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Before the Subcommittee on Crime, Terrorism, and Homeland Security
of the
Committee on the Judiciary
U.S. House of Representatives
OVERSIGHT OF THE FEDERAL BUREAU OF PRISONS AND
IMPLEMENTATION OF THE FIRST STEP ACT OF 2018
October 17, 2019

Thank you for the opportunity to testify regarding the Department of Justice's ongoing efforts to fully implement the First Step Act.

The Attorney General has consistently and emphatically stated that the Department will implement the First Step Act's requirements. As part of his January 2019 confirmation hearing, the Attorney General committed to faithfully implementing the Act. He has consistently communicated that message to the public and to those within the Department.

The Department, in turn, has worked tirelessly to ensure that the Act's many reforms are implemented in a way that reduces recidivism, provides opportunities to offenders, and protects our communities. As an example of that commitment, the Deputy Attorney General announced on July 19, 2019 that $75 million in existing resources would be reprioritized in order to provide the FSA's authorized funding level for implementation in 2019.

Today, I would like to focus on the Department's efforts to develop, refine, and implement the Risk and Needs Assessment System (RNAS) required by the Act. I also will summarize some of the other steps that the Department has taken to implement the Act.

I.   **Developing, Refining, and Implementing the Risk and Needs Assessment System**

A. **Developing the Risk and Needs Assessment System**

Beginning with the Act's enactment, the Department focused on the development of the RNAS. The RNAS classifies inmates according to their risk of recidivism and determines the type and amount of evidence-based recidivism reduction programming that is appropriate for each inmate. An inmate's risk classification may also affect the inmate's ability to receive certain incentives. For example, some inmates may be able to receive time credits for successfully completing evidence-based recidivism reduction programs and productive activities. The Act also created an Independent Review Committee (IRC) to consult with the Department as it develops the RNAS.

Congress set an ambitious schedule to implement the Act's requirements. The Act required the Attorney General to develop and publish the RNAS within 210 days of the Act's enactment. That deadline was made even more ambitious for two reasons. First, the IRC did not exist when the Act was enacted. As a result, the Department had to start the process of establishing the IRC, consult with the IRC, and publish the RNAS – all within 210 days. Second, most Department employees were prevented from working during the funding lapse from December 2018 to January 2019.

Despite these challenges, on July 19, 2019, the Department satisfied Congress's deadline to publish the RNAS. On that day, the Department announced that it would use a new risk assessment instrument, the Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN) to classify inmates according to their risk of recidivism. The Deputy Attorney General emphasized the importance of PATTERN by holding a press conference announcing its release.

In developing PATTERN, the Department contracted with two national experts in risk assessment systems – Dr. Grant Duwe, the Director of Research for the Minnesota Department of Corrections, and Dr. Zachary Hamilton, an Associate Professor of Criminal Justice and Criminology and the Director of the Washington State Institute for Criminal Justice. The Department benefitted substantially from Drs. Duwe and Hamilton's knowledge and expertise. Consistent with the Act, PATTERN incorporates dynamic risk factors – things that an inmate can change over time. Such dynamic factors include, among others, an inmate's infractions, beneficial programs, and vocational courses.

The Department also satisfied the Act's requirements with respect to the IRC. Shortly after funds were made available for the IRC's work, the National Institute of Justice (NIJ) selected the Hudson Institute as the host organization for the IRC. As the host organization, the Hudson Institute acted as a project manager and supported the IRC in its work. The IRC includes members with academic expertise, such as Drs. Faye Taxman and James Byrne; those with correctional expertise, such as John Wetzel and Patti Butterfield; and those who have served in senior roles in the United States Government, such as George Terwilliger and John Walters.

The Department consulted extensively with the IRC as it developed PATTERN. The IRC gave advice during formal meetings with the Attorney General, Deputy Attorney General, and Department subject matter experts. It also participated in informal consultation sessions among IRC members and NIJ's outside experts.

The Department also held three listening sessions in April and May of 2019 to allow stakeholders to provide input regarding the RNAS. The Department received written and in-person statements from 27 individuals representing a variety of communities, including legal experts, law enforcement, criminal justice advocates, academics, victims' rights advocates, and others. The Department received constructive advice on a variety of topics, including what a useful risk assessment system should include, the need to avoid racial bias, and the need to take account of the harms suffered by crime victims.

B. Refining the Risk and Needs Assessment System

In announcing PATTERN, the Department made clear that it was only the first step in implementing the Act. Indeed, as part of PATTERN's announcement, the Department immediately began the process of considering how to improve it. That process included a 45-day public study period that recently concluded. During that study period, the Department solicited public comment and conducted two listening sessions with interested stakeholders. The Department received 17 statements (combining written and in-person) as a result of the listening sessions. Additionally, the Department has continued to consult with the IRC and NIJ's outside

experts to consider ways to improve PATTERN. This is an ongoing process, and we look forward to refining the RNAS over time.

C. Implementing the Risk and Needs Assessment System

In addition to developing and improving PATTERN, the Department is committed to ensuring that the System is appropriately implemented within BOP. Indeed, NIJ contracted with a third outside expert, Dr. Angela Hawken, to work on implementation of the RNAS.

As PATTERN is refined and finalized, BOP will train staff in how to use it appropriately. BOP anticipates assessing new inmates as they are processed at intake and reassessing all inmates every six months. After an inmate is assessed, BOP will provide a needs plan with tailored programs and services. BOP is actively reviewing its available programming to ensure that inmates are being offered appropriate programs and services. We expect that BOP will post a list of approved programs by January 2020.

The Department also is working to design an enhanced needs assessment tool with input from expert practitioners, academic researchers, and federal partners. As part of that effort, on August 28 and 29, 2019, the RAND Corporation, on behalf of NIJ, hosted a workshop on the Use of Risk and Needs Assessments in Prisons. I attended a portion of that workshop, along with IRC member, Dr. Faye Taxman. The prototype needs assessment system is expected to be available for testing by the second quarter of 2020.

Additionally, BOP is developing a system to track and award earned time credits for inmates who successfully complete evidence-based recidivism reduction programs and productive activities. BOP will continue to update its systems and policies to integrate PATTERN into its operations.

The Department also will monitor the effectiveness of PATTERN over time. NIJ will research and evaluate the predictive validity of PATTERN. It also will examine the effectiveness of our programming in reducing recidivism. Based on this research and other data, the Department will refine and make changes to PATTERN and the associated programming and procedures.

II.   Other Efforts to Implement the First Step Act

Of course, the Risk and Needs Assessment System is only one part of the Act. Other steps that the Department has taken to implement the Act include:

- **Good Time Credit Recalculation**. Over 3,000 federal prison inmates were released from BOP custody as a result of the Act's recalculation of how much good time credit an inmate may accumulate each year.

- **Compassionate Release**. BOP updated its policies to reflect the new procedures for inmates to obtain "compassionate release" sentence reductions under 18 U.S.C. §§ 3582 and 4205(g). Since the Act was signed into law, 95 inmates have received Compassionate Release.

- **Expanded Use of Home Confinement**. The Act authorizes BOP to maximize the use of home confinement for low risk offenders. Currently, there are approximately 2,000 inmates on Home Confinement. The legislation also expands a pilot program for eligible elderly and terminally ill offenders to be transitioned to Home Confinement. There are currently 328 inmates approved for the pilot, with 242 already on home confinement under the pilot.

- **Drug Treatment**. Offenders are interviewed and screened by drug treatment specialists and a clinical psychologist to determine if they have a substance abuse treatment need. Inmates with an identified need are provided an individualized treatment plan to address their need. About 20,000 BOP inmates are currently enrolled in drug treatment programs, including the Residential Drug Abuse Program (RDAP).

- **Medication Assisted Treatment (MAT)**. The Act requires BOP to assess the availability of and the capacity to treat opioid use disorders through evidence-based programs, including medication-assisted treatment. In the midst of the opioid crisis, this initiative is important to improve reentry outcomes. Every inmate within 15 months of release who might qualify for MAT has been screened. Inmates are screened physically and psychologically for history of an opioid-related disorder.

- **Effective Re-Entry Programming**. Implementing the Act includes helping offenders successfully reintegrate into the community – a critical factor in preventing recidivism and, in turn, reducing the number of crime victims. Finding gainful employment is an important part of that process. In furtherance of this goal, BOP launched a "Ready to Work" initiative to connect private employers with inmates nearing release under the Act.

In addition to these implementation efforts, BOP has taken the following important actions:

- Updated existing guidance and training concerning the use of restraints on pregnant inmates;

- Verified that existing policies and contracts comply with the Act's requirement to provide sanitary products to female offenders free of charge;

- Updated its policy for employees to carry and store personal weapons on institution property;

- Offered de-escalation training to its employees and officers in accordance with the Act;

- Identified a dyslexia screening tool; and

- Updated its mental health awareness training regarding inmates with psychiatric disorders.

Thank you again for the opportunity to testify regarding the Department's efforts to implement the Act. I look forward to working with you as we seek to provide opportunities, to reduce recidivism, and to protect our communities.