

\*\*\*EMBARGO UNTIL

THURSDAY, APRIL 25, 2019, 9:00 A.M. ET

[WWW.BJS.GOV](http://www.bjs.gov)

[Print release](#) | [Prisoners full report](#) |

[Jail inmates full report](#)

BUREAU OF JUSTICE STATISTICS

CONTACT: TANNYR WATKINS

(202) 532-3923; EMAIL: [Tannyr.M.Watkins@ojp.usdoj.gov](mailto:Tannyr.M.Watkins@ojp.usdoj.gov)

### **PRISON AND JAIL INCARCERATION RATES DECREASED BY MORE THAN 10% FROM 2007 TO 2017**

WASHINGTON — From 2007 to 2017, incarceration rates in both prisons and jails decreased by more than 10%, according to reports released today by the Bureau of Justice Statistics. Over a decade, the incarceration rate among state and federal prisoners sentenced to more than a year dropped by 13%, from 506 prisoners per 100,000 U.S. residents in 2007 to 440 prisoners per 100,000 in 2017. The prison incarceration rate also dropped 2.1% from 2016 to 2017, bringing it to the lowest level since 1997.

The jail incarceration rate decreased by 12% from 2007 to 2017, from 259 to 229 jail inmates per 100,000 U.S. residents, but did not decline from 2016 to 2017.

The U.S. prison population was 1.5 million prisoners at year-end 2017, and the population of jail inmates in the U.S. was 745,000 at midyear 2017. There were 1.3 million prisoners under state jurisdiction and 183,000 under federal jurisdiction. From the end of 2016 to the end of 2017, the number of prisoners under federal jurisdiction declined by 6,100 (down 3%), while the number of prisoners under state jurisdiction fell by 12,600 (down 1%).

By citizenship status, non-citizens made up roughly the same portion of the U.S. prison population (7.6%) as of the total U.S. population (7.0%, per the U.S. Census Bureau). This is based on prisoners held in the custody of publicly or privately operated state or federal prisons.

Among racial groups, the imprisonment rate for sentenced black adults declined by 31% from 2007 to 2017 and by 4% from 2016 to 2017, the largest declines of any racial group.

However, the imprisonment rate for sentenced black males was more than twice the rate for sentenced Hispanic males and almost six times that for sentenced white males (2,336 per 100,000 black males compared to 1,054 per 100,000 Hispanic males and 397 per 100,000 white males). The rate for sentenced black females was almost double that for sentenced white females (92 per 100,000 black females compared to 49 per 100,000 white females).

Among state prisoners sentenced to more than one year, more than half (55%) were serving a sentence for a violent offense at year-end 2016, the most recent year for which state data are available.

An estimated 60% of blacks and Hispanics in state prisons were serving a sentence for a violent offense, compared to 48% of whites. At the end of fiscal year 2017, nearly half of all federal prisoners were serving a sentence for drug trafficking.

Privately operated prison facilities held 121,400 prisoners, or 8% of all state and federal prisoners, at year-end 2017. Inmates in these facilities were under the jurisdiction of 27 states and the Bureau of Prisons. The number of federal prisoners held in private facilities decreased by 6,600 from 2016 to 2017 (down 19%).

In 2017, almost two-thirds (482,000) of jail inmates were unconvicted, awaiting court action on a charge, while the rest (263,200) were convicted and either serving a sentence or awaiting sentencing.

The demographic characteristics of persons incarcerated in jails shifted from 2005 to 2017. During this period, the percentage of the jail population that was white increased from 44% to 50%, while the percentage that was black decreased from 39% to 34%. Hispanics accounted for 15% of all jail inmates in 2017, the same as in 2005. Asians accounted for less than 1% of jail inmates in both years. In 2017, the jail incarceration rate for blacks was more than 3 times the rate for whites and Hispanics, and more than 20 times the rate for Asians.

Jails reported 10.6 million admissions in 2017, which represented no change from 2016 but a 19% decline from 13.1 million in 2007. The overall weekly inmate turnover rate was 54% in 2017, while the estimated average time spent in jail before release was 26 days.

At midyear 2017, one in five jails were operating at or above 100% of their rated capacity, which is the number of beds or inmates that a rating official has assigned to a facility. The total rated capacity of county and city jails was 915,100 beds at midyear 2017. An estimated 81% of jail beds were occupied in 2017, down from 95% in 2005.

*Jail Inmates in 2017* (NCJ 251774) was written by BJS statistician Zhen Zeng, Ph.D. *Prisoners in 2017* (NCJ 252156) was written by BJS statisticians Jennifer Bronson, Ph.D., and E. Ann Carson, Ph.D. The reports, related documents and additional information about BJS's statistical publications and programs are available on the BJS website at [www.bjs.gov](http://www.bjs.gov).

The Bureau of Justice Statistics of the U.S. Department of Justice is the principal federal agency responsible for collecting, analyzing and disseminating reliable statistics on crime and criminal justice in the United States. Jeffrey H. Anderson is the director.

The Office of Justice Programs, directed by Principal Deputy Assistant Attorney General Matt M. Dummermuth, provides federal leadership, grants and resources to improve the nation's capacity to prevent and reduce crime, assist victims and enhance the rule of law by strengthening the criminal justice system. More information about OJP and its components can be found at [www.ojp.gov](http://www.ojp.gov)

###

# Threading the Needle: The FIRST STEP Act, Sentencing Reform, and the Future of Criminal Justice Reform Advocacy



**MOLLY GILL\***

Vice President of  
Policy, FAMM

## I. Introduction

Shortly after Donald Trump's election to the presidency, a journalist contacted me and asked for my opinion on the prospects for passing criminal justice reform legislation in Congress. On one hand, I said, this new President had described our historically low crime rates as an era of "violence in our streets and . . . chaos in our communities."<sup>1</sup> On the other hand, I mused, "If it takes a Richard Nixon to go to China, we may have just elected the ultimate Richard Nixon on criminal justice reform." If anyone could sign a criminal justice reform bill into law without the fear of being labeled "soft on crime," it would be President Trump.

Then President Trump selected Jeff Sessions as Attorney General, seemingly guaranteeing that this administration would not be one to sign criminal justice reforms into law.<sup>2</sup> In 2016, then Senator Sessions (R-AL) had almost single-handedly ensured<sup>3</sup> that the Sentencing Reform and Corrections Act (SRCA)<sup>4</sup> never received a vote in the U.S. Senate, despite its wide bipartisan support and the leadership of Senate Judiciary Committee Chairman Chuck Grassley (R-IA) and criminal justice reform champion Dick Durbin (D-IL) at the bill's helm. Exactly as expected, when SRCA was reintroduced<sup>5</sup> and passed by the Senate Judiciary Committee again in 2017,<sup>6</sup> some deemed the bill unpassable.<sup>7</sup>

But prison reform—the subject of the second half of SRCA—has long been of interest to some in the Trump administration. Trump's son-in-law, Jared Kushner, awoke to the need for prison reform after his father spent time in federal prison.<sup>8</sup> An odd couple from the U.S. House of Representatives, Doug Collins (R-GA) and Hakeem Jeffries (D-NY), introduced the Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person (FIRST STEP) Act with the hope of passing an incremental reform package.<sup>9</sup> The bill improved and built on the prison reforms in SRCA but included no sentencing reforms. Weeks before the House vote on the FIRST STEP Act, Senators Grassley and Durbin publicly insisted that if a criminal justice reform bill were to pass, it must include sentencing reforms like those in SRCA.<sup>10</sup> The FIRST STEP Act later passed in the House of Representatives by a bipartisan vote of 360 to 59.<sup>11</sup> Both Jeffries and Collins insisted in floor speeches that the bill was indeed a "first

step" and that sentencing reform would continue to be necessary,<sup>12</sup> but their words did not reassure some advocates or win over Grassley and Durbin. The stage was set for either compromise or gridlock in the Senate.

## II. Disagreement over the FIRST STEP Act

The FIRST STEP Act also split the criminal justice reform advocacy community into two disagreeing camps. Opponents mourned the bill's lack of sentencing reforms and criticized its reliance on risk assessment tools to determine a prisoner's risk of reoffending and, consequently, ability to redeem time credits earned for completing rehabilitative programs in prison. Opponents of the FIRST STEP Act argued that risk assessment tools would have a racially disparate impact, making Whites the most likely beneficiaries of the bill's earned time credit benefits.<sup>13</sup> Opponents also questioned whether Attorney General Sessions could be trusted to implement the bill's reforms<sup>14</sup> and whether the funds authorized for prison programs would ever materialize in the appropriations process.<sup>15</sup>

The FIRST STEP Act's supporters pointed to the bill's safeguards against the use of a risk assessment tool that would create racial disparities in its application,<sup>16</sup> and they highlighted the bill's improvements on the prison reform portions of SRCA.<sup>17</sup> Most importantly, the FIRST STEP Act included a handful of reforms that the bill's supporters had been advocating for decades and that would directly and immediately benefit federal prisoners and their families. These reforms included the following.

### A. Good Time Credit

Federal law<sup>18</sup> permits prisoners to earn up to fifty-four days per year of "good time" credit for following prison rules, but this has been interpreted by both the Federal Bureau of Prisons (BOP) and the U.S. Supreme Court such that prisoners actually earn only forty-seven days per year.<sup>19</sup> The FIRST STEP Act fixes this discrepancy and increases good time credits by seven days for each year of the sentence imposed, for all federal prisoners except those serving life sentences.<sup>20</sup> The bill applies that reform both prospectively and retroactively, bringing approximately 180,000 prisoners<sup>21</sup> home a week sooner for each year of their sentence, if they comply with all prison rules.

*Federal Sentencing Reporter*, Vol. 31, No. 2, pp. 107–111, ISSN 1053-9867, electronic ISSN 1533-8363.  
© 2018 Vera Institute of Justice. All rights reserved. Please direct requests for permission to photocopy or reproduce article content through the University of California Press's Reprints and Permissions web page, <http://www.ucpress.edu/journals.php?p=reprints>. DOI: <https://doi.org/10.1525/fsr.2018.31.2.107>.

A person serving a ten-year sentence, for example, would get an extra week off for each year already served with good behavior, plus an extra week off for each year served with good behavior going forward. For prisoners and their families, good time credit reform would be a significant victory for criminal justice reform, with real, immediate, and meaningful benefits.

#### **B. Increased Use of Home Confinement**

The FIRST STEP Act would require<sup>22</sup> the BOP to put low-risk, low-needs people in home confinement for the maximum amount of time allowed (up to six months or 10% of the person's sentence, whichever is less)<sup>23</sup> at the end of their sentences. Some people leaving prison do not need the services of a halfway house and can go straight to home confinement to live with their families while they reenter society. Yet historically the BOP has not fully utilized home confinement.<sup>24</sup>

#### **C. Compassionate Release**

The FIRST STEP Act reforms the BOP's use of compassionate release<sup>25</sup> for sick and elderly prisoners, a process that has been notoriously broken for decades.<sup>26</sup> Reforms would allow prisoners to appeal denials of compassionate release to federal courts after all other BOP remedies have been exhausted or at least thirty days have passed since the request was submitted; require annual data reporting on the BOP's use of compassionate release; and create an expedited timeline for BOP consideration of compassionate release requests from terminally ill prisoners, among other reforms.<sup>27</sup>

#### **D. 500-Mile Placement Rule**

The FIRST STEP Act would require the BOP to place people in prisons no more than 500 driving miles from home unless security designation, programming or health-care needs, or bed space limits prevent it.<sup>28</sup> Studies have found that about one in four federal prisoners are incarcerated more than 500 miles from home.<sup>29</sup> Long distances make it difficult and expensive for spouses, parents, and children to visit a loved one in prison, fraying ties that can help prevent recidivism.<sup>30</sup>

#### **E. More Rehabilitative Programming and Funding**

The FIRST STEP Act authorizes \$250 million over five years<sup>31</sup> for more rehabilitative programming in federal prisons, where most prisoners currently lack meaningful educational, job training, mental health, and drug treatment programs.<sup>32</sup> Funding is also essential because the BOP has recently been cutting the number of staff that provide rehabilitative programming and classes.<sup>33</sup> Without adequate funding and staff, prison reform is impossible.

### **III. Salvaging the FIRST STEP Act with Sentencing Reform?**

Just when the August congressional recess arrived and it seemed the FIRST STEP Act would die the same death as

similar bills before it, President Trump announced that he would be willing to sign a FIRST STEP Act that included sentencing reforms.<sup>34</sup> This sparked negotiations among Senators Grassley and Durbin and other key lawmakers. Another breakthrough came when Senate Majority Leader Mitch McConnell (R-KY) promised to give the FIRST STEP Act a floor vote in the Senate after the November 2018 elections if the bill could win 60 votes.<sup>35</sup> As of this writing,<sup>36</sup> the challenge in Congress is that of threading a needle: the final criminal justice reform bill must include enough sentencing reforms to win over FIRST STEP Act opponents like Grassley and Durbin, but not so much sentencing reform that the bill would be vetoed by President Trump or too easily killed by Attorney General Sessions, still outspokenly opposed to sentencing reform.<sup>37</sup> Sentencing reforms that are on the table for negotiation include the following provisions from SRCA.

#### **A. Reform of 18 U.S.C. § 924(c) "Stacking"**

Federal law requires consecutive five-, seven-, ten-, and thirty-year mandatory minimum sentences for possessing, brandishing, or discharging a gun in the course of a drug trafficking crime or a crime of violence, and consecutive twenty-five-year sentences for each subsequent conviction.<sup>38</sup> This "stacking" of penalties—required even when all of the criminal charges arise from one offense or course of conduct in a single indictment<sup>39</sup>—results in absurd punishments like the forty-year sentence Frederick Turner, a low-level and first-time drug offender, received for merely delivering a gun to a confidential informant during his addiction-driven involvement in a drug conspiracy.<sup>40</sup>

SRCA's reform provision would clarify that the twenty-five-year sentences for second or subsequent § 924(c) offenses may be applied only when the prior § 924(c) conviction was already final prior to the commission of the current offense.<sup>41</sup> At the October 2015 markup of SRCA, then Senator Sessions said, "I think the stacking issue is a problem. . . . I would support reform of the stacking provisions somewhat like you have it in the bill today."<sup>42</sup> Of all the sentencing reforms proposed as additions to the FIRST STEP Act, stacking reform is arguably the least controversial.

#### **B. Reform of 21 U.S.C. §§ 841, 851 Mandatory Minimums for Repeat Offenders**

Current law requires mandatory twenty-year and life-without-parole sentences for drug offenders with prior drug convictions, if the prosecutor files an information seeking such sentences.<sup>43</sup> In addition to their excessive length, these sentences are problematic because they are frequently applied to people whose prior convictions are old, stemmed from drug addiction, were for non-trafficking offenses, or did not actually result in a prison sentence.<sup>44</sup> The U.S. Sentencing Commission found that § 851 enhancements were applied inconsistently, with wide geographic variations in eligibility, filing, withdrawal, and ultimate application of the enhancement among offenders. For example,

five federal districts sought § 851 enhancements against more than 50% of eligible drug trafficking offenders, while nineteen districts sought no § 851 enhancements against eligible offenders.<sup>45</sup> Additionally, while § 851 enhancements had a significant impact on all racial groups, they impacted Black offenders most significantly.<sup>46</sup>

SRCA's reforms would reduce the mandatory life-without-parole sentence to a mandatory minimum twenty-five-year sentence for a third drug offense and reduce the mandatory twenty-year sentence to a mandatory minimum fifteen-year sentence for a second drug offense under §§ 841 and 851. In SRCA, these reforms would be retroactively applicable. Also, SRCA would limit the types of prior drug offenses that can trigger §§ 841 and 851 sentences to those for which the person served more than one year in prison and for which the release from imprisonment was within fifteen years of the commission of the current offense.<sup>47</sup>

### C. Safety Valve Expansion

One of the only exceptions to mandatory minimum drug sentences, the "safety valve,"<sup>48</sup> is so narrow that many low-level offenders with minimal criminal records are excluded from relief and receive disproportionate punishments.<sup>49</sup> Old and minor offenses, including those for which a person served no prison or jail time, can disqualify a person from safety valve eligibility. Examples include careless driving, trespassing, insufficient funds check, and disorderly conduct; all count in the guidelines calculation if the sentence was a term of probation of more than one year.<sup>50</sup> In FY 2016, 22% of drug offenders qualified for the safety valve,<sup>51</sup> yet the U.S. Sentencing Commission also found that a "significant portion of offenders who performed relatively low-level functions did not qualify under the safety valve provision. For example, a significant portion of Couriers (31.9%), Mules (28.8%), and Employees/Workers (33.9%) did not qualify for the safety valve in fiscal year 2016," and these offenders received longer sentences.<sup>52</sup>

The SRCA reforms would expand the existing safety valve's criminal history prong to make eligible those who do not have more than four criminal history points (excluding any one-point prior offenses), a prior three-point offense, or a prior two-point violent offense, as calculated under the guidelines. The safety valve would also apply if the court found that the person lacked prior convictions for serious violent felonies and the criminal history score overrepresented the seriousness of the defendant's record or likelihood of reoffending.<sup>53</sup> SRCA would also create a new safety valve specifically for the ten-year mandatory minimum sentences for drug trafficking, with an extensive and rigid list of eligibility criteria.<sup>54</sup>

### D. Fair Sentencing Act Retroactivity

The Fair Sentencing Act of 2010 (FSA) reduced the weight disparity between crack and powder cocaine mandatory minimum sentences from a ratio of 100:1 to 18:1 but did

not apply this reform retroactively.<sup>55</sup> As of October 2017, according to a U.S. Sentencing Commission analysis, 3,147 crack cocaine offenders remained in federal prisons serving mandatory minimum terms that Congress, the President, and the country have repudiated as unfair and racially discriminatory.<sup>56</sup> SRCA's provisions would allow crack cocaine offenders sentenced before August 3, 2010, to petition courts for sentences in line with the FSA's reforms.<sup>57</sup>

## IV. Conclusion: Threading a Needle, or Waiting for Perfection?

Passing any legislation in Congress in an election year is a challenge with long odds of success, but regardless of what happens to the FIRST STEP Act, the bill's journey highlights important future challenges and disagreements the criminal justice reform community must face and resolve, namely:

1. Must criminal justice reform legislation be comprehensive (i.e., include both sentencing and prison reforms) before Congress can pass it? If so, what else must comprehensive criminal justice reform include? If only comprehensive criminal justice reform is acceptable, how long should advocates—and, more importantly, prisoners and their families—be willing to wait for Congress to pass it?
2. Must Congress pass a criminal justice reform bill only when there is an administration in power that will implement it effectively? Again, if so, how long should people be willing to wait for reform before such an administration arises?
3. Is the use of risk assessment tools always barred unless they are certain not to create or exacerbate racial disparities? If so, what is the level of certainty required before allowing the use of a particular tool in reform legislation? What safeguards, if any, are sufficient to make a risk assessment tool an acceptable inclusion in a criminal justice reform bill? If risk assessment tools are rejected unconditionally, what are the alternative policies Congress should pursue instead?

The future passage of federal criminal justice reform may not depend on who lives in the White House. Instead, it may depend on whether the criminal justice reform community—and its allies in Congress—are willing to accept an incremental bill like the FIRST STEP Act without sentencing reforms, support reform even if the current Department of Justice is hostile to its implementation, or try out a risk assessment system that ultimately may or may not produce racial disparities. The answers to these questions will decide how long taxpayers, lawmakers, and, most importantly, incarcerated people and their families must wait for criminal justice reform. In the meantime, as of this writing, there is a slim chance to thread the needle—if enough people hold steady to make the effort a success and the postelection environment permits people to reach an agreement.

## Notes

- \* FAMM is a national, nonpartisan, nonprofit criminal justice reform organization in Washington, D.C. See [www.famm.org](http://www.famm.org). The author thanks Doug Berman and Shon Hopwood for the invitation to contribute this article.
- <sup>1</sup> *Full Text: Donald Trump 2016 RNC Draft Speech Transcript*, Politico (July 21, 2016), <https://www.politico.com/story/2016/07/full-transcript-donald-trump-nomination-acceptance-speech-at-rnc-225974>. Later, President Trump referred to crime in America as “American carnage.” See The White House, Inaugural Address (Jan. 20, 2017), <https://www.whitehouse.gov/briefings-statements/the-inaugural-address/> (“This American carnage stops right here and stops right now”).
- <sup>2</sup> Ed Kilgore, *Sessions as Attorney General Means Criminal-Justice Reform Is Dead*, NY Mag. (Nov. 18, 2016), <http://nymag.com/daily/intelligencer/2016/11/sessions-as-ag-means-criminal-justice-reform-is-dead.html>.
- <sup>3</sup> *Id.* (“[W]ith the 2016 elections pending, the junior U.S. senator from Alabama began raining on the criminal-justice-reform parade, attacking pending Senate legislation on both traditional war-on-drugs grounds, and the new claim that America was being subsumed in a new ‘crime wave.’ ”)
- <sup>4</sup> S. 2123, 114th Cong. (2015).
- <sup>5</sup> S. 1917, 115th Cong. (2017).
- <sup>6</sup> U.S. Senate Judiciary Committee, Executive Business Meeting on S. 1917, the Sentencing Reform and Corrections Act (Feb. 15, 2018), <https://www.judiciary.senate.gov/meetings/02/15/2018/executive-business-meeting>.
- <sup>7</sup> Eli Watkins, *Rebuffing Sessions, Senators Advance Criminal Justice Reform Bill*, CNN (Feb. 15, 2018), <https://www.cnn.com/2018/02/15/politics/sentencing-prison-reform-senate-grassley-sessions/index.html> (“Senate Majority Whip John Cornyn, a Texas Republican who is one of the lawmakers backing the prison reform approach, opposed the comprehensive package and said he did not think sentencing reform would make it into law given the current political landscape”).
- <sup>8</sup> Jordyn Phelps, *Inside Jared Kushner’s Personal Crusade to Reform America’s Prisons*, ABC News (Apr. 8, 2018), <https://abcnews.go.com/Politics/inside-jared-kushners-personal-crusade-reform-americas-prisons/story?id=53901143>.
- <sup>9</sup> H.R. 5682, 115th Cong. (2018).
- <sup>10</sup> Press Release, Office of Senator Dick Durbin, Grassley, Durbin: Sentencing Reform Necessary for Senate Consideration of Criminal Justice Reform (May 9, 2018), <https://www.durbin.senate.gov/newsroom/press-releases/grassley-durbin-sentencing-reform-necessary-for-senate-consideration-of-criminal-justice-reform> (“We are encouraged to see our House colleagues continue a serious discussion about necessary reforms to our nation’s criminal justice system. However, as we move forward, reforms to federal sentencing laws must be a central part of this discussion”).
- <sup>11</sup> 164 Cong. Rec. H4302–19 (daily ed. May 22, 2018), <https://www.congress.gov/congressional-record/2018/05/22/house-section/article/H4302-2>.
- <sup>12</sup> *Id.* at 4313 (comments of Rep. Jeffries (D-NY): “You will not just take one legislative magic wand and wipe it away in one shot. It will require sustained effort, sustained intensity, sustained commitment, and a meaningful first step. That is what this bill represents”); *id.* at 4312 (comments of Rep. Collins (R-GA): “I want to see sentencing reform, too. I am on record as saying I do. I am on record as continuing past this to actually do that”).
- <sup>13</sup> See, e.g., Letter to Members of Congress from the Leadership Conference on Civil and Human Rights, “Vote No on the FIRST STEP Act” (May 21, 2018) at 1, 3, [http://civilrightsdocs.info/pdf/policy/letters/2018/Short\\_Oppose%20FIRST%20STEP%20Act\\_5.21.18\\_FINAL.pdf](http://civilrightsdocs.info/pdf/policy/letters/2018/Short_Oppose%20FIRST%20STEP%20Act_5.21.18_FINAL.pdf) (claiming that “‘risk assessments’ will further embed racism into the meting out of resources that could change prisoners’ lives—like access to treatment, work, and most importantly, the ability to earn time off of a sentence”). The letter was also signed by 108 other advocacy groups.
- <sup>14</sup> *Id.* at 2 (“Attorney General Jeff Sessions is a well-known, long-time opponent of sentencing and prison reform. It would be unwise and harmful to vest so much discretion in an Attorney General so hostile to meaningful justice reform”).
- <sup>15</sup> *Id.* at 2–3.
- <sup>16</sup> See H.R. 5682 § 101(a), 115th Cong. (2018), <https://www.congress.gov/bill/115th-congress/house-bill/5682/text> (requiring the Attorney General to “on an annual basis, review and validate the risk and needs assessment system, which review shall include . . . an evaluation of the rates of recidivism among similarly classified prisoners to identify any unwarranted disparities, including disparities among similarly classified prisoners of different demographic groups, in such rates”).
- <sup>17</sup> See, e.g., FAMM, The FIRST STEP Act (H.R. 5682): Good for Families, Prisoners, and Public Safety (May 2018), <https://famm.org/wp-content/uploads/FAMM-FIRST-STEP-Factsheet.pdf>.
- <sup>18</sup> 18 U.S.C. § 3624(b)(1) (2018).
- <sup>19</sup> *Barber v. Thomas*, 560 US 474 (2010).
- <sup>20</sup> H.R. 5682 § 102(b).
- <sup>21</sup> Federal Bureau of Prisons, Population Statistics, [https://www.bop.gov/about/statistics/population\\_statistics.jsp](https://www.bop.gov/about/statistics/population_statistics.jsp) (showing a federal prison population of 183,488 inmates as of August 9, 2018).
- <sup>22</sup> H.R. 5682 § 402.
- <sup>23</sup> 18 U.S.C. § 3624(c)(2).
- <sup>24</sup> U.S. Dep’t of Justice, Office of the Inspector General, Audit of the Federal Bureau of Prisons’ Management of Inmate Placements in Residential Reentry Centers and Home Confinement (Nov. 2016), <https://oig.justice.gov/reports/2016/a1701.pdf> (“BOP is underutilizing direct home confinement placement as an alternative to [halfway house] placement for transitioning low-risk, low-need inmates back into society. . . . BOP placed only 6 percent of even those lower risk inmates directly into home confinement, despite BOP policy and guidance stating that direct home confinement placement is the preferred placement for low-risk, low-need inmates”).
- <sup>25</sup> 18 U.S.C. § 3582(c)(1)(A)(i).
- <sup>26</sup> See FAMM & Human Rights Watch, *The Answer is No: Too Little Compassionate Release in U.S. Federal Prisons* (Nov. 2012), <https://www.hrw.org/report/2012/11/30/answer-no/too-little-compassionate-release-us-federal-prisons>.
- <sup>27</sup> H.R. 5682 § 403(b). This section of the bill is identical to the GRACE Act, S. 2471, 115th Cong. (2018).
- <sup>28</sup> *Id.* at § 401.
- <sup>29</sup> Charles Colson Task Force on Federal Corrections, *Transforming Prisons, Restoring Lives: Final Recommendations of the Charles Colson Task Force on Federal Corrections* 40 (Jan. 2016), <https://www.urban.org/sites/default/files/publication/77101/2000589-Transforming-Prisons-Restoring-Lives.pdf>.
- <sup>30</sup> *Id.* at 39–40.
- <sup>31</sup> H.R. 5682 § 104.
- <sup>32</sup> See generally Kevin Ring & Molly Gill, *Using Time to Reduce Crime: Federal Prison Survey Results Show Ways to Reduce Recidivism* (June 2017), [https://famm.org/wp-content/uploads/Prison-Report\\_May-31\\_Final.pdf](https://famm.org/wp-content/uploads/Prison-Report_May-31_Final.pdf) (finding in a survey of approximately 2,000 federal prisoners that most reported little access to or availability of job training, education, computer training, mental health treatment, and drug treatment provided by qualified prison staff).

- <sup>33</sup> See Taylor Dolven, *Trump's Cuts to Federal Prison System "Decimates" [sic] Jobs*, Vice News (Feb. 13, 2018), [https://news.vice.com/en\\_ca/article/wj4jbm/trumps-cuts-to-federal-prison-system-decimates-jobs](https://news.vice.com/en_ca/article/wj4jbm/trumps-cuts-to-federal-prison-system-decimates-jobs).
- <sup>34</sup> Alexander Bolton, *Trump Gives Thumbs Up to Prison Sentencing Reform Bill at Pivotal Meeting*, The Hill (Aug. 3, 2018), <http://thehill.com/homenews/senate/400176-trump-gives-thumbs-up-to-prison-sentencing-reform-bill-at-pivotal-meeting>.
- <sup>35</sup> Alexander Bolton, *GOP Loads Up Lame-Duck Agenda As House Control Teeters*, The Hill (Oct. 11, 2018), <https://thehill.com/homenews/senate/410882-gop-lame-duck-agenda-grows-as-house-control-teeters>.
- <sup>36</sup> November 1, 2018.
- <sup>37</sup> U.S. Dep't of Justice, Attorney General Sessions Delivers Remarks Calling for a Legislative Fix to the Armed Career Criminal Act (Aug. 1, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-calling-legislative-fix-armed-career-criminal> (calling for the maintenance and expansion of lengthy mandatory minimum sentences). Regarding Sessions's comments, Senator Grassley responded the next day by telling reporters, "With all that I have done to help Sessions, to keep the president from firing him, I think Sessions ought to stay out of it." Jordain Carney, *Grassley: Sessions Should 'Stay out of' Criminal Justice Debate after I Helped Him Keep His Job*, The Hill (Aug. 2, 2018), <http://thehill.com/homenews/senate/400114-grassley-sessions-should-stay-out-of-criminal-justice-debate-after-i-helped>.
- <sup>38</sup> 18 U.S.C. § 924(c) (2018).
- <sup>39</sup> *Deal v. United States*, 508 US 129 (1993).
- <sup>40</sup> See Rachel Weiner, *Judge Laments 40-Year Sentence for Meth Dealer as "Excessive" and "Wrong"*, Wash. Post (July 2, 2018), [https://www.washingtonpost.com/local/public-safety/judge-laments-40-year-sentence-for-meth-dealer-as-excessive-and-wrong/2018/07/02/f1319b4c-7bd0-11e8-93cc-6d3becdd7a3\\_story.html?noredirect=on&utm\\_term=.70627609d295](https://www.washingtonpost.com/local/public-safety/judge-laments-40-year-sentence-for-meth-dealer-as-excessive-and-wrong/2018/07/02/f1319b4c-7bd0-11e8-93cc-6d3becdd7a3_story.html?noredirect=on&utm_term=.70627609d295). Reagan-appointed Judge T. S. Ellis regretted imposing Turner's forty-year sentence. As early as 2015, Judge Ellis wrote to the Senate Judiciary Committee, "I urge Congress to clarify that language in § 924(c)(1)(C) in order to prevent unjust applications in instances where a prior § 924(c) conviction has not yet been given an opportunity to have a deterrent effect. Moreover, fairness demands that Congress make the change explicitly retroactive." See Letter from Judge T. S. Ellis III to Senator Chuck Grassley and Congressman Robert Goodlatte (Dec. 1, 2015) at 2, <https://www.politico.com/f/?id=00000164-6faa-d85b-a776-ffb22630001>.
- <sup>41</sup> S. 1917 Tit. I § 104, 115th Cong. (2017).
- <sup>42</sup> U.S. Senate Judiciary Committee, Executive Business Meeting, Oct. 22, 2015, <https://www.judiciary.senate.gov/meetings/executive-business-meeting-10-22-15>.
- <sup>43</sup> 21 U.S.C. §§ 841, 851 (2018).
- <sup>44</sup> See, e.g., Human Rights Watch, *An Offer You Can't Refuse: How U.S. Federal Prosecutors Force Drug Defendants to Plead Guilty* (Dec. 2013), <https://www.hrw.org/report/2013/12/05/offer-you-cant-refuse/how-us-federal-prosecutors-force-drug-defendants-plead> (describing the case of Sandra Avery, who received a life-without-parole sentence for a drug offense based on three fifteen-year-old drug possession offenses for which she never served prison time).
- <sup>45</sup> U.S. Sentencing Comm'n, *Application and Impact of 21 U.S.C. § 851: Enhanced Penalties for Federal Drug Trafficking Offenders 6* (July 2018), [https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180712\\_851-Mand-Min.pdf](https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180712_851-Mand-Min.pdf).
- <sup>46</sup> *Id.* at 32.
- <sup>47</sup> S. 1917 Tit. I § 101, 115th Cong. (2017).
- <sup>48</sup> 18 U.S.C. § 3553(f) (2018). The safety valve is a strict five-part test, all parts of which must be met for the person to qualify for a sentence below the applicable mandatory minimum:
1. The person did not have more than one criminal history point, as calculated under the U.S. Sentencing Guidelines;
  2. The person did not play a leadership role in the offense;
  3. The person did not possess or use a gun in relation to the offense;
  4. The offense did not result in death or serious bodily injury to any other person; and
  5. The person pleads guilty and fully discloses their involvement in the offense. *Id.*
- <sup>49</sup> See, e.g., Famm, Shirley Schmitt, <https://famm.org/stories/shirley-schmitt-never-sold-single-ounce-profit/> (describing a case in which a woman who never sold drugs for profit received a ten-year mandatory minimum prison term and was disqualified from the safety valve because of prior convictions for drug and drug paraphernalia possession, neglect of livestock, and purchase of pseudoephedrine over the limit, for none of which she served jail or prison time).
- <sup>50</sup> U.S.S.G. § 4A1.2 (2018).
- <sup>51</sup> U.S. Sentencing Comm'n, *Mandatory Minimum Penalties in the Federal Criminal Justice System 6* (Oct. 2017), [https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171025\\_Drug-Mand-Min.pdf](https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171025_Drug-Mand-Min.pdf).
- <sup>52</sup> *Id.* at 7.
- <sup>53</sup> S. 1917, Tit. I § 102.
- <sup>54</sup> *Id.* at Tit. I § 103 (giving a five-year rather than a ten-year mandatory minimum sentence to an offender who does not have a prior conviction for a "serious drug felony" or a "serious violent felony"; was not a leader, organizer, manager, or supervisor in the offense; did not act as an importer or exporter, high-level distributor or supplier, wholesaler, or manufacturer, unless the person was a minor or minimal participant, as defined in the sentencing guidelines; did not use or possess a gun; pled guilty; and did not sell drugs to or with a person under age eighteen; and no death or serious bodily injury resulted to any person during the offense).
- <sup>55</sup> Pub. Law 111-220 (Aug. 3, 2010).
- <sup>56</sup> Letter from Glenn R. Schmitt, U.S. Sentencing Comm'n, to Congressional Budget Office (Mar. 9, 2018) at 4, [https://www.uscc.gov/sites/default/files/pdf/research-and-publications/prison-and-sentencing-impact-assessments/March\\_2018\\_Impact\\_Analysis\\_for\\_CBO.pdf](https://www.uscc.gov/sites/default/files/pdf/research-and-publications/prison-and-sentencing-impact-assessments/March_2018_Impact_Analysis_for_CBO.pdf).
- <sup>57</sup> S. 1917, Tit. I § 105.

# How the FIRST STEP Act Would Restore Dignity to Incarcerated Women



JESSICA JACKSON\*

## I. Introduction

The burning smell of bleach filled our nostrils as we sat in the cold, sterile visiting booth. Her long brown hair fell in front of her face as she stared at the floor, her brown eyes brimming with tears. I began to reach my hand out in comfort, to show her a sliver of the compassion she deserved but had never experienced. I glanced out through the yellow tinged plexiglass, noticing the names etched along the sides. My eyes landed on the male guard staring at us from his station a few feet away. I quickly drew back my hand, shutting down the only hope of consoling her as she began to sob, the tears spilling down her cheeks, describing her first night in solitary confinement as a fifteen-year-old pregnant girl.

Stories like this girl's are by no means uncommon these days. In 1970, approximately 8,000 women were incarcerated. This number had ballooned to 110,000 women by 2016, a nearly fifteen-fold increase. Like men, imprisoned women work jobs that pay as much in a month as a minimum-wage worker beyond bars makes in a day. In most jails and prisons, women have to pay for feminine hygiene products, a necessary inconvenience men do not have to contend with. Women have had to forgo cherished phone calls with family members in order to afford these products, and guards have been known to mock women in need of them. The practice of forcing imprisoned women to buy tampons and pads has been appropriately described as dehumanizing, humiliating, and cruel.<sup>1</sup> In addition, despite the fact that they are unlikely to be any danger, pregnant incarcerated women are still regularly shackled by prison guards. They can also be shackled at any time after giving birth.

In January 2017, Senators Cory Booker (D-NJ), Elizabeth Warren (D-MA), Kamala Harris (D-CA), and Dick Durbin (D-IL) introduced the Dignity for Incarcerated Women Act.<sup>2</sup> That bill, which was ultimately tabled, would have required the Federal Bureau of Prisons (BOP) to provide personal care products, including tampons and sanitary napkins, for free to women incarcerated in federal prisons. Shortly after the bill was introduced, my organization, #cut50, cofounded by CNN commentator and former Obama aide Van Jones and myself, launched the Dignity for Incarcerated Women Campaign led by Topeka K. Sam, a formerly incarcerated woman who is passionate about fighting for the sisters she left

behind. She's worked to put formerly incarcerated women at the helm of the conversation and to pass similar bills throughout the country. This year, a bipartisan coalition of Governors in states including California, Oklahoma, Connecticut, and Kentucky have all signed bills to increase dignity for women inside, while similar bills are currently being considered in New Jersey and Georgia.<sup>3</sup>

Portions of the federal bill proposed by Booker, Warren, Harris, and Durbin that would provide feminine hygiene products to imprisoned women have since been included in the Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person (FIRST STEP) Act.<sup>4</sup> The Act was crafted as a bipartisan prison reform bill that would end the deadlock on federal prison reform and could feasibly be signed into law by President Trump. If passed, women incarcerated in federal prisons would get necessary personal care items like tampons and pads for free. In addition, incarcerated women would no longer face the cruelty of shackling while giving birth or postpartum. The FIRST STEP Act passed the U.S. House of Representatives by a vote of 360 to 59, is now pending before the Senate, and will likely come to a vote after the November 2018 midterm elections. The Senate version of the bill has also been amended to include key provisions of the Sentencing Reform and Corrections Act, such as retroactivity of relief under the Fair Sentencing Act of 2010.<sup>5</sup>

## II. Mandating Feminine Hygiene Products Free of Charge

On May 18, four days before the FIRST STEP Act passed in the House, formerly incarcerated activist Topeka K. Sam spoke on a panel with Senior Advisors to the President Jared Kushner and Brook Rollins, Secretary of Energy Rick Perry, Van Jones, and myself before dozens of others at a White House conference. Sam explained that she went to federal prison for three years on a drug conspiracy charge. What she saw there reflected the statistics that 80% of incarcerated women are mothers and that 86% have experienced trauma, violence, or abuse. When asked what happens to women in prison, Sam told the audience that they are "victimized, traumatized, and stripped of their dignity over and over again." She explained that male guards watch the women undress, that the women have to pay for tampons and pads with their extremely meager

*Federal Sentencing Reporter*, Vol. 31, No. 2, pp. 116–118, ISSN 1053-9867, electronic ISSN 1533-8363.  
© 2018 Vera Institute of Justice. All rights reserved. Please direct requests for permission to photocopy or reproduce article content through the University of California Press's Reprints and Permissions web page, <http://www.ucpress.edu/journals.php?p=reprints>. DOI: <https://doi.org/10.1525/fsr.2018.31.2.116>.

wages, and that they have to decide between calling their children and buying toothpaste.

Sam detailed for the audience that she had uterine fibroids, which increased the volume of her menstrual bleeding. She had to give a paper bag filled with her used pads to a male guard to examine them, in order to prove that she actually needed the extra pads she was asking for. And unlike many incarcerated women she got to know inside, Sam came from a family that had financial resources and helped support her while she was incarcerated.<sup>6</sup>

Section 411 of the FIRST STEP Act (“Healthcare Products”) mandates that women incarcerated in federal prisons will not have to go through the same humiliating ordeal that Sam did. Section 411(a) states that the Director of the BOP *shall* make tampons and sanitary napkins available for free, “in a quantity that is appropriate to the healthcare needs of each prisoner.”<sup>7</sup> Subsection (b) requires that the products provided “confirm with applicable industry standards.”<sup>8</sup>

### III. Banning the Shackling of Pregnant and Postpartum Women

It is estimated that approximately 2,000 women deliver babies behind bars each year. A stunning 5–10% of women who enter jail or prison are pregnant.<sup>9</sup> There are no mandatory national standards for prenatal care in prisons, and pregnant and postpartum women are still shackled in federal prisons.<sup>10</sup> Women who deliver babies behind bars are separated from their newborn babies within mere days; given that 3% of women remanded to federal prison are pregnant at sentencing, a substantial number of women are subject to this form of abuse.<sup>11</sup> Some prison officials have justified the practice as mitigating escape risks, but no escapes have been reported.<sup>12</sup> Shackling of women’s ankles, wrists, or both without genuine safety concerns still occurs with lax enforcement of the Agency’s internal policy against the practice. Dehumanizing conditions mixed with inadequate prenatal health care have led to long-term trauma for women who have delivered their babies behind bars.<sup>13</sup>

The BOP technically banned shackling of women who are pregnant or in labor in 2008, but human rights organizations and formerly incarcerated women tell a different story. Maria Sosa sued the BOP in 2013, accusing the Agency of allowing guards to shackle her in 2010 while she gave birth in the Federal Detention Center, Miami. Sosa was awaiting a federal Medicare fraud charge and was detained pretrial only because she was considered a “flight risk” because she was born in Cuba (she is a U.S. citizen). Her lawyer told a local paper that “[s]he gave birth with shackles around one wrist and one ankle. She didn’t even have a chance to hold the baby in her arms before they snatched it away from her.”<sup>14</sup> On the floor of the House, Representative Karen Bass (D-CA) recounted the story of another woman who discussed being shackled over her belly after having an emergency Cesarean section. Bass read the woman’s words to her fellow representatives:

“With the weight on my stomach, it felt like they were ripping open my C-section.”<sup>15</sup>

Section 301 of the FIRST STEP Act would put the mandate of the 2008 BOP policy memorandum into statutory law, meaning that a subsequent Director of the BOP would not be able to bring shackling back for pregnant and postpartum women in recovery for up to twelve weeks. Exceptions are carved out for extraordinary circumstances, such as when a corrections official determines the prisoner presents “an immediate and credible flight risk that cannot reasonably be prevented by other means” or poses “an immediate and serious threat of harm” to herself or others.<sup>16</sup> If either of these conditions applies, the Act mandates that the least restrictive restraints are used<sup>17</sup> and bans particularly degrading forms of shackling.<sup>18</sup> A grievance procedure<sup>19</sup> and a violations reporting procedure<sup>20</sup> would be established, and the Director of the BOP would be required to report compliance to both bodies of Congress annually.<sup>21</sup>

### IV. Keeping the Bureau of Prisons Accountable

Very few Americans truly know what happens behind bars. Only the most heinous stories of prisoner abuse tend to make the news cycle.<sup>22</sup> Often, the coverage is dominated by prison agency spokespeople, and getting information about happenings behind bars is notoriously difficult. Reporter biases about prisoners and their inherent untrustworthiness are also common in mainstream media outlets.<sup>23</sup> While the National Women’s Law Center has praised the BOP for nominally ending the shackling of pregnant women, it conceded in 2010 that “[t]here is not yet information regarding the implementation of this policy.”<sup>24</sup>

The dearth of information combined with the BOP’s track record for thwarting the intent of laws that would help incarcerated prisoners means that legislation must be as airtight as possible in order to safeguard women’s dignity. Take, for instance, the Agency’s track record on “good time” credits: 18 U.S.C. § 3624(b) provides fifty-four days off a federal prisoner’s sentence per year, but the Agency interpreted that to actually mean forty-seven days, because it prorates the time. To ensure that women like Topeka K. Sam are not abused for their natural bodily functions, the FIRST STEP Act uses commanding, mandatory language (i.e., “shall,” “prohibited”) with regard to providing feminine hygiene products and banning the shackling of pregnant and postpartum women.

### V. Conclusion

The FIRST STEP Act passed by a wide margin in the House of Representatives, while its biggest critics were concerned that the bill did not go far enough to reform the federal criminal justice system. As Representative Sheila Jackson Lee (D-TX) stated on the floor: “Elements of this bill are striking and good. But to a mom, is it more exciting for you to know that your son, who had an excessive sentencing because of mandatory minimums, and you, who are incarcerated, have your sentence reduced than maybe

on the back end<sup>25</sup> She ended up voting no on the bill.<sup>26</sup> As the bill worked its way through the Senate, a compromise was struck that added key sentencing reform provisions that progressive Democrats applauded. The final fate of the FIRST STEP Act has not been determined at the time of writing.

However, Congress has been deadlocked on federal prison and criminal justice reform for at least a decade. Should the bill die in the Senate, the elements of the bill that Representative Jackson Lee considered “striking and good” will again be tabled for an unforeseen amount of time. Incarcerated women should not be forced to wait that long to have their dignity as human beings affirmed, especially when the BOP can seldom be trusted to respect people’s rights without a congressional mandate.

#### Notes

- \* Jessica Jackson is a human rights attorney and cofounder of #cut50, a national bipartisan initiative to reduce incarceration while keeping communities safe. Ms. Jackson is the former Mayor of Mill Valley, California, where she currently serves on the City Council.
- <sup>1</sup> Elizabeth Swavala, Kristine Riley & Ram Subramanian, *Overlooked: Women and Jails in an Era of Reform* (2016), <http://www.safetyandjusticechallenge.org/wp-content/uploads/2016/08/overlooked-women-in-jails-report-web.pdf>.
- <sup>2</sup> Dignity Act, S.1524, 115th Cong. (2017–2018).
- <sup>3</sup> *Dignity for Incarcerated Women*, #cut50, <https://www.cut50.org/dignity>.
- <sup>4</sup> FIRST STEP Act, H.R. 5682, 115th Cong. (2017–2018).
- <sup>5</sup> Alexander Bolton, *Trump Gives Thumbs Up to Prison Sentencing Reform Bill at Pivotal Meeting*, The Hill (Aug. 3, 2018), <http://thehill.com/homenews/senate/400176-trump-gives-thumbs-up-to-prison-sentencing-reform-bill-at-pivotal-meeting>.
- <sup>6</sup> SiriusXM Urban View, Facebook (May 18, 2018), <https://www.facebook.com/sxmurbanview/posts/topeka-k-sam-at-the-white-house-w-van-jones-siriusxm-urban-view/1067702803385000/>.
- <sup>7</sup> H.R. 5682 § 411(a).
- <sup>8</sup> *Id.* § 411(b).
- <sup>9</sup> Jennifer G. Clarke & Rachel E. Simon, *Shackling and Separation: Motherhood in Prison*, 15 *Virtual Mentor* 779 (2013), <https://journalofethics.ama-assn.org/article/shackling-and-separation-motherhood-prison/2013-09>.

- <sup>10</sup> Carolyn Sufrin, *The Shameful Neglect of Pregnant Women Behind Bars*, UC Press Blog (Mar. 26, 2017), <https://www.ucpress.edu/blog/26328/pregnant-and-behind-bars-the-experience-of-incarcerated-women-and-mothers/>.
- <sup>11</sup> Bureau of Justice Statistics, *Medical Problems of Prisoners* (2008), <https://www.bjs.gov/content/pub/pdf/mpp.pdf>.
- <sup>12</sup> Adam Liptak, *An Ex-Convict Challenges Shackling Women In Labor*, N.Y. Times (Mar. 5, 2006), <https://www.nytimes.com/2006/03/05/world/americas/an-exconvict-challenges-shackling-women-in-labor.html>.
- <sup>13</sup> McKenna Flores & Jaylen Bohman, *Pregnancy & Prison: The Untold Story of Women Who Give Birth Behind Bars*, Universe Narratives (Apr. 4, 2017), <https://universe.byu.edu/narratives/pregnancy-prison/>.
- <sup>14</sup> Michael E. Miller, *Miami Federal Prison Inmates Give Birth in Shackles, Lawyer Says*, Miami New Times (Feb. 21, 2013), <https://www.miaminewtimes.com/news/miami-federal-prison-inmates-give-birth-in-shackles-lawyer-says-6539320>.
- <sup>15</sup> 164 Cong. Rec. H4313 (daily ed. May 22, 2018), <https://www.congress.gov/crec/2018/05/22/CREC-2018-05-22-pt1-PgH4302-2.pdf>.
- <sup>16</sup> H.R. 5682 § 301, 115th Cong. (2018).
- <sup>17</sup> *Id.*
- <sup>18</sup> *Id.*
- <sup>19</sup> *Id.*
- <sup>20</sup> *Id.*
- <sup>21</sup> *Id.*
- <sup>22</sup> Seham Elmalak, *Babies behind Bars: An Evaluation of Prison Nurseries in American Female Prisons and Their Potential Constitutional Challenges*, 35 *Pace L. Rev.* 1080, 1080 (2015), <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1903&context=plr>.
- <sup>23</sup> Kevin Gosztola & Brian Sonenstein, *Fact-Checking the Prison Strike: Marshall Project Reveals Bias against Prisoner-Led Resistance*, Shadowproof (Aug. 29, 2018), <https://shadowproof.com/2018/08/29/fact-checking-prison-strike-marshall-project-reveals-bias-prisoner-led-resistance/> (explaining that the Marshall Project’s coverage “includes the perspectives of activists, but plays into biases against incarcerated people by suggesting they might not be telling the truth about their struggle for human rights”).
- <sup>24</sup> Rebecca Project for Human Rights & National Women’s Law Center, *Mothers Behind Bars* 8 (2010), <https://www.nwlc.org/sites/default/files/pdfs/mothersbehindbars2010.pdf>.
- <sup>25</sup> *Supra* note 15, H4314.
- <sup>26</sup> H.R. 5682: FIRST STEP Act, Govtrack, <https://www.govtrack.us/congress/votes/115-2018/h215>.

# Beyond First Steps: Reforming the Federal Bureau of Prisons



**SHON  
HOPWOOD\***

Associate Professor  
of Law, Georgetown  
University Law  
Center

The Federal Bureau of Prisons (BOP) is the largest American prison system in terms of the number of people incarcerated under its jurisdiction.<sup>1</sup> Its self-described mission is to provide confinement environments “that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.”<sup>2</sup> Yet few think the BOP is attaining these modest goals.<sup>3</sup>

But reform could be coming. Congress is currently considering a federal prison reform bill, the Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person (FIRST STEP) Act that would require the BOP to provide meaningful rehabilitation programs for federal prisoners.<sup>4</sup> In return, those in federal prison who complete programming could obtain earned time credits used to serve out some of their prison sentence in a halfway house or on home confinement. The FIRST STEP Act also requires the BOP to place prisoners within 500 driving miles of their families; makes it easier for volunteers to enter federal prisons; increases federal “good time” credit by seven days (thereby reducing every sentence for those persons with a release date); allocates \$50 million each year for five years to create rehabilitative programming; improves accountability in the BOP’s use of compassionate release;<sup>5</sup> ends the shackling of pregnant women; and reauthorizes an early-release pilot program for elderly prisoners, among other reforms.

If the FIRST STEP Act does become law, it will take at least half a decade for its provisions to be implemented and for the reform community to obtain sufficient data to determine which BOP programs most effectively reduce recidivism. One of the primary benefits of the FIRST STEP Act is that it requires the Attorney General to conduct ongoing research and data analysis on “which evidence-based recidivism reduction programs are the most effective at reducing recidivism, and the type, amount, and intensity of programming that most effectively reduces the risk of recidivism.” So, regardless of how the BOP implements the FIRST STEP Act, the criminal justice reform community will be able to study the BOP’s effectiveness in providing rehabilitation programming for those in federal prisons, which hopefully will guide the next round of reforms.

Because of its substantive reforms, data collection, and reporting requirements, the FIRST STEP Act represents the best federal prison reform bill of the past three

decades.<sup>6</sup> And there is hope that Congress will soon pass the Act (with sentencing reform included),<sup>7</sup> and that President Trump will sign it into law.

Although the FIRST STEP Act provides many beneficial policy changes designed to better rehabilitate the men and women inside federal prisons, it falls short of optimal policy. The criminal justice reform community sought changes to the bill that did not survive political negotiations in the House.<sup>8</sup> A future Congress, not limited to the politics of the moment, could improve upon the FIRST STEP Act by making the following changes.

Prisoners are just like everyone else: they respond to incentives.<sup>9</sup> As noted above, the FIRST STEP Act currently rewards federal prisoners with potential earned time that they can use to serve part of their sentence in a halfway house or on home confinement.<sup>10</sup> For every month they successfully complete in rehabilitation programming, they can earn up to fifteen days a month of earned time credit.<sup>11</sup> And the earned good time acts as an incentive for these prisoners to reduce their own risk of recidivism.

There are, however, three problems with the incentive structure. First, the bill only provides earned time that can be used by prisoners to serve part of their sentence at a halfway house or on home confinement. The earned time credits do not cut sentences short, even though the best incentive to persuade those in federal prison to successfully complete recidivism-reducing programs is the promise of real time off their sentence in the form of additional good time.<sup>12</sup> Second, the bill only provides earned time credit to those who are determined to present a minimal or low risk of recidivism.<sup>13</sup> Yet low-risk federal prisoners come to prison already unlikely to reoffend; in fact, low-risk prisoners may not need programming at all.<sup>14</sup> The most effective way to reduce recidivism is to focus incentives and programming on those with higher risks of recidivism.<sup>15</sup> Third, the bill excludes those who commit certain violent, drug, white-collar, and sex offenses from the ability to even receive the earned time credit.<sup>16</sup> If the goal of the bill is to reduce recidivism, Congress should focus its rehabilitation efforts on higher-risk prisoners, many of whom have been in the system before and are unlikely to submit to the rigors of rehabilitative programming without a significant reward. Hoping that prisoners will simply pursue their own rehabilitation without meaningful incentives is not effective policy.

*Federal Sentencing Reporter*, Vol. 31, No. 2, pp. 119–125, ISSN 1053-9867, electronic ISSN 1533-8363.  
© 2018 Vera Institute of Justice. All rights reserved. Please direct requests for permission to photocopy  
or reproduce article content through the University of California Press’s Reprints and Permissions web page,  
<http://www.ucpress.edu/journals.php?p=reprints>. DOI: <https://doi.org/10.1525/fsr.2018.31.2.119>.

My own experience illustrates why Congress should create incentives leading to more real time off a prisoner's sentence. The BOP's most popular rehabilitative program is the Residential Drug Abuse Program (RDAP),<sup>17</sup> which has a 5,000-person waiting list because of its unique incentive: a one-year sentence reduction.<sup>18</sup> I served over ten years in federal prison but did not enroll in the RDAP.<sup>19</sup> Because Congress excluded anyone convicted of a violent crime from receiving the year off for completing the RDAP,<sup>20</sup> the incentive was unavailable to me. RDAP would have been beneficial, and although I was a particularly motivated prisoner, I did not enroll without the incentive attached.

Currently, around 50% of those released from federal prisons will be rearrested within ten years of release.<sup>21</sup> The optimal way to reduce this recidivism (Congress's purpose in potentially passing the FIRST STEP Act) is to provide meaningful rehabilitation programming—with the incentive of real time off—to those who present a medium to high risk of recidivating. By not providing a more significant incentive and excluding high-risk prisoners, Congress has created a system that will not reduce recidivism as effectively as it could. The next Congress to take up prison reform should change the earned time to good time and remove the list of exclusions so that everyone in federal prison is incentivized to take programs. Congress should also remove the RDAP exclusions so that those convicted of violent offenses, like myself, could receive a one-year reduction in sentence for participating. Most of those in prison will one day be released, and we should encourage them to enroll in the RDAP and other meaningful rehabilitation programming while they are in custody as a way to reduce recidivism when they are released.

If passed, the FIRST STEP Act's implementation will provide an initial step toward reforming the BOP. But even if the BOP perfectly implements all of the Act's reforms, additional reforms will be needed before the BOP can meet its mission statement. In this essay, I set forth the next steps in reforming the BOP, regardless of whether the FIRST STEP Act passes. Some of these proposed reforms can only be accomplished through legislation, but, with the right leadership, many others could be accomplished directly through BOP policy changes.

\*\*\*\*\*

The Federal Bureau of Prisons is the largest prison system in America, and the most effective way to improve the BOP is to reduce the number of people it incarcerates. Congress should reduce the federal prison population through comprehensive sentencing reform that eliminates mandatory minimum provisions, reduces the statutory maximum for federal crimes across the board, and then applies those changes retroactively. If Congress would merely reduce the penalties of the most frequently charged federal criminal statutes,<sup>22</sup> the federal prison population would be reduced to a more equitable and manageable number.

Consequently, the BOP would be more likely to invest in meaningful education and reentry classes for everyone in federal prison, thereby reducing the recidivism rate.

As to prison reform, policy change alone is insufficient; the BOP will need significant cultural change before it can significantly reduce the recidivism rate for those released from the federal prison system. Jeff Smith's experience is but one example of why that is so. Smith was a state politician in Missouri who in 2009 pled guilty to federal obstruction of justice charges and was sentenced to one year and a day in federal prison.<sup>23</sup> In his memoir, Smith shares a story about serving time at the Federal Correctional Institution in Manchester, Kentucky. The warden there decided to offer computer training classes as a reentry course to reduce recidivism. But when two correctional officers took Smith and other prisoners into the computer room, they instructed the prisoners to stare at, but not touch, the computers for thirty minutes. The correctional officers eventually told the prisoners they could leave. "And thus ended our computer skills class," Smith wrote.<sup>24</sup> This story exemplifies how initiatives aimed at providing those in prison with recidivism-reducing programs are often not implemented in appropriate and effective ways.

Correctional officers within the BOP are given considerable discretion, and there is a large disconnect between official BOP policy and how those policies are implemented by front-line correctional officers. Put differently, Congress can pass all the reform legislation it desires, but without systemic cultural change within the BOP and its personnel, those reforms are unlikely to be as effective as they should be.

So how could the BOP create the necessary cultural change? The BOP Director should create a new initiative emphasizing the rehabilitation aspect of the BOP's mission statement.<sup>25</sup> The Director should further encourage BOP employees to participate in rehabilitating prisoners by providing financial or other incentives for BOP employees at each individual facility, based on the recidivism or employment rate of the prisoners leaving that facility.<sup>26</sup> Indeed, some prisons already provide performance incentives for correctional officers.<sup>27</sup>

But top-down cultural change is unlikely to be sufficient.<sup>28</sup> The BOP should alter its hiring standards and practices. Federal correctional officers often negatively impact federal prisoners' efforts at rehabilitation. Many officers resent prisoners and view their role as providing additional unofficial punishments.<sup>29</sup> They may yell obscenities or use physical force as a first response to any negative behavior, whether a prisoner commits violence or simply walks too slowly to the housing unit. And many officers create environments where the explicit and implicit message every day is that prisoners are unworthy of dignity and are relegated to a life of crime, and hence to a life in prison. When those who are confined for years in this toxic environment routinely hear that message from those in authority positions, it impacts their ability to create positive growth and behavioral change.<sup>30</sup>

It is not surprising that so many federal correctional officers are unable to create an environment of positive reinforcement. The BOP does not hire those with backgrounds or training in behavioral sciences or social work to be front-line correctional officers. The BOP's hiring process is not rigorous. In order to be considered for a correctional officer position, an applicant must have either a four-year degree in any field or three years of general experience demonstrating "the aptitude for acquiring knowledge, skills, and abilities required for correctional work."<sup>31</sup> That general experience can be gained through employment involving classroom teaching, supervising planned recreational activities, managing others, or even working in sales. An applicant could work in a used car dealership for three years, and the BOP would consider that person qualified for a job as a federal correctional officer. Applicants who have made it through the initial qualification process are given a background check to determine whether they are suitable for the job. Those suitability determinations are made on a "case-by-case basis and are based upon an individual's character or conduct that could affect how the agency accomplishes its duties or responsibilities."<sup>32</sup> If an applicant is found suitable, the BOP then provides training on firearm use and self-defense, academic training on policies and procedures, and a modest physical abilities test.<sup>33</sup> The BOP places a premium on correctional officers maintaining the security of federal prisons—little attention is paid to how officers can positively impact the rehabilitation of prisoners.

Not every correctional system employs the BOP's hiring model.<sup>34</sup> Germany hires professional correctional staff who undergo extensive training similar to that of social workers and behavior specialists.<sup>35</sup> The German government provides a year of theoretical education and then a year of practical training, with courses on criminal law and self-defense—similar to the training that BOP provides. But Germany goes much further by providing classes on educational pedagogy, psychology, social education, stress and conflict management, and communication with prisoners.<sup>36</sup> Most importantly, German correctional officers rely on positive reinforcement.<sup>37</sup> And unlike their American counterparts, correctional staff in Germany rarely use disciplinary measures like solitary confinement.<sup>38</sup> As a result, German correctional systems have higher rates of success than their American counterparts.<sup>39</sup>

It is, of course, more expensive to incarcerate a person in Germany than in the United States.<sup>40</sup> Congress would need to invest in recidivism-reducing hiring practices before the BOP could comprehensively change its personnel. But research has shown that these costs would be worth it; correctional staff's positive relationships with prisoners can enhance their positive participation in risk-reducing programming.<sup>41</sup> If Congress replaced only a third of correctional officers in the BOP with adequately trained social workers, the long-term costs of incarceration would be reduced and public safety would increase because those

released from federal prison would not reoffend at the currently high rates.

If more social workers, psychologists, and educational staff were hired, the BOP could also improve its intake procedures. Every person coming into the correctional system should receive a holistic review.<sup>42</sup> If that review were conducted by trained professionals rather than someone who worked for three years in used car sales, it would better examine what factors led the individual to commit crimes and what package of rehabilitative programs could lessen the risk that an individual will commit new crimes upon release. Some in prison may need mental health treatment. Others, lacking job skills or education, may have turned to crime because they were unable to find employment. Still others may have difficulties with impulse control and may need mentoring or behavioral modification treatment. Or someone may need a combination of several programs. Currently, BOP correctional officers are simply unqualified to create individualized and adequate rehabilitative programs for prisoners or see that those programs are carried out in a positive environment.

But changing the BOP's hiring process will not be effective if Congress fails to provide the BOP with adequate resources to maintain a safe environment. Even after a reduction in the federal prison population beginning in 2013, the BOP remains overcrowded and many of its prisons are housing more prisoners than the rated capacity of those prisons.<sup>43</sup> The BOP also remains understaffed due to the reduction of its budget and its imposition of a 2017 hiring freeze.<sup>44</sup> Former BOP Director Charles Samuels testified to Congress that a prisoner-to-correctional officer ratio of 4:1 is high and "negatively impact[s]" the ability of BOP to "effectively supervise prisoners and provide inmate programs."<sup>45</sup> Despite that warning, the current prisoner-to-correctional officer ratio is 8.3:1. Studies have shown that overcrowding and insufficient staffing levels contribute to cycles of violence within federal prisons.<sup>46</sup> Congress should increase staffing to match the 3:1 ratio possessed by the five states with the highest prison populations.

The BOP could also ameliorate its staffing insufficiencies by updating its information technology (IT) and other systems. In a 2016 report, the Government Accountability Office identified the BOP's "Sentry" system as among the very old legacy IT systems in need of replacing.<sup>47</sup> Beyond broad IT updating, the BOP should seek to update and create processes that could reduce the amount of time BOP staff spends interacting with outside actors, such as defense lawyers and family members of prisoners. To provide just one example, the BOP should create an email system for setting up privileged and unmonitored attorney-client phone calls. Defense lawyers are often frustrated by the difficulty in reaching their client for an unmonitored phone call. Often the process involves calling the BOP prison phone number and asking to speak to the client's counselor or case manager. The process typically requires multiple phone calls between BOP officials and defense counsel to set up a single unmonitored attorney-client

phone call.<sup>48</sup> This exhausting process consumes the time of counselors and case managers. The BOP could easily create a system whereby lawyers send an email requesting an unmonitored call to a counselor who then responds with an answer to the request.<sup>49</sup>

As part of any move to change the cultural dynamic inside federal prisons, the BOP should also consider modifying the way it addresses those in prison. Currently, when correctional officers refer to a person within the prison system, they call the person “inmate.” Even the BOP’s mail policy employs that terminology. For example, when a lawyer sends a client in federal prison legal material, BOP policy requires attorneys to write on the envelopes: “Special Mail—Open only in the presence of the inmate.”<sup>50</sup> Studies have shown that language frames both what the public thinks about an individual and how individuals view themselves and their own ability to change.<sup>51</sup> The BOP has never provided a reason why its correctional officials could not use “people-first language” to promote respect and dignity for those individuals confined in the federal prison system.<sup>52</sup>

Cultural change within the federal prison system is undoubtedly important for improving the lives of those in its custody, but changes to some aspects of the system that create unique challenges for prisoners and their families are also needed. The biggest challenge for federal prisoners is the ability to maintain family and community ties. Because the BOP has prisons across the country, federal prisoners are often housed hundreds of miles away from their families and communities.<sup>53</sup>

Family and community ties are incredibly important in reducing recidivism. Studies show that prisoners who receive visits while in prison are less likely to commit misconduct while in prison.<sup>54</sup> I would often see more experienced prisoners advising younger prisoners to forget about the outside world and to focus only on what one could control in prison. That bad advice often led new prisoners to join prison gangs and, ultimately, the violent drama of federal prison. Those who did best were those who remained tethered to the outside world and focused on their release date, and they did so mainly through phone calls and visits with family and friends. Maintaining family and community ties is also a necessary component for those in federal prison to have successful reentries.<sup>55</sup> When a person leaves federal prison, the first two years in the outside world are precarious and unstable.<sup>56</sup> If someone with a federal felony on their record works paycheck-to-paycheck to make ends meet and they lose their job, that person normally has only family or friends as support. Without community support, these individuals will be faced with a choice between homelessness and crime, leading to higher reoffense rates. And many of those serving time in federal prison are parents, whose children also suffer the consequences of their incarceration. Children with an incarcerated parent run greater risks of health and psychological problems, of lower economic well-being and educational attainment,<sup>57</sup> and, sadly, of becoming

incarcerated themselves.<sup>58</sup> The BOP should thus make every effort to keep parents in contact with their children to avoid intergenerational cycles of incarceration.

The BOP has made strides in providing prisoners with avenues to maintain community and family ties. It has provided email services through the TRULINCS email system, which allows prisoners to stay in contact with their families.<sup>59</sup> And the FIRST STEP Act provides for increased phone minutes and visitation time for those who are completing rehabilitative programs, in addition to transferring those participating in programs closer to home.<sup>60</sup> But more progress is needed. The BOP should create video visitation, similar to Apple’s FaceTime, that families can use to stay in contact when the cost of actual visitation is financially out of reach. In some facilities, the BOP could create “family days” when families could spend the day together at the prison recreation yard or other suitable places. There are a number of unique ways available for the BOP to foster interactions between those in prison and their families and communities.

Finally, the BOP also has room for improvement on reentry. The BOP has created a Release Preparation Program (RPP) for prisoners, yet it is provided to prisoners only when they are eighteen months from release. In 2016, an Inspector General report found that the BOP doesn’t ensure that its RPP program “across its institutions [is] meeting inmate needs,” in part because the BOP does not provide a “nationwide RPP curriculum” and has not created “a centralized framework to guide curriculum.”<sup>61</sup> In keeping with that report’s recommendations, the BOP should create a nationwide RPP curriculum that can be used at all BOP facilities. That curriculum should obviously include input from outside policy experts, academics, and especially the formerly incarcerated, who know the challenges that federal prisoners face in reentering society in ways that a Department of Justice policy wonk would not. And there is hope that the new administration will make strides toward fixing the BOP’s ineffective RPP program through the Federal Interagency Council on Crime Prevention and Improving Reentry, which President Trump recently created through executive order.<sup>62</sup>

\*\*\*\*\*

If passed, the FIRST STEP Act promises to reform the Federal Bureau of Prisons, leading to reduced recidivism of those released from the federal prison system. But in order for the BOP to substantially reduce recidivism and to change the lives of the men and women it incarcerates, more will be needed. Congress must either increase appropriations to the BOP to provide adequate staffing, so that meaningful rehabilitation programs are provided effectively, or reduce the federal prison population by passing comprehensive sentencing reform. Even better, Congress could do both. For its part, the BOP needs to create significant cultural change through its hiring and training processes, in addition to modifying how its

correctional staff interact with those in custody. That we need to treat people within the federal prison system better in order to have better outcomes when people are released is not advanced neuroscience. As the spoof magazine *The Onion* once noted in quoting a fictional warden, “It just doesn’t seem possible that an inmate could live for a decade and a half in a completely dehumanizing environment in which violent felons were constantly on the verge of attacking or even killing him and not emerge an emotionally stable, productive member of society.”<sup>63</sup> Exactly.

## Notes

\* I would like to thank Douglas Berman and Steven L. Chanson for asking me to write an article for this issue of *FSR*. I would also like to thank my research assistants Margaret Rusconi and Tiffany Trump for their valuable work on the article.

<sup>1</sup> See Nathan James, Cong. Research Serv., the Federal Prison Population Buildup: Options for Congress 1 (May 20, 2016).

<sup>2</sup> See *Mission*, Federal Bureau of Prisons, [https://www.bop.gov/about/agency/agency\\_pillars.jsp](https://www.bop.gov/about/agency/agency_pillars.jsp) (last visited Aug. 14, 2018).

<sup>3</sup> The BOP has been in a state of crisis for several years now. See Michael E. Horowitz, U.S. Dep’t of Justice, Inspector Gen. Report, Top Management and Performance Challenges Facing the Department of Justice 1 (2015) (“Though the number of federal inmates has declined for a second year in a row, the Department of Justice continues to face a crisis in the federal prison system”); Samantha Michael, *Trump’s Budget Cuts Are Forcing Teachers and Nurses to Work as Federal Prison Guards*, Mother Jones (Feb. 19, 2018), <https://www.motherjones.com/crime-justice/2018/02/trumps-budget-cuts-are-forcing-teachers-and-nurses-to-work-as-federal-prison-guards/> (“Federal prison employees across the country say staffing cuts made by the Trump administration have crippled their ability to provide services to inmates and keep prisons safe. ‘It’s very dire,’ says Valerie Limon, a drug treatment specialist at the Lompoc Federal Correctional Complex in California”).

<sup>4</sup> See FIRST STEP Act, H.R. 5682, 115th Cong. (2018), <https://www.congress.gov/bill/115th-congress/house-bill/5682/text>.

<sup>5</sup> “Compassionate release allows prisoners facing imminent death, advancing age, or debilitating medical conditions to secure early release when those developments diminish the need for or morality of continued imprisonment.” Mary Price, *Everywhere and Nowhere: Compassionate Release in the States* 6 (June 2018), <https://famm.org/wp-content/uploads/Exec-Summary-Report.pdf>.

<sup>6</sup> When Congress has passed bills affecting those in federal prison, the results have been mixed. See Prison Litigation Reform Act, 42 U.S.C. § 1997e (curtailing the ability of all prisoners filing civil rights suits in federal courts); see also Second Chance Act of 2007, H.R. 1593, 110th Cong. (2007) (providing resources for reentry); Prison Rape Elimination Act of 2003, S. 1435, 108th Cong. (2003) (establishing provisions to deter the sexual assault of prisoners). For reasons why I consider the FIRST STEP Act to be the best and most comprehensive federal prison reform bill of my lifetime, see Shon Hopwood, *Why I Support the FIRST STEP Act*, Prison Professors Blog (May 22, 2018), <https://prisonprofessors.com/why-i-support-the-first-step-act/>; Shon Hopwood, *Those in Federal Prison and Their Families Can’t Wait for the Ideal Reform Bill: A Response to Just Leadership*, Prison Professors Blog (July 26, 2018), <https://prisonprofessors.com/first-step/>.

<sup>7</sup> The FIRST STEP Act might also include sentencing reform. See Alexander Bolton, *Trump Gives Thumbs Up to Prison Sentencing Reform Bill at Pivotal Meeting*, the Hill (Aug. 3, 2018), <http://thehill.com/homenews/senate/400176-trump-gives-thumbs-up-to-prison-sentencing-reform-bill-at-pivotal-meeting>.

<sup>8</sup> See Brennan Center for Justice, Letter to Congress on the FIRST STEP Act (May 8, 2018); Letter to Members of Congress from the Leadership Conference on Civil and Human Rights, “Vote ‘No’ on the FIRST STEP Act” (May 21, 2018). I advocated for many of the same changes to the Act in a letter I submitted to the White House.

<sup>9</sup> For studies explaining that positive behavioral changes require strong incentives and positive reinforcement, see Joan Petersilia, *What Works in Prison Reentry? Reviewing and Questioning the Evidence*, 68 Fed. Prob. at 3–9 (2004); Joan Petersilia, *Employ Behavioral Contracting for Earned Discharge Parole*, 6 Criminology and Public Policy 807 (2007); and Amy L. Solomon et al., Urban Institute, *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes* (2008).

<sup>10</sup> H.R. 5682 § 3632(d), 115th Cong. (2018).

<sup>11</sup> *Id.* § 3632(d)(4)(i) & (ii) (“A prisoners shall earn 10 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities. A prisoner determined by the Bureau of Prisons to be at a minimum or low risk for recidivating, who, over two consecutive assessments, has not increased their risk of recidivism, shall earn an additional 5 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities”).

<sup>12</sup> See Alison Lawrence, National Conference of State Legislatures, *Cutting Corrections Costs: Earned Time Policies for State Prisoners* 1 (2015) (“Although any policy that involves shorter lengths of stay for inmates raises concerns about public safety, states with earned time provisions have seen recidivism rates either remain unchanged or actually drop”).

<sup>13</sup> H.R. 5682 §3632(d)(4)(D).

<sup>14</sup> In fact, some studies have shown that placing low-risk offenders into intensive treatment programs may actually increase the likelihood of recidivism. See Andrews and James Bonta, *The Psychology of Criminal Conduct* 48 (5th ed. 2010).

<sup>15</sup> See *id.*

<sup>16</sup> H.R. 5682 §3632(d)(4)(D) (listing the exclusions based on offense).

<sup>17</sup> See *Substance Abuse Treatment*, Federal Bureau of Prisons (last visited Aug. 20, 2018), [https://www.bop.gov/inmates/custody\\_and\\_care/substance\\_abuse\\_treatment.jsp](https://www.bop.gov/inmates/custody_and_care/substance_abuse_treatment.jsp).

<sup>18</sup> 18 U.S.C. § 3621(e)(2)(B).

<sup>19</sup> See generally, Shon Hopwood, *Law Man: Memoir of A Jailhouse Lawyer* (2017).

<sup>20</sup> 18 U.S.C. § 3621(e)(2)(B) (“The period a prisoner convicted of a nonviolent offense remains in custody after successfully completing a treatment program may be reduced by the Bureau of Prisons, but such reduction may not be more than one year from the term the prisoner must otherwise serve”).

<sup>21</sup> See Executive Office of the President of the United States, *Returns on Investments in Recidivism-Reducing Programs* at 3 (May 2018)

<sup>22</sup> Federal drug, immigration, firearm, and fraud statutes represented 82.4% of all new federal cases in fiscal year 2017. See U.S. Sentencing Commission, *Overview of Federal Criminal Cases Fiscal Year 2017 2–3* (June 2018).

<sup>23</sup> See generally Jeff Smith, *Mr. Smith Goes to Prison: What My Year Behind Bars Taught Me About America’s Prison Crisis* (2015).

<sup>24</sup> *Id.* at 131.

- <sup>25</sup> Germany and the Netherlands organize their correctional systems around “the central tenets of resocialization and rehabilitation” rather than retributive punishment. Ram Suybramanian & Alison Shames, *Sentencing and Prison Practices in Germany and the Netherlands: Implications for the United States*, Vera Institute of Justice 7 (Oct. 2013).
- <sup>26</sup> See Alexander Volokh, *Prison Accountability and Performance Measures*, 63 Emory L. Rev. 339, 384–85 (2013) (explaining how performance incentives could work in public correctional settings). There are robust federal civil servant laws that might make performance pay unavailable without changes to federal statutes governing such issues. See National Center on Performance Incentives, *Performance-Based Pay in the Federal Government* (Feb. 2008).
- <sup>27</sup> See *Ten Steps Corrections Directors Can Take to Strengthen Performance*, Pew Charitable Trusts 6–7 (May 2008) (noting that the Association of State Corrections Administrators has standardized definitions of key performance measures that thirty-six jurisdictions are using).
- <sup>28</sup> See William M. Burdon et al., *Prison-Based Therapeutic Community Substance Abuse Programs—Implementation and Operational Issues*, 66 Fed. Prob. 3, 5 (2002) (explaining that most correctional organizations are “highly bureaucratic organizations that require personnel to operate in accordance with written policy and procedure manuals[, and] . . . the underlying philosophies and objectives of correctional systems, supports and reinforces a well-developed and firmly entrenched organizational culture that emphasizes safety, security, and strict conformance to established policies and procedures”).
- <sup>29</sup> See Shon Hopwood, *Improving Federal Sentencing*, 87 U.M.K. C. L. Rev. 79, 80–81 (2018) (describing unofficial punishments that accompany a federal prison sentence).
- <sup>30</sup> Research has consistently shown that a person’s motivation to change can be enhanced through positive interactions with correctional staff. See D. A. Andrews et al., *The Risk-Need-Responsivity (RNR) Model: Does Adding the Good Lives Model Contribute to Effective Crime Prevention?*, 38 Crim. Just. & Behav. 735, 735–55 (2011).
- <sup>31</sup> See *Correctional Officer Qualifications*, Federal Bureau of Prisons, <https://www.bop.gov/jobs/positions/index.jsp?p=Correctional%20Officer> (last visited Aug. 14, 2018).
- <sup>32</sup> *Id.*
- <sup>33</sup> *Id.* “Currently, the BOP’s system does not include a mechanism for assigning weights and systematically considering combinations of characteristics to derive a risk factor when deciding whether to make a newly hired Correctional Officer a permanent member of the staff.” U.S. Dep’t of Justice Office of the Inspector Gen. Evaluation & Inspections Div., *Enhanced Screening of Bop Correctional Officer Candidates Could Reduce Likelihood of Misconduct* vi (Sept. 2011).
- <sup>34</sup> See Nicholas Turner & Jeremy Travis, *What We Learned from German Prisons*, N.Y. Times (Aug. 6, 2015), <https://www.nytimes.com/2015/08/07/opinion/what-we-learned-from-german-prisons.html> (“The process of training and hiring corrections officers is more demanding in Germany. Whereas the American corrections leaders in our delegation described labor shortages and training regimes of just a few months, in the German state of Mecklenburg-Western Pomerania, less than 10% of those who applied to be corrections officers from 2011 to 2015 were accepted to the two-year training program. This seems to produce results: In one prison we visited, there were no recorded assaults between inmates or on staff members from 2013 to 2014”).
- <sup>35</sup> Suybramanian & Shames, *supra* note 26, at 12 (citing Joerg Jesse, *Presentation on Information about the Training of Corrections Staff* at the European-American Prison Project Conference at Neustrelitz Prison, Neustrelitz, Mecklenburg-Western Pomerania, Germany, Feb. 19, 2013).
- <sup>36</sup> *Id.*
- <sup>37</sup> *Id.* (citing Frank Grotjohann, *Presentation on the Role of Disciplinary Measures in the Prison Regime at JVA Waldeck* at the European-American Prison Project Conference at Waldeck Prison, Dummerstorf, Mecklenburg-Western Pomerania, Germany, Feb. 18, 2013).
- <sup>38</sup> *Id.*
- <sup>39</sup> See *This Is Prison? 60 Minutes Goes to Germany*, 60 Minutes (Mar. 31, 2016) (“Average Americans may balk at this level of freedom for convicted criminals, but prisons in Germany cost less and produce far fewer repeat offenders than U.S. prisons”).
- <sup>40</sup> See Maurice Chammah, *Prison without Punishment*, the Marshall Project (Sept. 25, 2015), <https://www.themarshallproject.org/2015/09/25/prison-without-punishment> (noting Germany’s cost per prisoner was \$135 a day as opposed to an average of \$85 in the United States).
- <sup>41</sup> See, e.g. D. A. Andrews et al., *supra* note 31, at 736; Craig Dowden & D. A. Andrews, *The Importance of Staff Practice in Delivering Effective Correctional Treatment: A Meta-Analytic Review of Core Correctional Practice*, 48 Int’l J. Offender Therapy & Comp. Criminology 203, 203–14 (2004).
- <sup>42</sup> The Charles Colon Task Force on Federal Corrections published a report in 2016 calling for the BOP to use an actuarial risk and needs assessment tool “to predict individual risk for recidivism and identify criminogenic need areas.” The Task Force further recommended that the BOP “develop tailored case plans and deliver programming based on individual risk to reoffend and criminogenic needs.” *Transforming Prisons, Restoring Lives: Final Recommendations of the Charles Colon Task Force on Federal Convictions* 32 (2016).
- <sup>43</sup> See *Statement of Charles E. Samuels, Jr., Director of the Federal Bureau of Prisons, before the U.S. Senate Committee on Homeland Security and Governmental Affairs, United States Senate* (Aug. 4, 2015), <https://www.hsgac.senate.gov/imo/media/doc/Testimony-Samuels-2015-07-29.pdf>.
- <sup>44</sup> See Danielle Ivory & Caitlin Dickerson, *Safety Concerns Grow as Inmates Are Guarded by Teachers and Secretaries*, N.Y. Times (June 17, 2018), <https://www.nytimes.com/2018/06/17/us/prisons-safety-substitute-guards.html> (“But as the shortage of correctional officers has grown chronic under President Trump—and the practice of drawing upon other workers has become routine—many prisons have been operating in a perpetual state of staffing turmoil, leaving some workers feeling ill-equipped and unsafe on the job, according to interviews and internal documents from the Bureau of Prisons”).
- <sup>45</sup> See *Statement of Charles E. Samuels, Jr.*, *supra* note 44, at 3.
- <sup>46</sup> See Jeremy Travis, Bruce Western & Steve Redburn, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* 6, 173–83 (2014).
- <sup>47</sup> See U.S. Gov’t Accountability off., *Gao-16-696T, Information Technology: Federal Agencies Need to Address Aging Legacy Systems* 20 (2016), <https://www.gao.gov/assets/680/677454.pdf>. The BOP did place a request for information in April 2018, seeking detailed information about IT tools and systems to aid in its modernization process. See Fedbizopps.Gov, *Sentry System Modernization* (Apr. 9, 2018), [https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=595e9386df0f67795520d04d12bbcb4c&\\_cview=0](https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=595e9386df0f67795520d04d12bbcb4c&_cview=0).
- <sup>48</sup> Transcript of Criminal Cause for Status Conference Before the Honorable Dora L. Irizarry at 16:14–16, *United States v. Ahmed*, No. 1:14-cr-00277, at 16 (E.D.N.Y. June 27, 2014). Defense counsel argued that unmonitored telephone calls were seemingly unavailable, as defense counsel’s law firm was unable to coordinate an unmonitored telephone call with their

- client despite numerous telephone calls to the prison over the course of several days.
- <sup>49</sup> An additional benefit of updating the BOP's process for setting up attorney-client phone calls is that those in federal prisons would have more access to counsel, and thus to the courts.
- <sup>50</sup> See Federal Bureau of Prisons, Program Statement 5800.16, at 21 (Apr. 5, 2011).
- <sup>51</sup> See Lauren M. Broyles et al., *Confronting Inadvertent Stigma and Pejorative Language in Addition Scholarship: A Recognition and Response*, 35 Substance Abuse (2014).
- <sup>52</sup> *Id.*
- <sup>53</sup> I was incarcerated at the Federal Correctional Institution in Pekin, Illinois, for ten years and my home at the time of my arrest was Lincoln, Nebraska, a distance of 460 miles. See Transforming Prisons, *supra* note 43, at 40 (noting that about half of the 2014 BOP population was housed more than 250 miles from home).
- <sup>54</sup> See Ryan Shanahan & Sandra Villalobos Agudelo, *The Family and Recidivism*, Am. Jails, Sept./Oct. 2012 ("Incarcerated men and women who maintain contact with supportive family members are more likely to succeed after their release. Although corrections practitioners and policymakers often understand the positive role families can play, they may not know how to involve the prisoner's loved ones as a resource within a correctional setting. Research on people returning from prison shows that family members can be valuable sources of support during incarceration and after release"); William D. Bales & Daniel P. Mears, *Inmate Social Ties and the Transition to Society: Does Visitation Reduce Recidivism?*, 45 J. Res. Crime & Delinq. 287, 287–321 (2008); Joshua C. Cochran, *The Ties That Bind or the Ties That Break: Examining the Relationship Between Visitation and Prisoner Misconduct*, 40 J. Crim. Just. 233, 433–40 (2012).
- <sup>55</sup> See Nancy G. La Vigne et al., Urban Institute, *One Year out: Tracking the Experiences of Male Prisoners Returning to Houston, Texas* (2009); Christy Visher et al., Urban Institute, *Returning Home: Understanding the Challenges of Prison Reentry* (2004).
- <sup>56</sup> In one study of the five-year recidivism rate for those leaving state prison, authors at the Bureau of Justice Statistics found that 56.7% of them were arrested by the end of their first year of release. See Matthew R. Durose, Alexia D. Cooper & Howard N. Snyder, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, at 1 (Apr. 2014).
- <sup>57</sup> Eric Martin, *Hidden Consequences: The Impact of Incarceration on Dependent Children*, National Institute of Justice (2017), <https://www.nij.gov/journals/278/Pages/impact-of-incarceration-on-dependent-children.aspx#note-Reference12>.
- <sup>58</sup> Megan Cox, *The Relationships Between Episodes of Parental Incarceration and Students' Psycho-Social and Educational Outcomes: an Analysis of Risk Factors* 3 (2009).
- <sup>59</sup> See Christopher Zoukis, *Energize: The Federal Bureau of Prisons' Technological Revolution*, Zoukis Prisoner Resources (June 17, 2014) (explaining how the BOP's transition to a TRULINCS system helped a person in federal prison maintain family and community ties).
- <sup>60</sup> See H.R. 5682 § 3632(d)(1)–(3), 115th Cong. (2018).
- <sup>61</sup> U.S. Dep't of Justice, Office of the Inspector Gen., *Review of the Federal Bureau of Prisons' Release Preparation Program* i (Aug. 2016).
- <sup>62</sup> See Exec. Order No. 13826, 83 Fed. Reg. 10771 (Mar. 7, 2018).
- <sup>63</sup> *15 Years in Environment of Constant Fear Somehow Fails to Rehabilitate Prisoner*, the Onion, Mar. 4, 2014.

# Former Prisoners' Letter to Senate Judiciary Leaders

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Chuck Schumer  
Minority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Chuck Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Diane Feinstein  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Senators McConnell, Schumer, Grassley, and Feinstein:

We are writing in regard to criminal justice reform and, in particular, the FIRST STEP Act, legislation approved overwhelmingly by the U.S. House of Representatives on May 22. Having spent a total of 352 years in federal and state prison, we bring a unique perspective to this issue, and we ask that you consider our views.

None of us believes the FIRST STEP Act is perfect. We do not believe it would reverse our country's overincarceration problem. All of us would change the bill in different ways and many of us wished it addressed excessive federal mandatory minimum sentences. But we also know that the bill would provide some long overdue relief and hope to more than 180,000 people in federal prison and millions of their family members and loved ones on the outside.

The bill, among other things, would:

- End the barbaric practice of shackling pregnant women in prison;
- Enable everyone in federal prison (except those serving life sentences) to earn more time off for good behavior, thereby allowing them to return to their families sooner;

- Keep families closer together by requiring the Federal Bureau of Prisons to place incarcerated people within 500 driving miles of their home;
- Reform the federal compassionate release program so that taxpayers are not spending millions to keep locked up the most expensive and lowest risk people and so that families can spend a loved one's final days together;
- Invest tens of millions of dollars in recidivism-reducing programming, improving public safety and giving people in prison a true second chance; and
- Require the Federal Bureau of Prisons to obtain government identification cards and birth certificates for people before they leave prison, which is crucial to finding work and getting health care, among other things.

These modest but meaningful reforms would help tens of thousands of families and deserve your support. These reforms would benefit all Americans by increasing the chances that people leaving prison are able to find meaningful work and keep their families together.

Despite the bill's clear benefits, we have heard some people suggest it would be better for Congress to do nothing rather than pass this bill. Such talk reflects a disturbing detachment from the hardships that so many families are experiencing today because of our counterproductive federal sentencing and prison policies.

While we do not claim to speak for all people who are serving time in federal prison or their families, we (or the organizations at which we work) are in touch with tens of thousands of these incarcerated individuals and their families every week. Many of us still have friends and loved ones behind bars. The people we talk to have no use for abstract debates about whether to pass comprehensive or narrow reform, speculative theories about how passing reform today might impact future reform or, worst of all, political gamesmanship. These families just need some help. They shouldn't have to wait any longer.

We also know from our personal experience that meaningful programming, educational, and job training opportunities in the federal system are lacking. All too often people are warehoused for decades with no hope. We know that too many parents are incarcerated so far away from their children that they rarely get to visit them—just imagine seeing your kids once or twice a year, if that. Going without the hugs and kisses of our loved ones for weeks and months



(June 8, 2018)

*Federal Sentencing Reporter*, Vol. 31, No. 2, pp. 157–159, ISSN 1053-9867, electronic ISSN 1533-8363.

© Families Against Mandatory Minimums. Please direct requests for permission or to reproduce article content to Families Against Mandatory Minimums: <https://famm.org/>.

DOI: <https://doi.org/10.1525/fsr.2018.31.2.157>.

was the most difficult part about being in prison. We know others who have gone for years without that critical physical contact. We also know that the Federal Bureau of Prisons' incorrect calculation of good time credit has deprived people of shortening their lengthy prison sentences. If anyone tells you these reforms are not "real" or "meaningful" to vulnerable families and individuals across the country, they simply don't know what they are talking about.

As you consider the FIRST STEP Act and criminal justice reform in the days and weeks ahead, we urge you to keep those in federal prison and their families foremost in your mind. They can't wait for reform.

Sincerely,

Shon Hopwood – federal prison, 10 years  
*Law Professor, Georgetown University Law Center\**

Norman Brown – federal prison, 24.5 years  
*Dep. Project Director, Project New Opportunity*

Topeka K. Sam – federal prison, 3 years  
*Director for #Dignity Campaign, #cut50*

Kevin Ring – federal prison, 1.5 years  
*President, FAMM*

Syrita Steib-Martin – federal prison, 9 years  
*Executive Director of Operation Restoration*

Amy Povah – federal prison, 9 years  
*President, CAN-DO Foundation*

Pat Nolan – federal prison, 2.5 years  
*Director, Center for Criminal Justice Reform at the American Conservative Union Foundation*

Craig DeRoche – state prison  
*Senior Vice President of Advocacy and Public Policy, Prison Fellowship*

Debi Campbell – federal prison, 16 years  
*Communications Outreach Associate, FAMM*

Michael Santos – federal prison, 26 years  
*Co-founder of Prison Professors L.L.C.*

Loretta Fish Liegel – federal prison 6.5 years  
*Registered nurse; motivational speaker*

Monroe Coleman – federal prison, 32 years Michael Mendoza – state prison, 17 years  
*Policy Associate, #cut50*

Stephanie Nodd – federal prison, 21 years Leyla Martinez – state prison, 2 years  
*President, Beyond the Box Initiative*

Glenn E. Martin – state prison, 6 years  
*Founder & President, GEM Trainers*

Jeffrey Smith – federal prison, 1 year  
*Executive vice president, Concordance Academy of Leadership; former Missouri State Senator and public policy professor*

Weldon Angelos – federal prison, 13 years  
*Musician; justice reform advocate*

Bernard B. Kerik – federal prison, 3 years  
*Retired NYC Police Commissioner and former NYC Correction Commissioner*

David Safavian – federal prison, 1 year  
*Deputy Director, Center for Criminal Justice Reform at the American Conservative Union Foundation*

Desmond Meade – state and federal prison, 3 years  
*Executive Director, Florida Rights Restoration Coalition*

Evans Ray – federal prison, 12 years  
Alfonzo Ingram – federal prison, 13 years  
*Prison Fellowship prison program graduate*

Richard MacAllaster – federal prison, 6 years  
Brandon Sample – federal prison, 12 years  
*Attorney & Executive Director, Prisology*

Celeste Wells – federal and state prison, 26.5 years  
*President & CEO, Save My Edges, Inc.*

Joshua B. Hoe – state prison, 3 years  
*Host of Decarceration Nation*

Victoria Wylie – federal prison, 1.5 years  
*Board member Operation Restoration*

Ivy Woolf Turk – federal prison, 4 years  
*Founder/Director, Project Liberation*

Tarra Simmons – state prison, 1.5 years  
*Skadden Fellow at Public Defender Association*

Joshua Boyer – federal prison, 17 years  
*President Obama clemency recipient and criminal justice reform advocate*

Reginald Dwayne Betts, Esq. – state prison, 8 years  
*Poet and Author*

Christopher R. Poulos – federal prison, 3 years  
*Attorney & Co-chair, Civil Survival*

Nina Manning – federal prison, 10 years  
*President, Fedfam4life*

Tray Johns – federal prison, 9 years  
*Executive Director, Fedfam4life*

Kathy Morse – state prison, 4.5 years  
*Advocate, participant, “Rikers: An American Jail”*

Denise C McCreary – federal prison, 3.5 years  
*Executive Director, Hands Of Hope Outreach Ministries, Inc.*

Melissa Shumsky – federal prison, 1.5 years  
*Member Engagement Coordinator, Anti-Recidivism Coalition*

Justin Paperny – federal prison, 1 year  
*Co-founder of Prison Professors L.L.C.*

Andrew Cory Greene – state prison, 8 years  
*Co-founder and Organizer, How Our Lives Link Altogether! (H.O.L.L.A!)*

**Note**

\* Occupations and titles listed for reference only. Individuals have signed in personal capacity.

# Understanding Federal “Restrictive Housing Unit” Environments



**JACK T. DONSON\***

Federal Bureau of Prisons (retired)

**KERAMET REITER\*\***

Associate Professor, Department of Criminology, Law & Society and the School of Law, University of California, Irvine

## I. Introduction

Some 7.3 million individuals are currently under the control of the criminal justice system in the United States: 2.3 million in prison, 800,000 on parole, and 4.2 million on probation. More than 10 million Americans are arrested each year, 600,000 of whom are imprisoned. Although recidivism is notoriously difficult to estimate, the most recent and comprehensive Bureau of Justice Statistics report found that, of the 400,000 state prisoners released each year, 68% were re-imprisoned within three years as a result of recidivism.<sup>1</sup>

These astonishing numbers include 80,000 individuals who are held in isolation on any given day, some of whom do not count their isolation stays in days or months, but in years and even decades. Long-term solitary confinement, concentrated in single-use facilities, fell out of favor in American prisons for much of the twentieth century, until a building boom of control-unit (or “supermax”) prisons began in the late 1980s, when being “tough on crime” was all the rage. The justifications for these facilities, however, date back to revolutionary violence that took place in prisons across the United States in earlier decades, including the alleged escape attempt of George Jackson in California and the revolt at Attica in New York, both in 1971.<sup>2</sup> By 2005, an estimated forty states were operating supermax facilities, the physical design of which served to strictly isolate prisoners from both the outside world and their fellow inmates.<sup>3</sup> Despite the extreme harshness of life in these prisons, the average stay far exceeds the United Nations’ recommended fifteen-day maximum.<sup>4</sup>

During the past several years, “solitary confinement” has received a great deal of attention throughout the country, and solitary confinement in federal facilities has received special scrutiny from federal legislators, federal oversight agencies like the National Institute of Corrections and the Office of the Inspector General, and federal courts. Federal solitary confinement has also faced critical exposés from national news outlets and litigation from prisoners’ rights advocates. In spite of all this attention, considerable confusion persists as to what constellation of conditions constitutes solitary confinement (let alone which of these conditions might be constitutional, effective, or ethical) within the national archipelago of 122 prisons that make up the Federal Bureau of Prisons (BOP) system.

This article seeks to (1) document the BOP practices that have led to confusion about the definition, prevalence, and conditions of solitary confinement and (2) outline the constellation of practices now encompassed within the new (as of 2015) umbrella term *restrictive housing practices*. First, we outline the critiques that have been leveled against BOP solitary confinement practices and policies, along with the responses of BOP officials. Second, we describe and define the range of labels assigned to different kinds of BOP housing units that impose some form of solitary confinement, or, in the new terminology, restrictive housing. Finally, we conclude with a discussion of the implications of this analysis—for both understanding and reforming solitary confinement practices.

## II. Critiques of Solitary Confinement and the Birth of Restrictive Housing

One of the first signals of renewed federal attention to solitary confinement came from the U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights headed by Senator Dick Durbin, which held hearings in 2012 and 2014 on solitary confinement practices in the United States. In February 2014 Charles Samuels, then Director of the BOP, testified before the Subcommittee. One of the more memorable moments of his testimony was when Senator Al Franken asked Samuels about the size of an average cell in solitary confinement—or “restrictive housing,” as Samuels dubbed it. The Director simply froze and could not answer the question. His inability to comprehend such a simple question exemplifies a harsh reality, demonstrating how out of touch prison administrators are with this human rights issue—and how little they know about the day-to-day operations of these facilities.<sup>5</sup>

The Subcommittee’s pressure on the BOP, along with a highly critical Government Accountability Office report that documented significant shortcomings in monitoring and evaluation of “segregated housing” in federal prisons,<sup>6</sup> caused the BOP to undertake what was referred to as an “independent” study through the National Institute of Corrections (NIC).<sup>7</sup> The NIC awarded the study to CNA Analysis and Solutions (CNA), a nonprofit research organization that operates the Center for Naval Analyses (as a defense contractor) and the Institute for Public Research. CNA released a report in early 2015.<sup>8</sup> The consultants

*Federal Sentencing Reporter*, Vol. 31, No. 2, pp. 126–132, ISSN 1053-9867, electronic ISSN 1533-8363.  
© 2018 Vera Institute of Justice. All rights reserved. Please direct requests for permission to photocopy or reproduce article content through the University of California Press’s Reprints and Permissions web page, <http://www.ucpress.edu/journals.php?p=reprints>. DOI: <https://doi.org/10.1525/fsr.2018.31.2.126>.

involved in the report consisted mostly of retired wardens and administrators who failed to take practical advice from advocates on running detailed BOP computer system rosters to obtain targeted data on the target population they were studying. Instead, they relied on what they described as a “BOP data dump” provided by the Agency. Moreover, BOP central office administrators allegedly worked to preempt critical findings by warning wardens of the preliminary findings in advance of the study’s release, thereby allowing prisoners to be moved and transferred out of segregated housing.<sup>9</sup> Solitary Watch, a nonprofit watchdog and investigative journalism group focused on the topic of solitary confinement, promptly characterized the NIC report as “an inside job” that “reached foregone conclusions,” providing little new information and few recommendations for serious reform.<sup>10</sup>

On the heels of the CNA report, in July 2015, President Obama became the first sitting President to visit a federal prison facility.<sup>11</sup> A few months later, in January 2016, Obama published an opinion piece in the *Washington Post* condemning solitary confinement; on the same day, the U.S. Department of Justice issued recommendations for significant reform of solitary confinement use, including banning solitary confinement for juveniles.<sup>12</sup> Although the move to ban juvenile solitary was largely symbolic (only a few juveniles annually experience solitary confinement in the federal prison system), it did bring further attention to the issue.<sup>13</sup> In a *Harvard Law Review* commentary published on the eve of his departure from the presidency, Obama highlighted his attention to solitary confinement as a key building block of his efforts to rehabilitate federal prisoners.<sup>14</sup>

Between Obama’s federal prison visit and the release of the Department of Justice’s recommendations, in October 2015 the National Institute of Justice (NIJ) hosted a “topical working group” on the use of “restricted housing” in the United States. Simultaneous with the conference, the U.S. Bureau of Justice Statistics released its first-ever report attempting to document the scale and duration of solitary confinement use across the United States.<sup>15</sup> One year later, the NIJ released a series of white papers on solitary confinement practices across the nation, along with a targeted funding call for further research on these topics.<sup>16</sup> This NIJ convening and subsequent attention solidified the new (arguably euphemistic) term *restrictive housing* as the label of choice for the constellation of solitary confinement practices in use across the United States and within the BOP.

Indeed, before 2014, the term *restrictive housing* was practically absent in BOP policy statements. One of the first appearances of the term was in May 2014, when the BOP issued Program Statement 5310.16, “Treatment and Care of Inmates with Mental Illness.” Shortly before that, as noted above, BOP Director Samuels had used the term *restrictive housing* when he testified before Congress. Still, a search of the BOP public database reveals that the term is used infrequently in current policy, despite several separate

policies dealing with “solitary confinement,” including Control Unit Programs, Special Management Units, Special Housing Units, and Inmate Discipline. However, Program Statement 5310.16 includes two new evaluation forms, both entitled “Restrictive Housing Mental Health Evaluation,” for the initial and follow-up review of isolated inmates. The forms and the label are new, but the evaluation practice is not: BOP policy has always required that a written, in-person “psychology assessment” report be completed every thirty days for inmates housed in Special Housing Units.

Nonetheless, in June 2017, a coalition of prisoners’ rights groups and corporate litigators (including the Washington Lawyers’ Committee for Civil Rights and Urban Affairs, the Pennsylvania Institutional Law Project, and the law firm Latham and Watkins) filed a lawsuit challenging the treatment of mentally ill prisoners in segregation at the United States Penitentiary, Lewisburg (USP Lewisburg), in Pennsylvania. *McCreary v. Federal Bureau of Prisons* alleged that mentally ill prisoners should never have been placed in the prison’s “Security Management Unit,” according to BOP policy, and that once there, the prisoners were cut off from their medication regimens, given crossword and sudoku puzzles in place of counseling or treatment, and often housed in small cells for up to twenty-four hours per day with cellmates.<sup>17</sup> The lawsuit followed up on an exposé, coproduced by National Public Radio and the criminal justice–focused news organization the Marshall Project, that had documented rates of violence at USP Lewisburg six times as high as in other federal prisons and blamed the violence on lack of mental health care and the prison’s practice of housing two prisoners together in one cell, with little or no time out of cell.<sup>18</sup>

A month later, in July 2017, yet another watchdog group reviewed BOP solitary confinement policies (now formally called “restrictive housing policies”), especially for the mentally ill, and condemned them. This time, the investigating agency was the Department of Justice’s Office of the Inspector General (OIG). The OIG found that, in the federal prison system’s highest-security prison in Florence, Colorado, prisoners with mental illnesses spend an average of sixty-nine months in solitary confinement—even though many states limit such terms for the mentally ill to no more than thirty days.<sup>19</sup> The report also found that the total number of prisoners receiving treatment for mental illness has fallen by 60% since the 2014 criticisms, likely because prison officials have reduced the number of prisoners identified as needing treatment.<sup>20</sup> Notably, the BOP officials also told the OIG investigators that “[t]he Bureau does not recognize the term *solitary confinement*” and that “solitary confinement does not exist” in the Bureau.<sup>21</sup>

The various terminology and slang—including *solitary confinement*, *segregation*, and *Special Management Unit*, all now encompassed by the term *restrictive housing unit*—makes understanding the isolation process extremely difficult for anyone outside of the BOP. Over the past few decades, during which supermax confinement steadily

grew in popularity, the federal government has evolved from isolating prisoners in Special Housing Units (commonly known as “Solitary,” the “SHU,” the “Hole,” or the “Box”) to use of “Control Units,” “Special Management Units,” “Communication Management Units,” and, most recently, “Reintegration Housing Units.” Indeed, there has been an evolution of “restrictive housing unit” settings within the BOP, which must be looked at from historical, policy, and professional perspectives alike. Here, we provide an overview of the varieties of segregation historically and currently in use in the BOP, in order to provide more robust context for future analysis and also to ensure that conversations about “restrictive housing” better encompass the breadth of highly restrictive and highly controversial practices currently in use. More specifically, this kind of analysis is foundational for legislators, advocates, and academics seeking to collectively effectuate change in federal restrictive housing practices.

### III. Restrictive Housing Unit Policy

Traditionally, the BOP has had two rationales for isolating inmates from the general population of a facility: (1) *administrative detention* (AD), which includes isolation for protective custody, pending an investigation, or for general administrative security concerns; and (2) *disciplinary segregation* (DS), a sanction for violating the BOP “code of conduct,” or rules governing prison behavior. Although AD and DS can be difficult to distinguish in practice, a clear understanding of these two foundational rationales for isolation remains critical to making sense of when, why, and how the BOP segregates certain prisoners.

More specifically, then, AD is a “non-punitive” status that removes an inmate from an institution’s general population when necessary to ensure the safety, security, and orderly operation of correctional facilities or to protect the public. The most common reasons for the placement of inmates in AD is that they are being investigated for committing a prohibited act, are in need of protection (called protection cases, or “PC”), are being held over in transit to a different facility, and/or are in post-disciplinary detention. Although the Code of Federal Regulations (C.F.R.) has significant checks and balances governing AD, there are no specific time frames designated for the processing of investigations of suspected prohibited acts or for the processing of PC threat-assessment reports.<sup>22</sup> Because of this vagueness and discretion, AD is, perhaps, the aspect of the “restrictive housing unit” process most in need of regulation.

Disciplinary segregation, by contrast, is a “punitive” status and can be imposed only by a Discipline Hearing Officer as a sanction for committing a prohibited act. It is similar to AD but usually involves housing in a different area of a segregation unit with more limited access to property, visiting, and the telephone. While federal courts have mandated minimal procedural protections (like notice, an opportunity to present evidence, and reviews of continued detention) for the disciplinary hearings that

precede placement in DS (or in Special Housing Units), many of these safeguards are not mandated until an incident report is actually issued.<sup>23</sup> Inmates, then, can languish in segregation indefinitely while awaiting a hearing.

The primary policy governing these practices was historically included in one federal policy directive entitled “Inmate Discipline and Special Housing Units.” In 2011, this policy was updated and separated into two separate policies: Program Statement 5270.09, “Inmate Discipline,” issued on July 8, 2011, and Program Statement 5270.10, “Special Housing Units,” issued on August 1, 2011. Today, there are at least four BOP policies directly governing the various types of “restrictive housing”: PS 5217.02, “Special Management Units”; PS 5270.10, “Special Housing Units”; PS 5270.09, “Inmate Discipline”; and PS 5212.07, “Control Unit Programs.” This proliferation of policies is representative both of the fracturing of labels and practices associated with solitary confinement (or restrictive housing) and of the variety of practices encompassed within the umbrella label of restrictive housing. More importantly, as suggested above, the more different labels, associated with a greater variety of policies, the harder the practice is to describe and evaluate—or, ultimately, to challenge and reform.

Not only have policies governing restrictive housing proliferated over the past few years, but the nature of this proliferation has been quite hidden. Routinely, BOP policy guidance is communicated through the issuance of *internal* memoranda to wardens from the BOP Director, Office of General Counsel, or Regional Director, rather than through the issuance of *public* Operations Memoranda, which would be in accordance with Program Statement 1221.66, “Directive Management Manual.” Two such internal memoranda—submitted on May 11 and November 23, 2005, by John M. Vanyur, Assistant Director, Correctional Programs Division, Central Office of the BOP, in Washington, D.C.—are of specific historical interest for understanding the Agency’s mind-set and culture around restrictive housing. These memos provided guidance in regard to “post-disciplinary administrative detention.” Specifically, the BOP in 2005, through these internal memoranda, required inmates, in at least some cases, to continue to reside in restrictive housing even after completing their DS sanctions. In order to be released from restrictive housing, an inmate not only needed to complete his assigned term in DS, but he was also required to maintain twelve months of clear conduct. If an inmate misbehaved in a restrictive housing unit, the (arbitrary) “clear conduct” period restarted, and the inmate faced another twelve months of isolation, perpetuating a continued cycle of isolation. This internal guidance directly violated regulations codified in the C.F.R., which required inmates to be released from DS at the conclusion of their assigned terms.<sup>24</sup> Nonetheless, the guidance, issued through internal memoranda in 2005, operated for more than a decade.

Blurring the boundaries between DS and AD and desensitizing staff to prolonged isolation, this internal guidance paved the way for the establishment of a variety of additional categories of segregation, or restricted housing, in the early years of this century. Here, we detail the history, justifications, and conditions for each of these practices (including some that predate the 2005 memoranda and some that postdate it) in order to document the proliferation of categories of segregation and the challenges of analyzing these categories.

The first specific category of segregated housing units has existed for decades in the BOP and has encompassed inmates in both AD and DS: Special Housing Units (SHUs). Most secure federal facilities operate a SHU to separate inmates from the institution's general population for both administrative and disciplinary reasons. In either form of separate housing, inmates are locked in a cell alone, or sometimes with as many as two other inmates, the third sleeping on the floor on a mattress.<sup>25</sup> Cell sizes vary depending on the facility design, with the average being approximately seven by nine square feet.<sup>26</sup> Inmates are locked in their cells twenty-three hours a day with the opportunity for one hour of recreation, ordinarily inside a small room or outdoor caged area. Food is brought to them on carts, and all movement within the unit is done with inmates in restraints, handcuffed behind the back. Inmates are rotated between cells on a periodic basis and have very limited access to law library materials or other programs. Social visiting is often limited or restricted, even without formal disciplinary sanctions. Telephone calls are allowed only once every thirty days, even when the placement is non-punitive in nature. The term *SHU* refers to the area of the prison where segregated inmates are housed, while the terms *AD* and *DS* describe the reasons for placement and the status of prisoners housed in areas like the SHU.

Another subcategory of SHU has also existed for decades in the BOP: Control Units (also called "supermaxes"). Control Units are a specific kind of housing unit (again, as distinguished from the status designations of AD and DS), even more secure and restrictive than a federal SHU. The concept of the "Control Unit" originated in Illinois at the United States Penitentiary, Marion (USP Marion), in the late 1960s, with a program referred to as "CARE," or the Control and Rehabilitation Effort. Although litigation and media exposés challenged the principles of CARE and the conditions in the first Control Units, the practice continued.<sup>27</sup> In the 1980s, prisoner Tommy Silverstein murdered Officer Merle Clutts in USP Marion. Prisoners were "locked down" into Control Units, much as portions of San Quentin and Attica had been "locked down" following incidents of violence in those state facilities in the 1970s. Supermaxes ultimately institutionalized such lockdowns. Today, in the federal system, lockdown facilities, or Control Units, are also often referred to as "ADMAX," or, in the case of the federal supermax facility in Florence, Colorado, "ADX." Opened in 1994, ADX was modeled on other state

supermax facilities in Arizona (the Special Management Unit in Florence) and California (the Pelican Bay Security Housing Unit in Crescent City).<sup>28</sup> At ADX, inmates are isolated from both staff and other inmates and spend twenty-three hours a day locked in their cells. Unlike the average "restrictive housing unit" setting, ADX units provide a TV-like monitor in the cell for viewing correctional programs.

Although USP Marion no longer operates a Control Unit, ADX does. In fact, there are several "restrictive housing unit" settings within ADX (which has a total of 408 beds), but there is only one ADMAX "Control Unit," with a rated capacity of seventy-eight inmates.<sup>29</sup> This is the most secure unit in the most secure prison in the entire federal prison system. In addition to the Control (or B) Unit at ADX, the other units, in order from most secure to least secure, are the Special Security Unit (or H), Special Housing Unit, General Population Units, and Intermediate Unit/Transitional Units. The 408-bed count represents a total of the various restrictive housing units within ADX, or ADMAX, which, in turn, is separate from the Florence penitentiary, which houses an additional 607 high-security inmates.<sup>30</sup>

Even the most restrictive conditions at the ADX complex have confused federal experts. For instance, the exact nature of these conditions was a point of controversy in the terrorism trial of Boston Marathon bomber Dzhokhar Tsarnaev. One former federal warden, Mark Beezy, testified (for the defense) that Tsarnaev would have no media contact, extreme correspondence restrictions, and one fifteen-minute phone call per month if housed at ADX—while the warden of ADX at the time, John Oliver, testified (for the prosecution) that Tsarnaev would be able to write and receive unlimited letters and would be able to make at least thirty minutes of phone calls per month.<sup>31</sup> (The distinction in privileges likely depended on whether Tsarnaev would be housed in the most restrictive "B" Control Unit or the slightly less restrictive "H" Special Security Unit.)<sup>32</sup>

Another public misconception has to do with the degree of isolation commonly imposed by the BOP in its restrictive housing units. Specifically, with a few exceptions, the BOP does not practice single-cell isolation on a mainstream basis. In fact, most prisoners in what the BOP is now calling restrictive housing, in units like SHUs and Special Security Units, have a cellmate or some other minimal human contact, in addition to at least two to three hours per day of time out of their cell. In general, the only segregated BOP inmates who do not have cellmates are those in the Florence "Control Unit," those being temporarily held in solitary confinement for protective custody cases until a threat assessment is conducted, those pending authorization into the witness security program (who are often held in solitary confinement for long periods while the WITSEC application is being processed), and a few sporadic cases throughout the country in "restrictive housing unit" settings that are administratively determined on a case-by-case basis. Of course, the practice of

double-celling some prisoners in segregation, even if they are locked in their cells twenty-two or more hours per day, produces further confusion about what exactly constitutes solitary confinement, or restrictive housing, within the BOP.

At some point between 2003 and 2008, the BOP added an additional category of segregated housing units (beyond SHUs and Control Units) to their repertoire: Special Management Units (SMUs). According to Program Statement 5217.02, “Special Management Units,” dated November 19, 2008, SMUs were designed for inmates who “participated in or had a leadership role in geographical group/gang-related activity, [and] present unique security and management concerns.”<sup>33</sup> Although the BOP website notes that the first SMU was established in 2008 at USP Lewisburg, and that is when USP Lewisburg was physically retrofitted to be an SMU,<sup>34</sup> internal BOP memos indicate that restrictive housing at USP Lewisburg was first dubbed “SMU” in 2003. Specifically, on March 17, 2003, M. E. Ray, Regional Director of the BOP Northeast Regional Office, submitted a memorandum to all wardens regarding the placement criteria for the SMU at USP Lewisburg. This is yet another example of confusing labeling of restrictive housing facilities.

Program Statement 5217.02 indicates that the SMU is “non-punitive” and lists the placement criteria, including gang associations, repeated disciplinary misconduct, and participation in group misconduct. The policy was recently reissued, having been revised from a four-level process of review and program participation, to be completed in eighteen to twenty-four months, to a two-level process, to be completed in twelve months.<sup>35</sup> The current SMU facilities are at USP Lewisburg and USP Allenwood (also in Pennsylvania; recently converted to a special “Mental Health Unit”). Insiders speculate that a facility in Thomson, Illinois, originally built as a state prison but later sold to the federal government, will eventually operate a large SMU. To date, however, it only houses about a hundred low-security prisoners.<sup>36</sup> Thomson was at one time being considered for prisoner transfers from Guantanamo Bay, Cuba.

In terms of security and control, SMU is a step up in security from a general-population U.S. penitentiary, but a step down in security from a SHU. Under the two-phase step-down program, all inmates start in Phase I, which is twenty-three-hour-per-day lockdown. Phase I provides for far fewer privileges and programs than inmates receive in the general population. As inmates move through the steps, however, they can earn more privileges than they would have in SHUs. Although SMUs are generally less restrictive than SHUs or Control Units, SMUs provide for fewer safeguards prior to placement approval. For instance, Control Unit policies require a formal team review every thirty days, while SMU policies require a review only every ninety days, with less stringent evaluation criteria.<sup>37</sup>

Just a few years after the first SMU was established, the BOP created yet another category of restrictive housing:

Communication Management Units (CMUs). Today, the BOP operates two CMUs: one in Terre Haute, Indiana (rated capacity of fifty), which opened in 2006; and one at USP Marion (rated capacity of fifty-two), which opened in 2008. While the SMUs were referenced in internal policies five years *before* the BOP publicly acknowledged this category of restrictive housing, CMUs were not governed by any formal policies for the first four years of their operation. The BOP did not publish CMU rules in the Federal Register for comment until April 6, 2010. On March 10, 2014, the BOP reopened the comment period for fifteen days in response to ongoing litigation. It had been more than eight years between the establishment of the first CMU and the issuance of the draft policy, Program Statement 5214.02, “Communication Management Units.” The first formal CMU policy was ultimately issued in April 2015.

The formal definition of a CMU is as follows: “a general population housing unit where inmates ordinarily reside, eat, and participate in all educational, recreational, religious, visiting, unit management, and work programming, within the confines of the CMU. Additionally, CMUs may contain a range of cells dedicated to segregated housing of inmates in administrative detention or disciplinary segregation status.”<sup>38</sup>

CMUs are for inmates whose current offense conduct requires increased monitoring of communication between the inmate and persons in the general community to “protect safety, security and orderly operation and to protect the public.”<sup>39</sup> There is no contact visiting in a CMU. All visits are conducted in English, unless another language is specified in advance and a translator scheduled. Non-English-speaking visits are conducted through simultaneous translation monitoring. Inmates designated to a CMU may be associated with terrorism, may have repeatedly attempted to contact victims and/or attempted illegal activities through approved communication methods, or may have received extensive disciplinary action due to misuse of communication methods.

In addition to developing ever more restrictive forms of “restrictive housing” in the first two decades of this century, the BOP has more recently established two forms of restrictive housing ultimately meant to be *less* restrictive: Reintegration Housing Units (RHUs) and Drop-out Yards. RHUs target male inmates identified as either verified or unverified protective custody cases, who consistently refuse to enter the general population, ordinarily at multiple locations. Information from the BOP’s Correctional Services Department that documents the inmate’s classification as a protective custody case, as well as information detailing the inmate’s placement in the SHU at previous facilities, is reviewed. A psychological evaluation from the referring institution is completed to determine whether the person is likely to persist in their belief that they cannot safely return to the general population at any facility, and whether the person is willing to participate in RHU programming. RHU inmates must be

classified as medium or high security, usually will not be active gang members, and must either have an unsubstantiated or unverified fear of general population placement or be considered a verified protective custody case at multiple locations.<sup>40</sup>

In addition to establishing RHUs in 2016, the BOP established Drop-out Yards in 2010. In that year, the BOP approved an executive paper entitled “Security Threat Group Drop-out Institutions” to identify specific institutions for the designation of security-threat group drop-outs attempting to disassociate from gangs. Drop-out units now exist in Otisville, New York (medium security), and Tuscon, Arizona (high security). Authorization to place an inmate in a Drop-out Yard is a lengthy process, which involves a thorough debriefing by investigators in collaboration with several entities, including the National Gang Intelligence Center, U.S. Customs and Border Protection, the Drug Enforcement Agency, and various units of the FBI (including the Criminal Investigation Division, the FBI Laboratory, Cryptanalysis, and Racketeering Records). As of June 2015, there were approximately 293 people in the drop-out units.<sup>41</sup> Upon arrival on a Drop-out Yard, inmates are placed in a nine-month cognitive behavioral therapy-related program and receive monthly interviews by BOP investigative staff. As of 2017, the BOP did not appear to have a formal public policy on these units.

#### IV. Implications

This review of the various categories of restrictive housing designations and practices in the Federal Bureau of Prisons reveals a number of important patterns. First, a wide variety of restrictive housing practices have proliferated over the past decade: Control Units, SHUs, CMUs, SMUs, and RHUs, to name just a few. Second, the history of policies governing these facilities suggests that administrators tend to design them, often issuing no governing policies, or only issuing internal governing policies. In the case of SMUs and CMUs, for instance, it took at least five years for the BOP to publicly acknowledge the existence of the facilities and seek to establish public rules and procedures for their operation. Third, the naming practices of these facilities create challenges for understanding exactly who is housed in them, what policies govern their operation, and how they differ from other facilities with different names. Such obfuscation makes taxonomies like the one we have sought to present here all the more important to maintain and analyze.

In sum, in our highly technical and specialized society, solitary confinement has morphed in many directions under the “restrictive housing unit” umbrella. It is important for professionals to understand these experiments in warehousing people and to appreciate their complex dynamics and characteristics within the prison setting. Through rendering these categories of restrictive housing more transparent, we hope to better facilitate advocacy and research efforts.

#### Notes

- \* Jack T. Donson is a lecturer in criminal justice and a consultant and national advocate on prison reform issues.
- \*\* Keramet Reiter is the author of *23/7: Pelican Bay Prison and the Rise of Long-Term Solitary Confinement* (New Haven, CT: Yale University Press, 2016).
- <sup>1</sup> Matthew R. Durose, Alexia D. Cooper, and Howard N. Snyder, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010* (Apr. 2014), <https://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>.
- <sup>2</sup> Keramet Reiter, *23/7: Pelican Bay Prison and the Rise of Long-Term Solitary Confinement* (2016).
- <sup>3</sup> Chase Riveland, *Supermax Prisons: Overview and General Considerations* (Jan. 1999), <http://static.nicic.gov/Library/014937.pdf>.
- <sup>4</sup> Sadbh Walshe, *Why Do We Let 80,000 Americans Suffer a ‘Slow-Motion Torture of Burying Alive’?*, *Guardian* (Mar. 20, 2014), <https://www.theguardian.com/commentisfree/2014/mar/20/solitary-confinement-psychological-effects-sarah-shourd>.
- <sup>5</sup> See <https://www.c-span.org/video/?c4485257/size-solitary-confinement-cell>.
- <sup>6</sup> U.S. Gov’t Accountability off., *Gao-13-429, Improvements Needed in Bureau of Prisons’ Monitoring and Evaluation of Impact of Segregated Housing* (2013), <http://www.gao.gov/assets/660/654349.pdf>.
- <sup>7</sup> The National Institute of Corrections was created in 1974 and was first funded “as a line item in the Federal Bureau of Prisons Budget,” suggesting little actual independence between NIC and BOP. *History*, U.S. Department of Justice, National Institute of Corrections, <https://nicic.gov/history-of-nic>.
- <sup>8</sup> McGinnis et al., *Cna Analysis & Solutions, Federal Bureau of Prisons: Special Housing Unit Review and Assessment* (Dec. 2014), [https://www.bop.gov/resources/news/pdfs/CNA-SHURReportFinal\\_123014\\_2.pdf](https://www.bop.gov/resources/news/pdfs/CNA-SHURReportFinal_123014_2.pdf).
- <sup>9</sup> Author’s personal conversations with administrators at several federal facilities.
- <sup>10</sup> Jean Cassella and James Ridgeway, *Audit of Solitary Confinement in Federal Prisons: An Inside Job Reaches Foregone Conclusions*, *Solitary Watch* (Mar. 2, 2015), <http://solitarywatch.com/2015/03/02/audit-of-solitary-confinement-in-federal-prisons-an-inside-job-reaches-foregone-conclusions/>.
- <sup>11</sup> Daniel White, *Watch President Obama Greet Inmates in Federal Jail*, *Time* (Sept. 22, 2015), <http://time.com/4044587/obama-vice-prison-greeting/>.
- <sup>12</sup> Barack Obama, *Why We Must Re-Think Solitary Confinement*, *Wash. Post* (Jan. 25, 2016), [https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce\\_story.html?utm\\_term=.aa2de5603d76](https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html?utm_term=.aa2de5603d76); U.S. Department of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing* (Jan. 2016), <https://www.justice.gov/archives/dag/file/815551/download>.
- <sup>13</sup> Juliet Eilperin, *Obama Bans Solitary Confinement for Juveniles in Federal Prisons*, *Wash. Post* (Jan. 26, 2016), [https://www.washingtonpost.com/politics/obama-bans-solitary-confinement-for-juveniles-in-federal-prisons/2016/01/25/056e14b2-c3a2-11e5-9693-933a4d31bcc8\\_story.html?utm\\_term=.43ec93028b64](https://www.washingtonpost.com/politics/obama-bans-solitary-confinement-for-juveniles-in-federal-prisons/2016/01/25/056e14b2-c3a2-11e5-9693-933a4d31bcc8_story.html?utm_term=.43ec93028b64).
- <sup>14</sup> Barack Obama, *The President’s Role in Advancing Criminal Justice Reform*, 130 *Harv. L. Rev.* 811, 830 (2017).
- <sup>15</sup> Allan J. Beck, Bureau of Justice Statistics, *Use of Restrictive Housing in U.S. Prisons and Jails* (Oct. 23, 2015).
- <sup>16</sup> See *Restrictive Housing*, National Institute of Justice, <https://www.nij.gov/topics/corrections/institutional/Pages/restrictive-housing.aspx#research>.
- <sup>17</sup> Joseph Shapiro, *Lawsuit Says Lewisburg Prison Counsels Prisoners with Crossword Puzzles*, National Public Radio (June 15,

- 2017), <https://www.npr.org/2017/06/15/532796528/lawsuit-says-lewisburg-prison-counsels-prisoners-with-crossword-puzzles>.
- 18 Christie Thompson & Joseph Shapiro, *Inside Lewisburg Prison: A Choice Between a Violent Cellmate or Shackles*, National Public Radio (Oct. 26, 2016), <https://www.npr.org/2016/10/26/498582706/inside-lewisburg-prison-a-choice-between-a-violent-cellmate-or-shackles>.
- 19 U.S. Dep't of Justice, Office of the Inspector General, Review of the Federal Bureau of Prisons' Use of Restrictive Housing for Inmates with Mental Illness (Jul. 2017), <https://assets.documentcloud.org/documents/3893449/Review-of-the-Federal-Bureau-of-Prisons-Use-of.pdf>.
- 20 *Id.*
- 21 For coverage of the report, see Ryan J. Reilly, *Federal Prisons Officials Claim Inmates Aren't Held in Solitary. DOJ Watchdog Says They Are*, Huffington Post (July 12, 2017), [http://www.huffingtonpost.com/entry/federal-prison-solitary-confinement-mental-illness\\_us\\_59664623e4b005b0fdca5f85?nf5](http://www.huffingtonpost.com/entry/federal-prison-solitary-confinement-mental-illness_us_59664623e4b005b0fdca5f85?nf5); Justin George, *Federal Watchdog Finds Mentally Ill Are Stuck in Solitary*, The Marshall Project (July 12, 2017), [https://www.themarshallproject.org/2017/07/12/federal-watchdog-finds-mentally-ill-are-stuck-in-solitary?utm\\_medium=email&utm\\_campaign=newsletter&utm\\_source=opening-statement&utm\\_term=newsletter-20170713-796#.mKCgYloHY](https://www.themarshallproject.org/2017/07/12/federal-watchdog-finds-mentally-ill-are-stuck-in-solitary?utm_medium=email&utm_campaign=newsletter&utm_source=opening-statement&utm_term=newsletter-20170713-796#.mKCgYloHY).
- 22 See 28 C.F.R. § 541.
- 23 See, e.g., Wolff v. McDonnell, 418 U.S. 539 (1974); Wilkinson v. Austin, 545 U.S. 209 (2005).
- 24 See 28 C.F.R. § 541.33 Release from the SHU: "(b) Disciplinary segregation status. You will be released from disciplinary segregation status after satisfying the sanction imposed by the DHO. The SRO may release you earlier if it is determined you no longer require disciplinary segregation status."
- 25 In 2016, the Marshall Project reported on the "deadly consequences of solitary with a cellmate." See Christie Thompson & Joe Shapiro, *The Deadly Consequences of Solitary with a Cellmate*, The Marshall Project (Mar. 23, 2016), <https://www.themarshallproject.org/2016/03/24/the-deadly-consequences-of-solitary-with-a-cellmate#.FghiQwmUw>.
- 26 Federal Bureau of Prisons, Program Statement 1060.11, Rated Capacities for Bureau Facilities (June 30, 1997), [https://www.bop.gov/policy/progstat/1060\\_011.pdf](https://www.bop.gov/policy/progstat/1060_011.pdf) (governs cell capacities and requirements).
- 27 Committee to End the Marion Lockdown, *From Alcatraz to Marion to Florence—Control Unit Prisons in the United States* (1992), [http://people.umass.edu/kastor/ceml\\_articles/cu\\_in\\_us.html](http://people.umass.edu/kastor/ceml_articles/cu_in_us.html). See also Jessica Mitford, *Kind and Usual Punishment: The Prison Business 134–135* (1974); *Adams v. Carlson*, 488 F.2d 619 (7th Cir. 1973).
- 28 Reiter, *supra* note 4.
- 29 "Population Report Aug. 8, 2017," available from BOP FOIA Project, *Responses to Project Requests*, <http://www.victorvillefoia.org/Responses%20to%20Project%20Requests.html>.
- 30 Federal Bureau of Prisons, Admissions and Orientation Handbook, Us Penitentiary, Administrative Max, Florence, Colorado, retrieved from <http://www.bop.gov/locations/institutions/flm/>.
- 31 See Zoë Sobel, *Key Witnesses in the Dzhokhar Tsarnaev Trial*, WBUR News (Mar. 28, 2015), <http://www.wbur.org/news/2015/04/02/tsarnaev-key-witnesses>; "Tsarnaev Testimony Shifts to Potential Prison Conditions," WPRI (May 6, 2015), <https://www.youtube.com/watch?v=L9jM56lDedE>.
- 32 For a description of the different privileges associated with each unit, see [https://www.bop.gov/locations/institutions/flm/FLX\\_prea.pdf](https://www.bop.gov/locations/institutions/flm/FLX_prea.pdf), 5–6.
- 33 For the BOP Program Statement, see [http://www.law.umich.edu/special/policyclearinghouse/Documents/5217\\_001%20ocr.pdf](http://www.law.umich.edu/special/policyclearinghouse/Documents/5217_001%20ocr.pdf).
- 34 For a history of this unit, see Karen M. Morin, "Security Here Is Not Safe": *Violence, Punishment, and Space in the Contemporary US Penitentiary*, 31 *Environmental and Planning D: Society and Space* 381 (2013).
- 35 For a discussion of these changes, see *Changes to Special Management Unit (SMU) Policy*, Federal Bureau of Prisons (Aug. 26, 2016), [https://www.bop.gov/resources/news/20160826\\_smu\\_policy\\_change.jsp](https://www.bop.gov/resources/news/20160826_smu_policy_change.jsp).
- 36 See *AUSP Thomson*, Federal Bureau of Prisons, <https://www.bop.gov/locations/institutions/tom/>.
- 37 28 C.F.R. § 541.49 Review of Control Unit Placement: "a. Unit staff shall evaluate informally and daily an inmate's adjustment within the control unit. Once every 30 days, the control unit team, comprised of the control unit manager and other members designated by the Warden (ordinarily to include the officer-in-charge or lieutenant, case manager, and education staff member assigned to the unit), shall meet with an inmate in the control unit."
- 38 Federal Bureau of Prisons, Program Statement 5214.02, Communications Management Units (Apr. 1, 2015), [https://www.bop.gov/policy/progstat/5214\\_002.pdf](https://www.bop.gov/policy/progstat/5214_002.pdf).
- 39 28 C.F.R. § 541.49.
- 40 Federal Bureau of Prisons, Operations Memorandum 003–2016, Reintegration Housing Unit (rhu) Activation Procedures (May 9, 2016), [https://www.bop.gov/policy/om/003\\_2016.pdf](https://www.bop.gov/policy/om/003_2016.pdf).
- 41 Internal BOP source. On file with J.D.

## Compassionate Release and the First Step Act: Then and Now

In the Sentencing Reform Act of 1984 Congress included several “safety valves” authorizing federal courts to revisit and consider reducing sentences in a few specific situations.<sup>1</sup> One of them is when the prisoner develops “extraordinary and compelling reasons.” This authority is known colloquially as “compassionate release.” Congress divided compassionate release responsibility among three actors:

- The U.S. Sentencing Commission (USSC) determines what constitute extraordinary and compelling reasons, such as terminal illness or advanced age;<sup>2</sup>
- The federal Bureau of Prisons (BOP) identifies prisoners who meet the criteria and brings their cases to the courts’ attention by filing a motion for a reduction in sentence; and
- The sentencing court decides whether to reduce the sentence after considering the factors in section 3553(a) and if it finds that “extraordinary and compelling reasons” warrant a reduction.<sup>3</sup>

### Before the First Step Act

The BOP regularly exercised its gatekeeping role to prevent courts from considering compassionate release requests from prisoners who meet the USSC (and even the BOP) criteria for extraordinary and compelling reasons. It did so simply by refusing to bring a motion to the court. The BOP was able to deny the court jurisdiction because:

- **The BOP developed its own set of criteria.** They included such things as terminal illness, extreme debilitation, and extraordinary family circumstances, but they also included considerations that Congress had committed to the courts. For example, the BOP examined whether a prisoner’s release might pose a threat to public safety, minimize the seriousness of the offense, or was otherwise not warranted.
- **The BOP denied compassionate release for the wrong reasons.** If the BOP found that a prisoner who otherwise met compassionate release criteria did not “deserve” to be released, it only had to deny the prisoner’s request and refuse to file a motion with the court.
- **There was no right of appeal.** The statute did not include any way for the prisoner to appeal the BOP’s denial of compassionate release.

---

<sup>1</sup> 18 U.S.C. sec. 3582 (c).

<sup>2</sup> 18 U.S.C. sec. 994 (t).

<sup>3</sup> 18 U.S.C. sec. 3582(c)(1)(A)(i).

## Compassionate Release Under The First Step Act

The First Step Act made important changes to how federal compassionate release works. It changes and expands the compassionate release eligibility criteria; ensures the prisoners have the right to appeal the BOP's denial or neglect of the prisoner's request for a compassionate release directly to court; and provides other important features, such as notification, assistance, and visitation rules.

### *Compassionate Release Objective Criteria Under the First Step Act*

The criteria for determining whether a prisoner has an “extraordinary and compelling reason” for a sentence reduction are sometimes broader under the Sentencing Guidelines than under the BOP Program Statement. Prisoners seeking compassionate release and/or filing motions should consult USSG [1B1.13](#), in addition to the [BOP Program Statement 5050.50](#) for guidance on what reasons are considered by courts to be “extraordinary and compelling.” We indicate the differences in the outline below.

- **Terminal Medical Condition:**
  - The prisoner has been diagnosed with a terminal, incurable disease with a life expectancy of 18 months; or
  - The prisoner has a disease or condition with an end-of-life trajectory, meaning that the disease or condition will lead to death. A specific prediction of time left to live is not necessary.
- **Debilitated Medical Condition:**
  - **BOP:** The prisoner has an incurable, progressive illness or has suffered a debilitating injury without hope of recovery. BOP will consider a compassionate release if the prisoner is
    - **Completely disabled** so they cannot carry on any self-care and is totally confined to a bed or chair; or
    - Able to do only **limited self-care** and is confined for 50 percent of waking hours to a bed or chair.
  - **Sentencing Commission:** The prisoner's ability to provide self-care in the prison is substantially diminished and recovery is not expected because the prisoner is
    - Suffering from a serious physical or medical condition;
    - Suffering from a serious functional or cognitive impairment; or
    - Experiencing deteriorating physical or mental health due to age.
- **New Law Elderly Prisoners** are those sentenced for an offense that occurred after November 1, 1987, who are
  - 70 years old or older; and
  - Have served 30 years of the sentence.
- **Elderly Prisoners (with Medical Conditions)**
  - **BOP**
    - 65 years old or older;
    - Suffer from chronic or serious medical condition related to age;

- Are experiencing deteriorating physical or mental health that substantially diminishes their ability to function in prison;
    - Conventional treatment promises no substantial improvement; and
    - Have served at least 50 percent of their sentence.
  - **Sentencing Commission**
    - 65 years old;
    - Are experiencing serious physical or mental health deterioration due to age; and
    - Have served at least **the lesser of 10 years or 75 percent** of their sentence.
- **Other Elderly Prisoners (BOP only)**
  - 65 years old or older; and
  - Have served the greater of 10 years or 75 percent of their sentence.
- **Family Circumstances**
  - Death or incapacitation of the family member or caregiver of the prisoner's minor children (**BOP adds that** to be eligible, the prisoner must be the only family member capable of caring for the children); or
  - Incapacitation of the prisoner's spouse or registered partner
    - **BOP:** "Incapacitation" means the spouse or partner has
      - Suffered a serious injury or debilitating illness and is completely disabled so as to be unable to carry on any self-care and is totally confined to a bed or chair; or
      - Has severe cognitive defect such as Alzheimer's.
    - **BOP:** The prisoner must be the only available family caregiver.

### *The First Step Act Gives Prisoners the Right to Go to Court*

The most significant change to compassionate release is that the Act provides prisoners the power to file a motion for compassionate release if they can demonstrate they have tried and failed to convince the BOP to do so for them. Before passage of the First Step Act a denial by the BOP was not appealable.

**Prisoners now have the right to file a motion** under 18 U.S.C. sec. 3582(c)(1)(A)(i) directly with the court under certain circumstances:

- Prisoners may file a motion after the earlier of
  - having "fully exhausted all administrative rights to appeal a failure of the BOP to bring a motion. . ." or
  - 30 days after the date the warden received a request for compassionate release from the prisoner.
- A prisoner **exhausts administrative rights** when one of two things happens:
  - The Central Office of the BOP rejects a warden's recommendation that the BOP file a compassionate release motion, or

- The warden refuses to recommend the BOP file a compassionate release motion and the prisoner appeals the denial using the BOP's [Administrative Remedy Program](#).<sup>4</sup>

*Other changes made by the First Step Act include:*

- **Notification when a prisoner is diagnosed with a terminal condition**
  - Within 72 hours after a terminal diagnosis, the BOP **must notify** the prisoner's attorney, partner, and family and inform them they may submit a request for the prisoner's compassionate release;
  - Within seven days the BOP **must provide** the partner and family members a **visit**;
  - BOP staff **must assist** a prisoner with a compassionate release request if asked to do so by the prisoner, the attorney, partner, or family member; and
  - The BOP **must "process"** a request for compassionate release from the prisoner, the attorney, partner, or family member within 14 days.
    - **Note** that P.S. 5050.50 (3)(a) interprets this provision to mean the request must be forwarded to the Central Office within 14 days, but this is not what the statute says.
    - **Note** that "terminal medical condition" is any "disease or condition with an end-of-life trajectory."
- **Support for prisoners who are physically or mentally unable to submit a compassionate release request on their own**
  - The BOP **must inform** the prisoner's attorney, partner, and family that they can submit a request and **must accept** a request from people other than the prisoner; and
  - BOP staff **must assist** a prisoner with a compassionate release request if asked to do so by the prisoner, the attorney, partner, or family member.

---

<sup>4</sup> Program Statement 1330.18

National Security

# ‘Cruel and unusual’: Alabama prisons plagued by severe violence, Justice Dept. investigation finds

By [Devlin Barrett](#)

April 3

Alabama’s understaffed and overcrowded prisons have for years allowed killings, sex abuse and other violence to go largely unchecked, according to a scathing set of findings issued Wednesday by Justice Department investigators.

The investigators found reasonable cause to suspect the state “routinely violates the constitutional rights of prisoners housed in Alabama’s prisons by failing to protect them from prisoner-on-prisoner violence and prisoner-on-prisoner sexual abuse, and by failing to provide safe conditions,” Justice Department officials wrote in [a letter](#) to Gov. Kay Ivey.

Federal authorities called the violations “severe, systemic, and exacerbated by serious deficiencies in staffing and supervision,” as well as an inability to control the flow of drugs and weapons inside the 13-prison system that holds roughly 16,000 male inmates.

To highlight the problem, investigators cited as an example a single week in September 2017 in which Alabama’s prisons saw a killing, three stabbings, a half-dozen severe beatings, two drug cases, four sex-abuse incidents, and a fatal drug overdose.

Alabama’s prisons have the highest homicide rate in the country, according to officials who also noted that some killings there went unreported.

According to public reports from the Alabama Department of Corrections, 24 prisoners were killed between January 2015 and June 2018, but federal investigators concluded at least three additional homicides had gone unreported as such.

“There are numerous instances where ADOC incident reports classified deaths as due to ‘natural’ causes when, in actuality, the deaths were likely caused by prisoner-on-prisoner violence,” the Justice Department report concluded.

Federal authorities also faulted state officials for what they said was a failure to fully investigate sex assaults in prison.

The Alabama prison system “has a tendency to dismiss claims of sexual abuse by gay prisoners as consensual ‘homosexual activity’ without further investigation, implying that a gay man cannot be raped,” the report

found, adding that some inmates who reported being assaulted were asked to sign a release of liability document by prison officials.

Conditions in Alabama prisons amount to a violation of the Constitution's Eighth Amendment protections against "cruel and unusual punishment," the Justice Department found. In their letter to the governor, federal investigators said they may file a lawsuit within 49 days to force changes inside the prisons but would prefer to negotiate a settlement with the state.

In a statement, the governor said she plans to work closely with the Justice Department "to ensure that our mutual concerns are addressed and that we remain steadfast in our commitment to public safety, making certain that this Alabama problem has an Alabama solution."

The investigation began in October 2016, a time when the Obama administration was a proponent of such "pattern and practice" investigations into law enforcement agencies with troubling track records of civil rights violations or mistreatment.

It continued during the Trump administration, despite then-Attorney General Jeff Sessions's public statements critical of such work. Until his departure late last year, Sessions had sought to curtail pattern and practice probes in favor of criminal investigations of individuals who may have violated people's rights.

Understaffing at the Alabama prisons, and the imposition of "voluntary mandatory overtime" on the skeleton prison staffs, have contributed to the problems, according to the Justice Department, which recommends immediately hiring 500 new guards to deal with the shortages.

Even that may not be enough, the report warns, noting that in February, Alabama filed a report indicating it needed to hire more than 2,300 people in the next four years.

"These staggering staffing deficiencies," the Justice Department noted, "were determined by ADOC's own experts."

### **Devlin Barrett**

Devlin Barrett writes about national security and law enforcement for The Washington Post. He has previously worked at the Wall Street Journal, the Associated Press and the New York Post, where he started as a copy boy. [Follow](#) 

---

*The Washington Post*

**Others cover stories. We uncover them.**

**Limited time offer:** Get unlimited digital access for less than \$1/week.

# ‘Horrorifying’ isn’t a strong enough word to describe Alabama’s prison conditions

---

By Editorial Board

April 4

“HORRIFYING” IS too tame a word for the conditions documented in Alabama’s prisons by a chilling [report](#) the Justice Department [released Wednesday](#). If conditions do not change, and soon, federal officials must force reform.

“Inadequately supervised . . . rife with violence, extortion, drugs, and weapons . . . overcrowding and understaffing,” Justice Department investigators listed. “Prisoner-on-prisoner homicide and sexual abuse is common. Prisoners who are seriously injured or stabbed must find their way to security staff elsewhere in the facility or bang on the door of the dormitory to gain the attention of correctional officers. Prisoners have been tied up for days by other prisoners while unnoticed by security staff.”

Among the many gruesome cases they unearthed, the investigators recounted how prisoners in an undersupervised disciplinary zone watched for guards as others stabbed another inmate repeatedly. The wounded man had to drag himself to a locked door while other prisoners banged on it in order to get security staff’s attention. He bled to death.

Homicide rates in Alabama prisons are far higher than the national average. Sexual assault seems pervasive, even as it is almost certainly underreported. Alabama correctional staffers write off claims of rape as consensual “homosexual activity.” Prison rape is torture; it should not be a condition of incarceration, and it cannot be accepted.

The list of failings continues: “Prisoners are being extorted by other prisoners without appropriate intervention of management. Contraband is rampant. The totality of these conditions pose a substantial risk of serious harm both to prisoners and correctional officers.”

None of this should be news to Alabama officials, because the state’s prison system has been miserable for decades. “Alabama is deliberately indifferent to that harm or serious risk of harm and it has failed to correct known systemic deficiencies that contribute to the violence,” investigators concluded. The state has engaged in a “pattern or practice” of violations of prisoners’ Eighth Amendment right to be free of cruel or unusual punishment, the report alleges.

The actions the Justice Department wants Alabama to take run from obvious to more obvious: hire more guards; set up monitoring systems to keep an eye on prisoners; do a better job documenting cases of abuse; make sure everyone entering a prison facility is screened; stop punishing inmates who come forward with

abuse allegations; fix the showers; fix the toilets. If Alabama does not improve enough within 49 days, the letter warns that the attorney general may file suit in federal court.

It is good the Justice Department is paying attention. Now it must follow through. Such barbarity is not tolerable.

**Read more:**

[The Post’s View: The terrible violence in an Alabama prison deserves a serious response](#)

[Jennifer Lackey: The measure of a country is how it treats its prisoners. The U.S. is failing.](#)

[Michael Gerson: No more pits of despair. Offenders are still humans.](#)

[Eugene Robinson: In prison reform, a little of something is better than a lot of nothing](#)

[Jason Rezaian: What happened during my first visit to a prison since being released from one](#)

The Washington Post

**Others cover stories. We uncover them.**

**Limited time offer:** Get unlimited digital access for less than \$1/week.

[Get this offer](#)

[Send me this offer](#)

Already a subscriber? [Sign in](#)

# Cruel & Unusual

## The True Costs of Our Prison System

*Robert DeFina & Lance Hannon*

A decade ago, in November 2000, the U.S. Conference of Catholic Bishops issued a pastoral statement titled *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice*. Unapologetically critiquing a criminal-justice system focused primarily on punishment, the bishops called the American response to crime “a moral test for our nation and a challenge for our church.”

Their statement chastised the United States for its “astounding” rate of incarceration, “six to twelve times higher than the rate of other Western countries,” and went on to suggest changes that would make the system more humane and socially beneficial. “Putting more people in prison and, sadly, more people to death has not given Americans the security we seek,” the bishops declared. “It is time for a new national dialogue on crime and corrections, justice and mercy, responsibility and treatment.”

The backdrop to the bishops’ pastoral was a dramatic rise in the incarceration rate. In the twenty years preceding their report, that rate rose steeply and steadily, more than tripling to 683 prisoners per 100,000 of the population—which meant 2 million people behind bars and a total bill to federal, state, and local governments of about \$64 billion. Closer inspection of the ranks of the imprisoned raised even more concerns. Prisons were increasingly admitting nonviolent criminals, especially those guilty of drug-related infractions. The prison population was increasingly made up of minorities: by 2000 about 60 percent of those imprisoned were either black or Hispanic. And Harvard sociologist Bruce Western noted that more than half of all African-American men who lack high-school diplomas were imprisoned by age thirty-four.

**Robert DeFina** is professor of sociology at Villanova University and co-editor of the *Journal of Catholic Social Thought*. **Lance Hannon** is associate professor of sociology at Villanova University. The authors’ work was supported in part by a Veritas grant from Villanova University.

Scholars who studied the issue concluded that the prison buildup was not simply a response to rising crime: violent-crime rates in 2000, in fact, roughly equaled those of 1980, while property-crime rates were actually lower. The trend toward mass incarceration was rooted rather in a series of policy changes aimed at winning political favor by “getting tough on crime.” These included mandatory sentencing, “three strikes and you’re out” laws, and harsher rules for probation and parole. And so the same amount of crime yielded substantially more incarceration. Nor did the strategy of mass imprisonment contribute much toward keeping crime down. Even the most generous estimates suggested a relatively minor role in crime prevention; many studies showed that rates of violent crime were unaffected. Indeed, as we shall see, some evidence suggests that certain crimes might actually have increased as a result.

For the bishops a decade ago, the existing approaches to criminal justice were severely at odds with the church’s scriptural, theological, and sacramental heritage. “A Catholic approach begins with the recognition that the dignity of the human person applies to both victim and offender,” they wrote. “As bishops, we believe that the current trend of more prisons and more executions, with too little education and drug treatment, does not truly reflect Christian values and will not really leave our communities safer.” The overriding emphasis on punishment, the harsh and dehumanizing conditions of prisons, the lack of help to prisoners attempting reentry into society: these and other failures of the system led the bishops to call for a new direction, one that emphasized restorative



justice and reintegration while insisting on the well-being and fair treatment of both prisoners and their victims.

The system envisioned by the bishops offered prisoners reintegration into the community, including the opportunity for reconciliation with those harmed, even as it supported victim restitution. It rejected crudely punitive strategies, such as mandatory sentencing, that neglect the complex sources of crime and the particularities of an individual criminal's makeup. The bishops also called for better treatment within the prison walls, including expanded counseling, health care, education, and training to help emerging prisoners integrate successfully into society. They recommended that prisons be easily accessible to family, friends, and religious communities able to support the development and growth of prisoners. Finally, they reminded us of the community's responsibility to work toward reducing crime and helping those at risk of engaging in criminal activities.

These proposals added up to a progressive analysis of crime, punishment, and prevention, and it would be hard to argue against the bishops' prescriptions or the moral basis that underpinned them. A decade later, however, both the pastoral's criticisms and its suggestions seem all too limited. The criticism focused mainly on shortcomings in the condition and treatment of individual prisoners and victims. While these remain important concerns, recent research has highlighted serious detrimental effects that the justice system has on the broader communities from which prisoners come and to which they ultimately return. These community-level effects have added substantially to the individual-level problems the nation's prison policy has created. Recognizing these consequences will help lead to a broader and deeper critique than the one articulated in the pastoral—a critique, moreover, that points the way to a criminal-justice system more in line with the principles of Catholic social thought.

The bishops analyzed the effects of prisons using what Rutgers sociologist Todd Clear has called an “atomistic view.” An atomistic view focuses on the individual prisoner—why he commits a crime, how he is treated within the criminal-justice system, and what happens to him once he is released. While such a view addresses the important issue of personal dignity, it mostly ignores the larger social fact that the individual prisoner is but one of over 2 million, and that those imprisoned come from geographically concentrated neighborhoods. A broader view discloses other problems. Imprisoning a large fraction of individuals from a particular community, it turns out, can cause that community substantial harm—especially when that community was disadvantaged to begin with.

Recent studies have illuminated the many ways this harm can occur. To begin with, mass imprisonment removes spending power from a community, as most of those incarcerated are working at the time of their arrest and contributing significantly to their families' income. Furthermore, as sociologists Bruce Western and Devah Pager have demonstrated,

incarceration significantly limits the earning capacity of ex-inmates through the erosion of their marketable skills, the loss of social networks, prison socialization into destructive behaviors, and, perhaps most important, the scarlet letter of a prison record. Ex-prisoners are barred from a large array of occupations in this country, ranging from emergency medicine to cosmetology; in thirty-seven states, employers are allowed to consider arrests *without conviction* when making hiring decisions. And loss of income is not limited to the incarcerated parent, but also afflicts the remaining parent, since childcare needs can significantly decrease the time available to find and keep a job. Research has consistently shown, moreover, that children with an incarcerated parent frequently suffer high levels of anxiety, shame, and depression; and attending to these needs forms a further obstacle to the remaining parent's participation in the labor force.

Such considerations reveal just how complex and multidimensional the impact of mass incarceration can be. At the community level, it disrupts social networks that bolster the chance for quality employment. The loss of an adult family member, especially one with years of experience in the legitimate labor market, reduces the “friend-of-a-friend” connections that aid employment. As sociologists Robert Sampson and Stephen Raudenbush point out, whole communities with high incarceration rates can become stigmatized, decreasing the likelihood that members will be hired, even those with no prison record. Other studies have suggested that mass incarceration disrupts a neighborhood's informal mechanisms of social support, as the constant churn of people in and out weakens bonds and diminishes collective identity. This in turn strains individual resources—as when parents who cannot rely on neighbors to look after children must spend money or forgo wages to do it themselves. The removal of adult breadwinners, meanwhile, eliminates role models important for young people. And the blatantly unequal and racialized use of incarceration can delegitimize governmental authority among youth and fuel an oppositional subculture in which mainstream activities such as work are devalued. These detrimental effects of concentrated incarceration on a community's norms and sense of collective efficacy may ultimately prevent residents from escaping what might otherwise be merely episodic poverty.

Another direct link to poverty is the increased prevalence of single-parent families. Not only does mass imprisonment shrink the pool of young men available for marriage, but the prison experience itself can make men less suitable for marriage. And single parenthood is a significant contributor to poverty and related social ills. As for released inmates, they face restricted access to the social-safety net. Several states, such as Texas and Missouri, deny them food stamps, public housing, and TANF, federal assistance for needy families. And the overhaul of the federal welfare system in 1996—the Personal Responsibility and Work Opportunity Reconciliation Act—included a lifetime ban on cash assis-

tance and food stamps for anyone convicted of a drug offense. These rules not only impede the re-integration of ex-prisoners, but put the community as a whole at risk, especially children. Mass incarceration has also been associated with growing and serious community-health problems. Economists Steven Raphael and Michael Stoll, for example, have linked the prevalence of AIDS in poor communities to the transmission of the disease through sexual violence in prison. This in turn renders communities less able to deal with other crucial concerns.

Beyond all this lies a political dimension. Mass incarceration can exacerbate a community's long-term economic deprivation by politically disenfranchising those with the greatest stake in policies that might help lift people out of poverty. In forty-eight states, prisoners cannot vote. Many states disallow voting while on probation or parole, and a few states, like Florida, permanently disenfranchise those convicted of a felony. According to a study by the Sentencing Project and Human Rights Watch, as of 1998 3.9 million Americans—about one in fifty adults—had either temporarily or permanently lost their right to vote. A clear racial imbalance characterizes this loss; the study revealed that about one in seven black men had either temporarily or permanently lost the right to vote, and in several states, nearly one in four black men of voting age were *permanently* disenfranchised. To make matters worse, census procedures dictate that prisoners be counted not in their home communities, but in the jurisdiction where they are imprisoned. Since the areas where prisoners come from tend to be urban, diverse, and Democratic, while prisons are frequently located in rural, white, and Republican districts, high-incarceration communities suffer a sort of electoral double-whammy, with political power drained away from them and transferred to politically antithetical communities that receive greater representation because of their sizable, nonvoting inmate population. The end result is less legislative support for—and greater opposition to—a variety of progressive initiatives that could aid disadvantaged communities, including, for example, a boost in the statewide minimum wage.

Finally, as if all this weren't bad enough, it is clear that the harms done to a community's economy by mass incarceration are likely to be multiplied. In a vicious feedback loop, decreased spending caused by lost income due to incarceration results in fewer businesses being able to remain solvent. When businesses go under, additional residents lose their jobs and fall below the poverty line, depressing spending further. Crucial nonprofit institutions, such as community churches, can be negatively affected as well by the economic contraction. Because such institutions frequently provide goods and services that alleviate poverty, crime, and other social ills, their weakening can intensify the collateral consequences of mass incarceration.

## St. John on Patmos

Gloried songward, time befriends till all is guest—holy  
to sealed, and ghost come quickly song, starfalls exploding  
nightward all noon at sundust, dawning at friend, holy

the ghostwords full in Godsong, time all seafire gloried,  
light from light unsealed, song from songfall, full enstoried

greeting, seen and unseen song all flame-sunder glory,  
time-come-angel without dust or footstep, and holy  
the friendsong, enwondered light holy, holy, holy.

—Judy Little

Some observers have suggested that increased incarceration can benefit disadvantaged communities by removing socially disruptive young men. This idea has intuitive appeal, yet it loses force in the context of mass incarceration. While the removal of just a few “bad apples” might well have positive implications, in some communities more than a third of the population of young males is in prison; this is less like removing a few apples than like uprooting the whole tree. In such situations the negative effects will likely outweigh whatever positive effects might exist. Our own research indicates that mass incarceration in recent decades has plunged millions of Americans into poverty. Other studies suggest potentially criminogenic consequences of mass imprisonment, arising from the release into the community of large numbers of prisoners exposed to an isolating and sometimes violent prison environment. According to criminologists Lynn Vieraitis, Tomislav Kovandzic, and Thomas Marvell, imprisonment trends in the past few decades actually *increase* the incidence of various types of crime. And our own research suggests that any such crime-inducing effects of imprisonment can persist for many years.

In light of these manifest problems, we believe that Catholic Social Teaching (CST) should broaden its engagement with the criminal-justice system to include what we term “community justice.” By community justice we mean the consideration of the community as an organic whole whose treatment should be subject to the demands of justice. Understanding communities this way is common for sociological analysis, but not perhaps for the kind of analysis typically used in CST. Yet with mass incarceration, it is simply not the case that the total damage equals the sum of individual harms. Rather, entire communities have been damaged, suffering perilous losses to their collective social, cultural, and physical capital.

This perspective opens up new questions and suggests new

applications of CST to the criminal-justice system. Diminution of the *common good*, for instance, is much graver when entire communities are destroyed. The urgency of a *preferential option for the poor* is heightened when policies push millions more people into poverty. The *social nature of the person* and *solidarity* are violated more seriously when entire social networks and sets of norms are damaged. Barriers to *participation* are much greater when whole communities are stigmatized because of high levels of incarceration. Such perspectives both require and inform a broader, deeper critique of our penal system.

A community-justice lens can also help highlight the racial imbalance in mass imprisonment. Bruce Western and Loïc Wacquant have argued that policy initiatives, like the “War on Drugs,” that have led to mass incarceration and the disproportionate incarceration of minorities constitute a reaction against the civil-rights movement. They represent, in other words, a new means of social control, in the tradition of such outlawed forms as blatant job discrimination, Jim Crow laws, and housing segregation, which effectively isolates members of a devalued social group and limits their access to valued resources. To the extent that this is accurate, criminal-justice policy directly violates several principles of CST, including the dignity of the person, the social nature of the person, participation, solidarity, and the universal destination of goods. Seen this way, mass incarceration isn’t merely an ineffective system needing improvement. Rather, it is a sinful, repugnant, and disordered structure worthy of wholesale replacement.

**W**hat practical steps might be taken to bring this disordered system into line with Catholic principles? First and foremost, we need to incarcerate fewer people. One recent proposal by economists John Schmitt, Kris Warner, and Sarika Gupta argues that half of all nonviolent criminals could be removed from prison and put on probation or parole with no appreciable effect on public safety, at a savings of close to \$17 billion—considerable resources for the common good, an especially attractive benefit for struggling state governments. Meaningful reductions in incarceration can also be achieved via judicious changes to parole and probation rules. Minor violations (such as lying about previous prison time on job applications) that can now land parolees back in jail, could be handled less punitively, keeping ex-inmates in the community. All in all, sociologist Todd Clear has suggested, the prison population could be cut in half by eliminating imprisonment for technical parole violations, trimming the length of parole supervision, and reducing prison sentences to those used twenty years ago.

Policies should be enacted to strengthen the efficacy of communities and their ability to exercise social control and offer social support. Foremost here are access to decent legitimate employment opportunities as well as to the child-care and transportation that facilitate working. Along these lines, the bipartisan Second Chance Act of 2008 suggests a heightened recognition of the problems of prisoner reentry and a new

political willingness to do something about them. Signed by President George W. Bush and supported by President Barack Obama, the law authorizes federal grants for employment and housing assistance, drug and alcohol abuse treatment, and other services to reentering offenders. In addition, all restrictions on work should be scrutinized, and those not demonstrably necessary to community safety should be removed. States can also reconsider allowing arrests without convictions to be factored into employment decisions.

The voting rights of ex-prisoners and those on probation and parole should be guaranteed, not only to assure individual rights (as the bishops stressed), but to give reentering prisoners a tangible stake in their communities. They should also be given full access to the safety net, including the basic programs (such as food stamps and TANF) that are essential for low-income communities, especially children. Public programs should treat poor ex-prisoners as well as they treat nonpoor ex-prisoners. Today, while public housing is denied to ex-inmates, the mortgage-interest deduction, essentially a housing program for middle- and upper-class families, is not. This surely runs counter to the call for a preferential option for the poor.

The principles of Catholic Social Teaching have provided a useful framework for reflection and guidance in addressing countless social problems over the past century. The arena of criminal justice is no exception. For a decade, the bishops’ pastoral has served as a powerful reminder that justice involves not only punishment but also the hard work of supporting the common good. As the bishops have pointed out, supporting the common good means helping the individual rejoin the community. And as we have stressed here, there must be a strong and vibrant community available to reintegrate *with*.

Sadly, in the ten years since the bishops’ pastoral was published, the disturbing trends it addressed have only continued, with the latest data showing the 2008 incarceration rate reaching 753 per 100,000 of the U.S. population, at a total direct cost of about \$75 billion. The trends in racial composition and the decreased severity of crimes meriting incarceration have continued as well. Meanwhile, the evidence for incarceration’s crime-reducing effect has weakened considerably. These failures demand our renewed attention and effort.

We have tried here to broaden the view presented in the bishops’ pastoral to recognize that incarceration on the scale seen in this country affects not only the individual but also the community at large, significantly amplifying poverty, crime, and other social pathologies. Analyses that fail to incorporate these community-level effects will continue to underestimate the harms caused by the current American approach to criminal justice. The principles of Catholic social teaching, on the other hand, can markedly improve what is clearly a broken system. Reconstructing the criminal-justice system in ways consistent with those principles will put us on a path toward respecting both the authentic development of the individual and the common good, and help us reverse an all-out assault on our most vulnerable communities. ■



March 26, 2018

The Honorable Charles Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Dianne Feinstein  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein:

On behalf of the Committee on Domestic Justice and Human Development of the U.S. Conference of Catholic Bishops (USCCB) and Catholic Charities USA (CCUSA), we write in support of the Sentencing Reform and Corrections Act of 2017 (S. 1917) (“SRCA”).

Our organizations have continuously advocated in favor of comprehensive improvement to our nation’s criminal justice system. Sentencing reform, along with prison and reentry program reform, are all critical components to a just and comprehensive criminal justice reform. In addition to SRCA, which represents years of bipartisan efforts to improve sentencing and prison reform, we urge you to address prison reform and reentry support programs by reauthorizing the Second Chance Act.<sup>1</sup>

The criminal justice system should serve both justice and mercy. As the Catholic bishops wrote in their pastoral statement:

We are guided by the paradoxical Catholic teaching on crime and punishment: We will not tolerate the crime and violence that threatens the lives and dignity of our sisters and brothers, and we will not give up on those who have lost their way. We seek both justice and mercy. Working together, we believe our faith calls us to protect public safety, promote the common good, and restore community.<sup>2</sup>

Society has a proper role in setting and enforcing just criminal laws, but our nation now has the highest rate of incarceration in the world with individuals, particularly from minority communities, serving disproportionately long sentences for non-violent offenses. Appropriate

---

<sup>1</sup> <http://www.usccb.org/issues-and-action/human-life-and-dignity/criminal-justice-restorative-justice/upload/Second-Chance-Reauthorization-Act-Endorser-2017-10-16.pdf>

<sup>2</sup> <http://www.usccb.org/issues-and-action/human-life-and-dignity/criminal-justice-restorative-justice/crime-and-criminal-justice.cfm>

punishment of wrongdoers is justified, but that punishment must always have a constructive and redemptive purpose.

The Sentencing Reform and Corrections Act of 2017 takes many steps in the right direction. On sentencing reform, the reduction of enhanced sentencing for prior drug felonies, the broadening of the safety valve to give more discretion to judges to fit the punishment to the crime, the limitation on the application of the 10-year mandatory minimum, and the expansion of the Fair Sentencing Act are praiseworthy features. Although we oppose the additional mandatory minimums – because one-size-fits-all solutions are often inadequate to address the complex causes of crime – on balance, this bill advances important improvements to federal sentencing practices.

In terms of prison reform, support for efforts to expand programs that reduce recidivism—such as education, jobs, workforce development, and mentoring—is essential. SRCA laudably creates a post-sentencing risk-and-needs assessment system that emphasizes dynamic factors to create incentives to earn time towards a placement in a prerelease facility. Critically, such a system will be reviewed regularly to ensure that it will not further exacerbate racial disparities in the criminal justice system. In the final bill, a provision should be added so that these reviews, and the methodology of the risk assessment system, are made public to help ensure the integrity of the system. SRCA also takes a positive step to expand compassionate release for terminally ill prisoners, parole for juveniles, and expungement of juvenile records. Restricting the use of solitary confinement, which Pope Francis has called a form of “torture,”<sup>3</sup> is also an important improvement. Finally, support for a Criminal Justice Commission helps to recognize the need for further research and reform of the criminal justice system.

This bipartisan bill makes a worthy first step towards criminal justice reform. As you debate sentencing and prison reform over the coming months, we urge you to work towards a system that serves both justice and mercy, that seeks to safeguard the common good and restore the community.

Sincerely,



Most Reverend Frank J. Dewane  
Bishop of Venice  
Chairman, Committee on Domestic Justice  
and Human Development



Sister Donna Markham, OP, Ph.D.  
President & CEO  
Catholic Charities USA

---

<sup>3</sup> [https://w2.vatican.va/content/francesco/en/speeches/2014/october/documents/papa-francesco\\_20141023\\_associazione-internazionale-diritto-penale.html](https://w2.vatican.va/content/francesco/en/speeches/2014/october/documents/papa-francesco_20141023_associazione-internazionale-diritto-penale.html)

# A Journey of HOPE

**A Catholic Approach to Sentencing Reform**

*“Establishing a criminal justice system that works and offers a genuinely rehabilitative environment does not constitute a soft approach to crime”*



## Contents

<i>Foreword</i>	2
<i>Introduction</i>	3
<i>The Role of Prison</i>	4
<i>An Unsustainable System</i>	7
<i>Effective Rehabilitation</i>	10
<i>A Complex Population</i>	13
<i>Conclusion</i>	16
<i>Summary of recommendations</i>	17

# Foreword

“Across England and Wales prisons are struggling to cope. They are characterised by poor living conditions, high levels of violence and self-harm, widespread use of psychoactive drugs, and prisoners being left in their cells for up to 22 hours a day.

These conditions are not only undignified but also present a huge obstacle for offenders seeking to turn their lives around. If there is no improvement, rates of reoffending will inevitably remain high, to the detriment of our whole society.

There have been many welcome and insightful reports in recent years calling for reforms, from Dame Sally Coates’ review of education to Lord Farmer’s findings about the importance of family ties. The Government has been receptive to calls for change. However, it is becoming increasingly clear that the impact of these reforms will remain limited while the prison population continues to grow and resources continue to be reduced.

Despite evidence that community sentences are more effective, many people who have committed non-violent crimes are still sent to custody for short sentences that only serve to disrupt their lives. Meanwhile over the last decade, the average lengths of medium-to-long term prison sentences for the same offences have actually increased leaving more people locked up for longer.

All this has created an unsustainable prison population in a custodial estate which cannot possibly provide a safe, decent or rehabilitative environment. Put simply we are locking up far too many people than we can reasonably care for or help to turn their lives around.

I believe that this is a critical moment for the government to act decisively by reforming existing policy around sentencing.

Drawing upon the legal, political, and academic insight of a range of experts, as well as input from those who have worked in the prison service, this report sets out some meaningful ways in which sentencing policy can be reformed in England and Wales. I would like to thank these expert contributors to this report for giving their time so generously.

The report also recognises the role that the Catholic Church itself must play in changing public attitudes around offenders and the use of prison.

I hope that it will serve to widen and inform the debate around sentencing in this country and contribute to finding the solutions we desperately need to improve our criminal justice system.”

**Rt Rev Richard Moth**  
**Lead Bishop for Prisons**

# A Journey of Hope:

## *A Catholic Approach to Sentencing Reform*

Addressing women prisoners during his visit to Chile in January 2018, Pope Francis stated: “Today your freedom has been taken away, but that is not the last word. Not at all! Keep looking forward. Look ahead to the day when you will return to life in society”. He went on to say, “we all know that, sadly, a jail sentence is very often simply a punishment, offering no opportunities for personal growth ... On the contrary, those initiatives that offer job training and help to rebuild relationships are signs of hope for the future”.

In 2016 the Catholic Bishops’ Conference of England and Wales produced *The Right Road: A Catholic approach to prison reform*.<sup>1</sup> The message and recommendations set out in this report remain highly relevant today however it has become increasingly clear that with a growing prison population, a shortage of staff, and a record rise in violence and self-harm, a more fundamental change to our criminal justice system is required. It is time for us to consider how we use prisons in our society by evaluating our current sentencing practices.

No discussion about sentencing policy will ever be straightforward. There are numerous complex and interwoven factors that form the context in which current practice is exercised and the technical sentencing process is in itself formed of numerous stages. Nonetheless, we must be bold in exploring the questions that lie at the heart of our criminal justice system, namely how we respond to crime and what will best serve the interests of victims, offenders, and wider society alike.

The values that underpin this report are hope, forgiveness, and reconciliation. The recommendations set out draw on the input of a wide range of experts and are designed to challenge not only those directly involved in the sentencing process and those who are politicians and policy-makers but also the views of those within the Catholic community, as well as those of society more generally. Any significant changes in the area of sentencing will require a shift in public perceptions and our own communities must evaluate robustly how they view offenders and how they understand prison.

## A. The Role of Prison – *Changing Public Perceptions*

First and foremost, the criminal justice system must meet the needs of victims, recognising the wounds left by crime and appreciating the legitimate desire for justice felt by those who have been wronged. It must also deter people from committing crime in order to reduce the number of victims in the future. In 2004, the Bishops Conference recognised that ‘greater awareness of the physical and psychological problems of victims is needed from all citizens, most particularly those who come into contact with victims of crime either through official agencies or as employers, landlords, neighbours, and friends’.<sup>2</sup> The Catholic Church in this country should reflect anew on the ways it can improve its support for victims of crime.

No authentic evaluation and reform of sentencing policy must ignore the voice of victims. It is essential that victims are involved in the process of building a more humane criminal justice system. The Church’s role in this, as well as that of other groups, is to accompany victims of crime by helping them to discover that it is ultimately forgiveness not retribution that brings healing. A greater voice must be given to those victims of crime who have chosen to forgive and who wish to dedicate their efforts to promoting hope and reconciliation in the communities around them. It should also be considered that a large number of those in prison have themselves been victims of crime. In the case of women in prison, many are victims of more serious crimes than those of which they have been convicted. This should be reflected in the services provided within prison that help individuals to understand the nature and causes of their offending.

One practical way in which faith-groups might be able to accompany victims is to support a process of dialogue between victims and offenders through the facilitation of restorative justice. There is considerable evidence to demonstrate that restorative justice provides both a positive experience for victims of crime and that it has a clear impact on rates of recidivism among offenders.<sup>3</sup> However, it is also important to consider that especially for those beavered by the violent actions of others or for those who have been effected by serious crime, the concept of restorative justice can be difficult to comprehend. Equally, some participants have had a negative experience in which offenders appear to be more interested in reducing their sentence than striving for genuine reconciliation. The Government should work to improve access to restorative justice for victims, integrating it more effectively into the sentencing process, but it should do so in close collaboration with victims and victim support groups.

In any review of sentencing practice, it must always be borne in mind that while in many cases culpability for crime is reduced by a variety of complex factors such as poverty, family breakdown and mental health problems, some people make a choice to continue committing crime and do not make the most of opportunities for rehabilitation. In such cases, while efforts must still be made to address underlying societal issues or the circumstances that affect the person concerned, it must be recognised that custody is sometimes viewed by sentencers as the only remaining outcome available to them.

The criminal justice system has a role to play in assuring members of the general public that they are safe. The Church recognises that some criminals are dangerous and a threat to public safety. In such cases prison may be the most appropriate option, although secure psychiatric units are likely to be more appropriate and beneficial to rehabilitation for those with serious mental health issues.

It is important to recognise that a disproportionate fear of crime among the public can be stoked by excessive and sensational journalism that places an undue focus on exceptional cases. Additionally, a punitive political culture can result in the view that harsher sentences are the only way to tackle crime.

Journalists, politicians and faith-groups should be vigilant in challenging penal populism. Members of the public should be encouraged to question various traditional views around offenders and the effectiveness and appropriateness of prison. There is a unique role for faith-groups in challenging the perceptions of their members. Christians have an unbroken history of visiting prisoners following Christ's explicit command to do so.<sup>4</sup> The Catholic community in this country should reflect deeply on new ways in which it can strengthen the links between parishes and local prisons. This in turn will require parishioners to reflect anew on the complexities that lead people to crime and the difficult reality of prison life.

There are also key practical ways in which churches can increase their involvement with the rehabilitation of offenders. This would further facilitate changes in perception. The Probation Service in England and Wales has historic roots in the work of church organisations. As the Probation Service comes under increasing pressure, it is time to ask what further role faith-groups and other voluntary organisations might play in supporting the work of the Probation Service. If a robust approach to safeguarding is guaranteed, the parish setting could provide a supportive environment for ex-offenders trying to turn their lives around. Additionally, the Church should encourage and nurture those who feel called to work with offenders and ex-offenders, pointing out the range of possibilities, including occasional volunteering, service in chaplaincy, or professional work as a prison or probation officer.

Options should be explored as to whether parishes may be able to provide new opportunities for employment, education, and reintegration for those released on license or those serving a community sentence. This would serve to break down barriers and improve public confidence in non-custodial sentences, whilst reminding society that committing a crime does not remove from a person their innate human dignity. A public re-evaluation of perceptions about crime and punishment must underpin any review of sentencing practice, and faith groups have a key role to play in challenging traditionally held views about offenders and the best way to respond to them. Those who commit crime are part of our communities – our neighbours, friends, children and parents – and the Church's message should challenge perceptions by placing a renewed focus on forgiveness, mercy, and compassion.

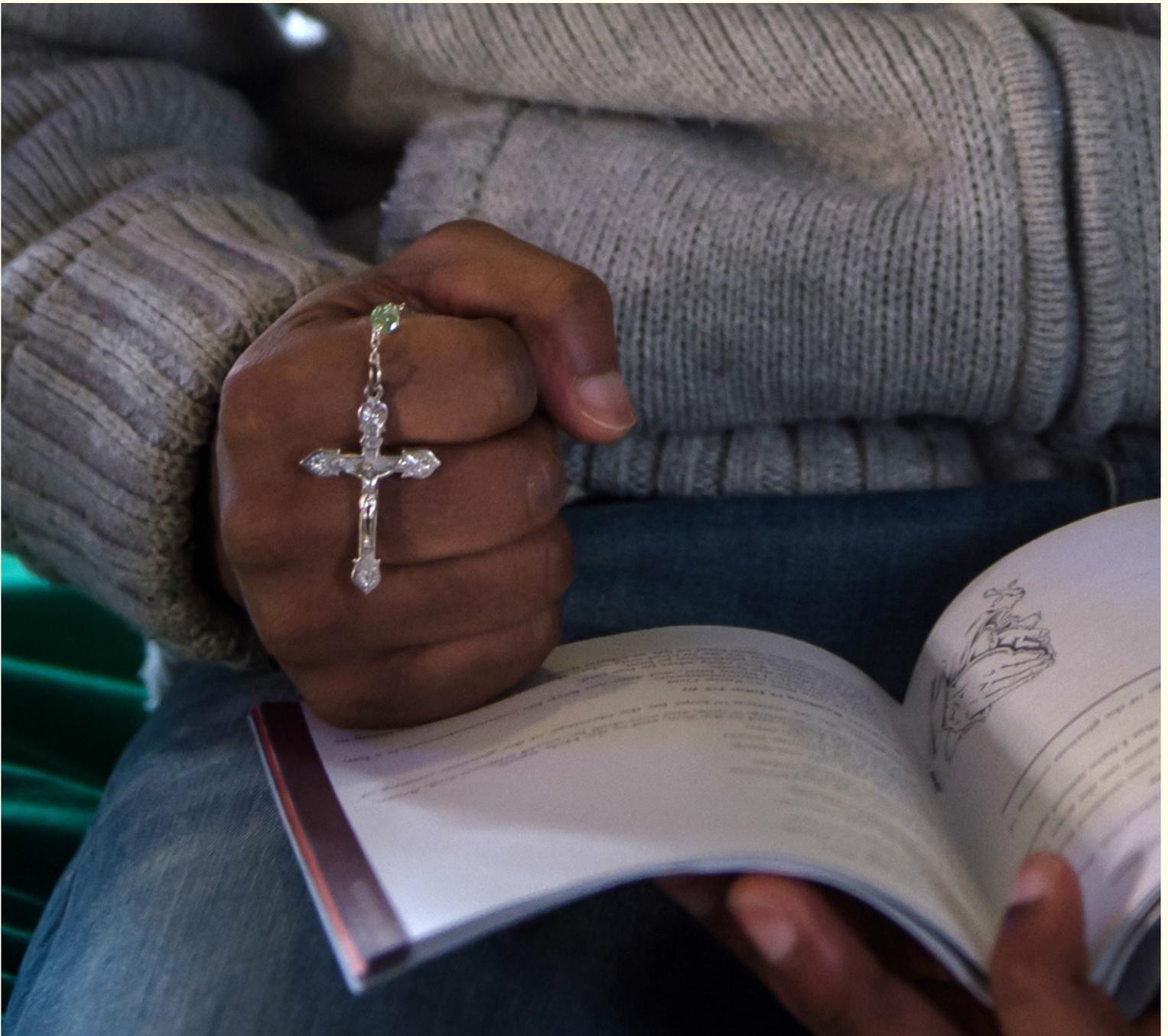
## **Recommendations**

- i. Meeting the needs of victims must be at the heart of criminal justice – *the Catholic community should examine how it supports victims of crime*
- ii. Restorative justice has the potential to help victims and reduce crime – *the Government should work closely with victims and victim support groups to improve access to restorative justice*
- iii. Public perceptions of offenders need to be challenged – *the Catholic community should reflect and build upon the links that exist between parishes and prisons*
- iv. Faith-groups have a greater role to play in rehabilitation – *the Catholic community should explore options with the Probation Service for developing rehabilitative programmes within parishes*

***“I DO NOT SEE THE BENEFIT OF A CRIMINAL JUSTICE SYSTEM WHICH SEEKS ONLY RETRIBUTION FOR CRIMES AND NOT TO REFORM CRIMINALS”.***

(Barry Mizen, co-founder of For Jimmy)

After losing their son to a violent crime, Barry Mizen and his wife Margaret went on to set up For Jimmy, a charity in memory of their son which seeks to promote the values of hope and redemption among local communities.



## **B. An Unsustainable System –** *Reducing the Prison Population*

England and Wales now has the highest imprisonment rate in western Europe and the prison population has risen by 77% over the last 30 years. This is despite a noticeable fall in recorded crime within the last decade. Neither is the prison population anticipated to decline in the near future, with a projected increase of 1,600 prisoners by March 2022. A key reason behind this trend is an increase in the average custodial sentence length for indictable offences from 31.7 to 57.1 months over the last 10 years.<sup>5</sup>

Our prisons can no longer cope with current levels of pressure. This is because whilst the prison population has remained at a consistently high level over the last 8 years, since 2009/10 funding for prisons has been reduced in real terms. To build a more humane criminal justice system, the Government must either substantially increase funding or significantly reduce the prison population. A clear cost-effective way of achieving the latter would be to curb ongoing sentence inflation.

There are multiple areas where change will need to occur if the average length of custodial sentences is to be brought down, from Parliament, to the Sentencing Council, to the Judiciary and Magistracy. It is clear that widespread reform is needed, for it is surely immoral to continue sending offenders to prison as we currently do if we cannot provide an environment that is safe, decent, and rehabilitative.

The view often expressed by the Government is that sentencing is wholly a matter for the Courts and the Sentencing Council. However, without political initiative there will be no consistent change in approach towards sentencing. Parliament has a decisive role in determining sentencing practice through the changes it makes to the law. Greater consideration should be made during the passage of legislation on the impact to the prison population of introducing new offences or revising sentence lengths for existing ones.

With very few exceptions, the Judiciary will follow the guidelines produced by the Sentencing Council when determining a sentence. These guidelines are produced within the current context of the law but there is no stated aim within the Sentencing Council to curb sentence inflation by occasional revisions of these guidelines. Furthermore, while the Council is required to assess the impact of their guidelines, such evaluations are arguably limited in their scope.<sup>6</sup>

The Government should consider revising the statutory duties of the Sentencing Council so that it is required to carry out a periodic review of sentencing trends in relation to specific offences. This would assist with determining the causes of sentence inflation and improve the effectiveness of guidelines in reducing such inflation. This process may also identify areas where existing sentencing guidelines or the law require amendment.

Parliament has some influence on the production of sentencing guidelines, particularly through the Justice Select Committee, which is a statutory consultee. The Committee has often performed its role effectively in identifying weaknesses in draft guidelines and in recommending appropriate revisions, but there is scope for greater scrutiny of the Sentencing Council's process for producing guidelines. For example, public awareness of the Sentencing Council is limited and more resources could be dedicated to educating the general public about the process of sentencing. This would serve to bring clarity to offenders, victims, and members of the community about the actual implications of specific sentences, particularly regarding factors determining the date of release from custody.

Both Government and Parliament have a significant influence over sentence lengths and thus the size of the prison population by the changes they make to legislation. A desire to appear tough on crime often results in increases to sentence lengths or the introduction of new sentences for fresh offences. These changes, which contribute to a growing prison population, are not always matched by an appropriate increase of resources to the criminal justice system.

While the demand for justice in the face of serious crime is reasonable, both Parliament and those campaigning for harsher laws should consider the effects of overcrowding in prisons, and whether sending more offenders to custody for longer is the best way to tackle crime. Establishing a criminal justice system that works and offers a genuinely rehabilitative environment does not constitute a soft approach to crime. Reforms to sentencing can often be seen as controversial and opposing them can be seen a quick and easy way of gaining public popularity. Any party in opposition should always consider the full implications of using penal populism as a means to gain political capital.

One further area of reform that the Government should consider is a reduction in the use of short-term custodial sentences and greater investment in alternatives to custody. Despite the evidence that community sentences are more effective at reducing reoffending than time in prison, their use has declined steadily over the last decade.<sup>7</sup> While the proportion of the prison population at any one time serving short prison sentences is relatively small, the frequent use of custodial sentences over community orders places an unnecessary strain on prison resources.

In Scotland crime is at a 42-year low and reconviction rates are at an 18-year low. The Scottish Government is also carrying out an ambitious reform of sentencing practice, which has included the introduction of a presumption against sentences of less than three months in the Criminal Justice and Licensing Act 2010. After a recent consultation, in which 85% of respondents favoured an extension, the Scottish government is now introducing a presumption against sentences of less than twelve months. The Scottish approach to criminal justice should be examined in greater detail and it should be considered whether there are lessons that could be applied in England and Wales.

## **Recommendations**

- i. Sentencing inflation needs to be curbed - *the Sentencing Council should be required to periodically review sentencing trends in order to identify and prevent sentencing inflation*
- ii. When sentences become tougher, pressure on prisons increases - *the Government should commit to matching changes in criminal law with appropriate increases to levels of funding for HMPPS*
- iii. Community sentences are used less and less despite their proven success- *the Government should introduce a presumption against short custodial sentences and facilitate the increased use of alternative community sentences*

***OVERCROWDING AND STAFF SHORTAGES HAVE A NEGATIVE KNOCK-ON EFFECT ON EVERY ASPECT OF THE PRISON SERVICE, NOT LEAST ON THE AMOUNT OF TIME PRISONERS SPEND OUT OF THEIR CELLS. A PRISONER WANTING TO ATTEND A WEEKLY RELIGIOUS SERVICE REPORTED: “I STOPPED GOING BECAUSE MOST WEEKENDS I WAS BANGED UP SO WHEN I DO GET OUT I NEED TO SHOWER AND PHONE FAMILY.” ANOTHER STATED “I MISSED MY FIRST TWO OPPORTUNITIES TO ATTEND MASS AS I WAS NOT RELEASED FROM MY CELL.”***

(Belief and Belonging, 2016)



## C. Effective Rehabilitation – *Determining the Right Sentence*

Our criminal justice system must take into account the complex needs of those who offend and recognise the factors that drive people to crime; it must consider the damaging impact that overcrowded and violent prisons have on those sent to them; and it must bear in-mind the knock-on effect that prison sentences have on the families of offenders who are often forgotten victims.<sup>8</sup>

Using sentencing guidelines, the Judiciary determines the appropriate sentence for an offender taking into account a range of factors. This process is informed by a Pre-Sentence Report (PSR) which is produced by the Probation Service with the support of the Crown Prosecution Service. This report must include an assessment of the nature and seriousness of an offence, as well as the impact on a victim. The National Probation Service (NPS) is responsible for producing PSRs. When a case is referred to a Community Rehabilitation Company, the report produced by the NPS is in turn used to inform sentencing planning.

The Inspectorate of Probation found recently that the requirement for a speedy delivery of sentences has ‘reduced the prospect that assessment undertaken at court will also be adequate for the purposes of managing risk and addressing need through the supervision of a community sentence’. This means that Community Rehabilitation Companies (CRCs) are less likely to produce effective sentencing plans.<sup>9</sup> If CRCs continue to develop inadequate sentencing plans, then confidence in community sentences will continue to diminish and there will be an increasing reliance on the use of custody. The Government should review how PSRs are produced and should establish regulations that ensure appropriate levels of detail, including information about background, motivation, complex needs, and caring responsibilities, are included in such reports. This would in turn help CRCs to produce effective sentencing plans.

Consideration should also be given as to how to better equip judges and magistrates to properly take into account the background, motivation, and complex needs of those they are sentencing and to have a fuller appreciation of the effects that a sentence has on an offender and their family. The Lammy Review has made a number of useful recommendations in this regard. For example, its suggestion that magistrates follow an agreed number of cases in the youth justice system from start to finish, in order to ‘deepen their understanding of how the rehabilitation process works’.<sup>10</sup> There is also scope for developing new opportunities, such as training days, for judges, magistrates, and lawyers to deepen their understanding of the complex issues surrounding offending. Groups that work closely with the families of offenders should be involved in any such educational programmes. To achieve this the Government should work with legal professionals to explore suitable ideas.

For offenders who are particularly influenced by drugs and alcohol, there is great merit in the concept of Problem-Solving Courts (PSCs). PSCs work with offenders who have repeatedly committed non-violent drug and alcohol related offences but who have resolved to turn their lives around. The presiding judge in a PSC can implement a wide range of conditions whilst retaining the right to impose custody if an agreed regime is broken. The use of PSCs also creates an opportunity to trial innovative community based sentences, the lessons of which can be carried into wider sentencing practice.

There is compelling evidence to show the success of Problem-Solving Courts, with more than 3,000 operating in the US where there is evidence to suggest that repeat reoffending rates are reduced by the use of such courts. The Ministry of Justice has endorsed them on a number of occasions since the findings of a Problem-Solving Court Working Group were released in April 2016. Despite this there has been no systematic effort to pilot PSCs. The Government should revive its efforts to establish PSCs throughout England and Wales.<sup>11</sup>

By reducing the number of offenders sent to custody, and thus the pressure placed on prisons, there would be greater scope for addressing the specific needs of prisoners and the root causes of offending. Those with drug addictions would be able to receive more effective treatment, those with mental health conditions would be able to receive better care, it would be easier to facilitate family contact and it would be possible for prison to become a more genuinely rehabilitative environment. Furthermore, a prison system which was not over-stretched would allow for more effective “through the gate” planning and support, as well as better provision of education within prisons to address often poor levels of literacy. In other words, breaking a negative spiral of overcrowding and reoffending could radically alter the criminal justice system and result in prisons that are safe, decent, and humane.

## Recommendations

- i. Insufficiently detailed Pre-Sentence Reports negatively impact sentencing planning - *the Government should review the current process for producing PSRs*
- ii. Problem-Solving Courts meet the specific needs of offenders and result in innovative approaches to community sentencing - *the Government should pilot PSCs throughout England and Wales*
- iii. Increased opportunities for training would assist judges and magistrates in understanding the background of offenders and the impact of sentences on families - *the Government should work with the legal profession to explore new possibilities for training in these areas*



***CUSTODY IS DEEPLY INAPPROPRIATE FOR VULNERABLE WOMEN AND CAN BE A VERY TRAUMATIC EXPERIENCE - BETTER ALTERNATIVES SHOULD BE MADE MORE WIDELY AVAILABLE. ONE YOUNG WOMEN WITH LEARNING DIFFICULTIES AND VARIOUS MENTAL HEALTH CONCERNS SET FIRE TO HER ACCOMMODATION AFTER FEELING SUICIDAL BECAUSE OF THE LOSS OF HER GRANDPARENTS. NO SUITABLE ACCOMMODATION WAS FOUND FOR HER SO SHE WAS SENTENCED TO 2 YEARS AND 8 WEEKS IN CUSTODY. THROUGHOUT HER SENTENCE SHE HAS BEEN CONVEYED CONFLICTING INFORMATION WHICH HAS MADE HER MENTAL HEALTH WORSE.***

(Story provided by Joy Doal, CEO of Anawim)

Anawim is a Birmingham based charity that supports vulnerable women, including offenders and ex-offenders.



## D. A Complex Population – *Supporting Specific Groups*

As well as reducing the overall prison population by a systematic reform of sentencing practice, other reforms need to take place to address the needs of specific groups. When considering how to improve sentencing practice, special consideration should therefore be given to groups that are overrepresented within the criminal justice system or for whom a custodial sentence has a disproportionate impact.

Women make up 5% of the total prison population, but the needs of women offenders are often more complex and there is scope for much improvement to the way in which women are sentenced. Around 46% of women in prison have reported suffering domestic violence and 53% have experienced emotional, physical, or sexual abuse during childhood.<sup>12</sup> Clearly, the traumatic effects of abuse need proper treatment and may not be addressed by placing women in custody. As the Independent Advisory Panel on Deaths in Custody has stated, there also needs to be increased focus on ‘early intervention and support for women whose offending is largely driven by histories of abuse and trauma’.<sup>13</sup> A further point for consideration is that women are much more likely to be primary carers than men and if a mother goes to prison, in 9 out of 10 cases her children will need to leave their home to go into care or to live with relatives.

Despite the fact that 84% of women offenders have committed a non-violent offence, the number of community sentences has fallen by nearly half in the last decade.<sup>14</sup> Introducing a presumption against short prison sentences would serve to reduce the number of women in custody. However, this should also be accompanied by greater investment as well as improved partnerships with voluntary organisations in order to provide community sentences that meet the specific needs of women, especially those with mental health concerns or those responsible for children. For example, women’s centres can provide an excellent environment in which to address complex needs. Furthermore, those who attend women’s centres are less likely to reoffend.<sup>15</sup>

Our criminal justice system is generally ill equipped to cope with the mental health conditions of some offenders. The National Audit Office has identified a number of systematic problems within prisons regarding the treatment of mental health conditions. For example, only 34% of those eligible for transfer to hospital are moved within the 14-day requirement.<sup>16</sup> Substantial reform is required in this area and can only be more realistically achieved if it is accompanied by a reduction in the total prison population and by a marked increase in resources for both community-based and prison-based mental health provision.

A more specific concern is that prison is sometimes used inappropriately to detain those who have committed a crime because of their mental health condition. This is often the result of judges lacking psychiatric alternatives to custody. It is not appropriate to send someone with a severe mental condition into an environment that is unlikely to be able to provide appropriate care and which poses a real threat of causing further damage to a person’s mental health. The Government should work to ensure that such circumstances are avoided by guaranteeing funding for effective psychiatric interventions where they are needed and preventing the improper use of custody for those in need of specialist support.

The work of the Lammy Review into the treatment of Black, Asian, and Minority Ethnic individuals has revealed many concerning figures. With 25% of the prison population coming from a BAME background despite making up only 14% of the total population and BAME defendants being more likely to receive prison sentences for drug offences than white defendants, there are clearly structural problems that require immediate attention. The Lammy Review has also highlighted similar disparities among the Gypsy, Roma, and Traveller population, with the GRT population estimated to make up 5% of the male prison population, despite forming only 0.1% of the overall population.<sup>17</sup>

The Catholic Church welcomes the Lammy Review and the recommendations which the Government has agreed to take forward. It is clear that the Catholic Church, as well as other faith groups, has a key role to play in addressing the complex social injustices that lead to the overrepresentation of BAME and GRT people in the criminal justice system. Furthermore, they have a pastoral duty to support the members of these groups that are imprisoned. The Catholic Church in particular has strong links with the Traveller community. There is also room for wider ecumenical and inter-religious collaboration in building links with communities that feel isolated or rejected by the rest of society and which are thus overrepresented in the criminal justice system.

## **Recommendations**

- i. Many vulnerable women are inappropriately serving a custodial sentence - *the Government should widen the availability of non-custodial sentences for women and increase the level of resources for women's specialist services*
- ii. Custody is wrongly used to detain some individuals suffering with severe mental health conditions – *the Government should provide sufficient funding for alternatives to custody for those with severe mental health conditions*
- iii. BAME and GRT people are overrepresented in the criminal justice system – *the Catholic community should consider what it can do better to support such disproportionately effected groups*

***FAILING TO GIVE PRISONERS PROPER CARE IS NOT ONLY IMMORAL BUT DRAINS THE PRISON SERVICE OF RESOURCES AND MANPOWER. ONE PRISON CHAPLAIN RECALLED A YOUNG MAN PLACED ON CONSTANT WATCH IN A PRISON HOSPITAL: “HE WAS DIAGNOSED AS NEEDING TO BE IN A SECURE HOSPITAL AT A VERY EARLY STAGE, HOWEVER, DUE TO LACK OF FUNDING AND LACK OF BED SPACE THIS CONSTANT WATCH LASTED OVER TWO YEARS. DURING THAT TIME AN OFFICER, USUALLY ON OVERTIME, WAS WITH HIM 24/7. THIS DRAIN ON PRISON RESOURCES WAS A DIRECT RESULT OF THIS PRISONER BEING IN THE WRONG PLACE”***

(Story provided by a Catholic prison chaplain)



# Conclusion

There has been a common narrative in recent decades over how our society should respond to those who commit crime. In seeking to bring justice for those who suffer the impact of criminal behaviour, in wishing to keep our streets safe, and by desiring to vent our emotional reaction to the injustices committed by offenders, society has often responded to crime by demanding ever harsher sentences for an ever-greater number of offences. While all of these responses to crime are understandable, the facts show that greater use of prison is not always the most appropriate answer and is resulting in real harm to individuals, families, and communities.

There is currently an unprecedented crisis facing our criminal justice system and our prisons are failing society. Numerous reports demonstrate systematic failures within the prison system, from violence, to drug use, to self-harm and suicide. This means that offenders' chances for rehabilitation are severely lessened, resulting in frequent reoffending and reconviction after release. The case for a wide-ranging reform of sentencing practice is clear from both a long-term financial and practical perspective, as well as from a moral and humanitarian one. We must help offenders to return to the right road by building a system which enables them to do so. We have a duty to support both victims of crime and those who have offended by helping them to undertake a journey of hope, mercy, forgiveness, and redemption.

# End Notes

- <sup>1</sup> The Right Road: A Catholic approach to prison reform (Catholic Bishops' Conference of England and Wales: 2016)
- <sup>2</sup> A Place of Redemption: A Christian Approach to Punishment and Prison (Catholic Bishops' Conference of England and Wales: 2004)
- <sup>3</sup> Victims' justice? What victims and witnesses really want from sentencing (Victim Support: 2010)
- <sup>4</sup> "I was in prison and you visited me." Matthew 25:36
- <sup>5</sup> Bromley Briefing (Prison Reform Trust: Summer 2018); Prison Population Projections 2017 to 2022 (Ministry of Justice: August 2017)
- <sup>6</sup> The Sentencing Council for England and Wales: brake or accelerator on the use of prison? (Transforming Justice: December 2016)
- <sup>7</sup> Bromley Briefing Prison Factfile (Prison Reform Trust: Autumn 2017)
- <sup>8</sup> Pact: <https://www.prisonadvice.org.uk/>
- <sup>9</sup> Annual Report (HM Inspectorate of Probation: 2017)
- <sup>10</sup> The Lammy Review (2017)
- <sup>11</sup> What Happened to the Rehabilitation Revolution? (Centre for Social Justice: September 2017)
- <sup>12</sup> <http://www.womeninprison.org.uk/research/key-facts.php>
- <sup>13</sup> Preventing the Deaths of Women in Prison (Independent Advisory Panel on Deaths in Custody: March 2017)
- <sup>14</sup> <http://www.womeninprison.org.uk/research/key-facts.php>
- <sup>15</sup> The Evidence at a Glance on Women's Centres (Prison Reform Trust)
- <sup>16</sup> Mental Health in Prisons (National Audit Office: June 2017)
- <sup>17</sup> The Lammy Review (2017)

# A Summary of Recommendations

**Meeting the needs of victims must be at the heart of criminal justice** – the Catholic community should examine how it supports victims of crime

**Restorative justice has the potential to help victims and reduce crime** – the Government should work closely with victims and victim support groups to improve access to restorative justice

**Public perceptions of offenders need to be challenged** – the Catholic community should reflect and build upon the links that exist between parishes and prisons

**Faith-groups have a greater role to play in rehabilitation** – the Catholic community should explore options with the Probation Service for developing rehabilitative programmes within parishes

**Sentencing inflation needs to be curbed** - the Sentencing Council should be required to periodically review sentencing trends in order to identify and prevent sentencing inflation

**When sentences become tougher, pressure on prisons increases** - the Government should commit to matching changes in criminal law with appropriate increases to levels of funding for HMPPS

**Community sentences are used less and less despite their proven success** - the Government should introduce a presumption against short custodial sentences and facilitate the increased use of alternative community sentences

**Problem-Solving Courts meet the specific needs of offenders and result in innovative approaches to community sentencing** - the Government should pilot PSCs throughout England and Wales

**Increased opportunities for training would assist judges and magistrates in understanding the background of offenders and the impact of sentences on families** - the Government should work with the legal profession to explore new possibilities for training in these areas

**Many vulnerable women are inappropriately serving a custodial sentence** - the Government should widen the availability of non-custodial sentences for women and increase the level of resources for women's specialist services

**Custody is wrongly used to detain some individuals suffering with severe mental health conditions** – the Government should provide sufficient funding for alternatives to custody for those with severe mental health conditions

**BAME and GRT people are overrepresented in the criminal justice system** – the Catholic community should consider what it can do better to support such disproportionately effected groups



Catholic Trust for England and Wales  
Registered Charity No. 1097482  
Company No. 4734592  
[www.catholicchurch.org.uk](http://www.catholicchurch.org.uk)

# With a lifelong Catholic at the helm, Oregon eyes prison reform

[Free email](#) [Subscribe](#)



Credit: OFFSTOCK/Shutterstock.



 **EWTN** News

Help bring good news to the world

[DONATE](#) [LEARN MORE](#)

**Latest Videos:**

**Follow us:**



[Follow](#)

By [Perry West](#)

Portland, Ore., Apr 10, 2019 / 02:20 pm (CNA).- The head of the Oregon prison system is looking to make significant changes to the way the state views punishment, and she insists that Catholics and other people of faith have an important role to play.

Norwegian prison system. The collaboration is part of the European Prison Project, which was initiated in 2017.

Peters told CNA that the project seeks to humanize the penitentiary experience. Following the Norwegian structure, she said the act of going to prison should be the penalty, rather than prison being a place where further punishment is administered. Jail time should emulate the community outside of prison, she said, with services including employment departments and libraries.

“Your liberties being taking away, being away from your family is your punishment. Everything else once you arrive in that prison system should model your community life. It should look as much [as possible] like the community that you left, in terms of programming, treatment, education, work, connectivity with your family,” she said.

This requires involvement from the outside community, including a



### Trending:



**Buffalo priests removed from ministry following seminarian complaints**



**Dominican priest: California confession bill threatens all religions**



said. While there are paid chaplains on staff, religious leaders are relied on to lead spiritual ceremonies and provide other services.

Peters pointed to a **2012 study** from the Minnesota Department of Corrections, which found that prisoners' interaction with the outside community greatly reduced the chances of an inmate's return to prison. This was true for prisoners who were visited by friends, family members, mentors and other community members. Visits from ex-spouses were a notable exception – they increased the risk of recidivism. According to the study, the best results involved the visitation of siblings, in-laws, fathers, and clergy.

“The primary element that they found was that visits reduced recidivism,” Peters said. “Families were at the very top of the list of course, but so were religious leaders.”

The European Prison Project is not so much a program as it is an exploration into a new outlook on the



**Pope Francis: Never forget to smile, even when life is hard**



**Archbishop Etienne of Anchorage named coadjutor of Seattle**



**The original Image of Divine Mercy: It's not where you might think**



treatment, and work, as well as their right to make complaints, to make use of community services, and to have access to an ombudsman or public advocate who will represent their interests and safety," read an overview of the program.

The Oregon Department of Corrections has sent personnel to Norway twice as part of the initiative. The first trip involved Peters, a team of administrators, and a group of legislators to observe Norway's prison structure. Last September, Peters took a team of 15 frontline correctional officers to the country to immerse themselves into prison jobs and other aspects of society, like churches and home life.

Norway's citizen are very proud of its system, said Peters, noting that the country's recidivism rate is about 20 percent, half that of Oregon. She added that in Norway, the "word inmate isn't a scarlet letter," but rather, time in prison is viewed as an opportunity for rehabilitation.



### **Pope Francis gives \$500,000 to support migrants in Mexico**



In the U.S., Peters said, there are serious obstacles that restrict an inmate's integration back into society. This includes "fear mongering" and a stigma surrounding a criminal record, which can make it difficult for former prisoners to find jobs, apply for housing and rebuild their lives.

A majority of inmates want to leave prison as good and functioning members of society, she stressed.

"Figuring out how to change that dynamic and change that perception, it's only going to happen by bringing people inside," she said.

"These volunteers will tell me that it is a spiritual experience for them – life altering and life changing – to hear the stories of individuals who most of them want to come home and be good, tax-paying citizens," she added.

As all state prison facilities have opportunities for volunteer work, Peters encouraged Catholics to get involved with a local prison ministry. She said there are opportunities for individuals to meet with groups at a

involvement inside our prisons, not just in Oregon, but around the world.”

---

## **Our mission is the truth. Join us!**

As a CNA reader, you know our team is committed to finding, reporting, and publishing the truth. Like you, we know that Jesus Christ is the way, the truth, and the life.

Generous donors have given to make sure that all the news you read here at CNA is always free of charge—not only for you, but for millions of readers each year.

Will you join them and [become a CNA supporter today?](#)

Your [one-time or monthly donation](#) will help our team continue reporting the truth, with fairness, integrity, and fidelity to Jesus Christ and his Church. Thank you.

Yours in Christ,