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S. Hrg. 114–475

OVERSIGHT OF THE BUREAU OF PRISONS: FIRST–HAND ACCOUNTS OF CHALLENGES FACING THE FEDERAL PRISON SYSTEM

HEARING

BEFORE THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

AUGUST 4, 2015

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Committee on Homeland Security and Governmental Affairs

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OVERSIGHT OF THE BUREAU OF PRISONS: FIRST-HAND ACCOUNTS OF CHALLENGES FACING THE FEDERAL PRISON SYSTEM

TUESDAY, AUGUST 4, 2015

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:04 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Lankford, Ayotte, Ernst, Carper, McCaskill, Baldwin, Heitkamp, Booker, and Peters.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. Good morning. This hearing will come to order.

Let me just say, I am really looking forward to this one. I was telling the witnesses, I have read all the testimony, and I generally do that to the best of my ability. Sometimes, the testimony provided before this Committee can be a little dry, and as I am reading it late at night, it will put me to sleep. Not so in this case whatsoever. I think the testimony was fascinating, partly because I am somewhat new to this issue.

I am going to keep my statement somewhat brief, because I know Senator Booker would like to make an opening statement. I am happy to have him do so, because he has been obviously involved in this issue a whole lot longer than I have.

I just want to make a couple brief remarks. Being an accountant, being a business guy, I am pretty data-driven. The data, the statistics on this particular problem, the Bureau of Prisons (BOP) and our high levels of incarceration rates, are pretty stark.

In 1980, for example, there were 25,000 people in the Federal Prison System. Today, there are 209,000. That is a 736 percent increase as our population has only increased 40 percent. In total, back in 1980, there were about 500,000 people in prison. Today, there are 2.3 million. We in America have the highest level of incarceration in the world, in 2013, 716 people per 100,000 population. The next closest country was Rwanda with 492. If you take a look at Canada, it is 118.

So, I guess my primary comment is, when you look at those stark statistics and you see—and, by the way, and I appreciate that Jerome Dillard is here from Madison, Wisconsin. I met with him ear-

lier as part of a group called Nehemiah Project, a group of individuals, some of them ex-offenders spending some time in jail, trying to help other people re-enter society. I remember during that meeting, Jerome, how many times did I wince as I was being told the stories of how unbelievably difficult we make it for former offenders, people in jail to re-enter society.

So, the purpose of this hearing is to lay out these realities, understand that what the Bureau of Prisons is dealing with is an incredibly difficult and complex problem, and by the way, I do have to mention that the testimony by Charles Samuels, the current Director, I think is also powerful, and he kind of lays out a little bit of the problem in terms of the dual mission of the Bureau of Prisons. Let me just quickly read from his testimony. "The dualfold mission is to protect society by confining offenders in prisons and community-based facilities that are safe, humane, cost efficient, and appropriately secure, and then, second, to ensure that offenders are actually participating in programs that will assist them in becoming law-abiding citizens when they return to our communities."

That is a tough task, and I wish I could say I was looking at the statistics and say that, boy, we are really nailing that one. We have really got this problem solved. We do not. We are a long ways from it. I think the testimony will be that in the Federal system we have only a 41 percent recidivism rate, where in State and locals it is over 60 percent. I guess when you look at that, we are maybe doing something better on the Federal level than we are doing State and local, but boy, that is a long way from a successful result, and I am sure you will agree with me on that.

I am not going to steal Ms. Kerman's thunder off of her testimony, but at the very end, I want everybody to pay very close attention to the quote she is going to provide from Mr. Thomas Mott Osborne, because I think it really lays out exactly what is at issue here and exactly the question we should be asking as a civilized society.

So, with that, I will turn it over to my Ranking Member, Senator Tom Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks, Mr. Chairman.

I want to thank Senator Booker for encouraging us to hold this important hearing. We want to thank all of you for coming as witnesses.

My day job before I came here to the U.S. Senate was I was privileged to be Governor of Delaware for 8 years and very actively involved in the National Governors Association (NGA). In Delaware, we do not have sheriffs' jails. We do not have county jails or city jails. We have a State correctional system. We have one for adults and we have one for juveniles.

In my second term as Governor, a fellow named Barry McCaffrey came to Delaware, General Barry McCaffrey, Retired, and he was at the time the Nation's Drug Czar, and he wanted to come and visit a program in the city of Wilmington at Gander Hill Prison because we were doing a pretty good job in terms of reducing recidivism by about half, from about 75 percent to maybe 40 percent. He

wanted to find out, how are we doing it. He brought with him an ABC camera crew, as well.

I will never forget, before he actually went into the prison and looked at the program to see how it worked, we met with about 50 inmates, and we met in a room much smaller than this room. They were all in their white garb, and General McCaffrey and myself. And, I had been to many of their high schools or their middle schools, grade schools, through churches, their ballgames, and had some idea who some of them were. They knew who I was.

And, I said to the guys before we got started on the program part of the tour, I said to these 50-some, most of them, I do not know, 19, 20, 21, 22 years old, I said, how did you guys end up getting here? What happened in your lives or did not happen in your lives that led you here? About five or six guys spoke up before we took our tour and they all told stories that were very similar.

I was born when my mom was young. I never knew my dad. I ended up in kindergarten. Other kids could actually read. They knew their letters. They knew their numbers. I could not. I got into first grade and I started falling behind. In the second grade and the third grade and the fourth grade, just falling further behind. Along about the fourth grade, this one guy said, I realized if I just act up in class and just be a real nuisance, the teacher would stop calling on me. And, so, he would put his head down and just stay out of trouble.

And, they said, eventually, they will be put out in the hall, probably about the fifth or sixth grade. And probably when I was in the seventh or eighth grade, I was suspended from school. And for a while, he said, I liked that, because I was no longer embarrassed by how little I knew.

And, he said, when I was in the ninth grade, I got expelled and I found myself on the outside in a world, he said, everybody wants to be popular. Guys like me want to be popular, he said. If you are a good athlete, you can be popular in school. If you are smart, you can be popular in school. If you are good with girls, you can be popular in school. He said, I was none of those.

And, he said, I was on the outside and I wanted to feel good about myself, and the only way I could feel good about myself was to take drugs or to consume alcohol, and when I did that, I felt good about myself. He said, I did not have any ability to pay for those things. I ended up in a life of crime and I ended up in this prison.

Every one of them told the same story.. And the fellow who was the Commissioner of Corrections for me at the time was a fellow named Stan Taylor, a wonderful guy. He used to say to me, "95 to 98 percent of the people that are incarcerated in our State are going to end up being released and come back into our society. And we can send them back out into society as better people, better parents, or better criminals. And," he said, "it is our choice. It is our choice." And, to an extent, it is a choice of the inmate themselves.

So, we are big on root causes in this Committee. I am big on root causes in this Committee. And, if we take young men, young women, not-so-young men and not-so-young women, and actually do something about their addictions while they are incarcerated, that is helpful. If we do something about the lack of an education,

that is helpful. If we do something about their lack of work skills or actually the ability to have to get up in the morning and know they have a job to go to, that is helpful. All the above.

States are laboratories of democracy. We can learn a lot from them. And we can learn from one another. Today, we are going to learn from you and we look forward to this very much.

Again, Cory, I just want to thank you for suggesting that we be here. Let us have a good hearing. Thank you.

Chairman JOHNSON. Thank you, Senator Carper.

Again, I will ask for unanimous consent to enter my written opening statement in the record,[1] and with that, Senator Booker.

OPENING STATEMENT OF SENATOR BOOKER

Senator BOOKER. I just want to start by expressing my gratitude to the Ranking Member and to the Chairman for having this hearing. It has been probably the best experience I have had in the U.S. Senate since I began about 18, 19 months ago, to find such bipartisan willingness to deal with issues of justice in our country. It is extraordinary from my hour meeting with Chairman Grassley yesterday to being able to sit with you today, Chairman, to see this bipartisan willingness to confront the wrongs in our country that surround criminal justice and a determination to do something about it.

Chairman JOHNSON. Let me just interject before you go on, and we talked about this earlier. I was going to do a field hearing in Milwaukee on high levels of incarceration. We did not do it on that subject because this is so complex and it was difficult to design the hearing so it would not be inflammatory.

Senator BOOKER. Yes.

Chairman JOHNSON. So, again, I appreciate your working with me so we hold this first one here. But, again, this will be the first——

Senator BOOKER. Yes.

Chairman JOHNSON [continuing]. In a series. What we ended up doing instead is we held a hearing on school choice, which starts really at the beginning part of this time spectrum in terms of not providing a proper education, and it ends up leading to this end result in terms of prison.

But, again, I appreciate your willingness to work with me on this, and I am hoping at some point in time we can move this discussion into different areas that this is pretty relevant. One of them certainly would be in Milwaukee. Thank you.

Senator BOOKER. I am grateful to you. We have had countless, now, conversations about criminal justice reform, and your eagerness, willingness, sincere desire to do something about it has been, I think, really encouraging to me in my early months in the Senate, so I am thankful for that and for this opportunity to be here today.

It is a movement now in our country to do something about it. When you have a President of the United States willing to visit a prison, being the first person to do so, we see that that is a part of our culture as a Christian. It says in the Bible, Matthew 25,

[1] The prepared statement of Senator Johnson appears in the Appendix on page 49.

"When I was hungry, you gave me something to eat. When I was thirsty, you gave me something to drink. When I was in prison, you came to visit me." This understanding that our criminal justice system is not about fear and retribution but should be guided by principles of justice, fairness, and ultimately redemption, to me, that is the American way.

But, unfortunately, we have gone in a way that so far cuts against our common values and our ideals. This age of mass incarceration on a whole is violating our core principles in so many areas. To have us, as we claim to be the land of freedom and liberty, but to have one out of every four imprisoned people on the planet Earth here in the United States of America, even though we only have 4 to 5 percent of our population, runs contrary to our core ideals.

To do this at such a massive expense to the taxpayer, unnecessarily egregious expenditures, where we spend about a quarter-of-a-trillion dollars a year incarcerating human beings, many of whom do not need to be incarcerated at the lengths in which they are, runs against our values.

When we see our infrastructure crumbling in this country, yet we have the resources between 1990 and 2005 to build a new prison in the United States every 10 days, that runs against our fiscal prudence and our values as a Nation.

When we see poor people being ground up into a system but for the fact that they do not have the resources for their liberation, that we have modern day debtors' prisons in our country, that runs contrary to our common values.

We now are at a point in our country where we have literally almost one out of three Americans, between 75 and 100 million Americans, have an arrest record. If we were to go back to the Revolutionary times and tell them that there was going to be a government in this land that would be seizing the liberty of almost one out of three people, we would definitely have sparked that Revolutionary spirit. And, now is a time that we need a revolution when it comes to issues of crime and punishment.

Now, the Chairman was very clear, and I think it is important to restate, that this is a narrow hearing about one specific aspect to begin a process of looking for reforms. But please know, if you look at just our Bureau of Prisons, our Federal prison population has expanded 800 percent since 1980. The Bureau of Prisons now has almost 200,000 inmates and it is 35 to 40 percent over-capacity. It employs nearly 40,000 people, and last year, in fiscal year (FY) 2014, the Bureau of Prisons' enacted budget totaled an astonishing $6.9 billion. Just working on transportation and commuter rail, seeing the fraction of that we are debating over when we are spending this much.

This Bureau of Prisons now is 25 percent of the Department of Justice (DOJ) discretionary budget. In my very first meeting with then-Attorney General (AG) Holder, he actually talked to me about the urgent crisis he faces if the Bureau of Prisons is squeezing out his entire budget, taking money away from things that we should be investing in for homeland security for our protection overall as a citizenry because of this massive explosion.

The Bureau of Prisons is so large that it is absolutely critical that we in Congress, this Committee, exercise our oversight to ensure that taxpayer dollars are being spent wisely, and especially in light of what many States are showing, that you can reduce your prison populations dramatically, saving taxpayer dollars and lowering crime at the same time.

So, make no mistake. As a mayor, I learned that you have to make sure that when a crime is committed that there is a punishment and people get a proportional punishment. But, I am troubled by some of the practices that are obviously failing to live up to our common values and just do not make in any way economic sense, as well.

And, so, I am grateful for this hearing. There are some areas which I think we really need to drill down that are in those small areas that we can make improvements now that can, Mr. Chairman, make a big difference.

One of them is solitary confinement, known in the Bureau of Prisons as segregated housing units. It is a practice that many people, medical professionals, human rights activists, civil rights activists, indeed, other countries, consider torture because of its impact. Prolonged use of solitary confinement on an inmate often results in severe psychological harm.

Justice Kennedy in a recent Supreme Court decision questioned the constitutionality of this punishment, saying "the penal system has a solitary confinement regime that will bring you to the edge of madness, perhaps madness itself." The medical community confirms that reality. It is time that the Federal Government acts as a model to ending this practice of solitary confinement.

Also, Congress gave the courts the authority to release prisoners early for extraordinary compelling reasons, known as compassionate release. The Bureau of Prisons has the ability to release prisoners now that are facing imminent death or serious incapacitation. The data is clear on this population. They are not a threat to our safety and our community, and they are costing taxpayers extraordinary amounts of money. This is a Compassionate Release Program that is properly named and should be explored.

Then-Attorney General Holder issued guidelines to allow the Bureau of Prisons to expand the pool of applicants who may be considered for compassionate release. This is something we should look at.

Finally, I hope that we can explore what programming the Bureau of Prisons provides to those that are the least of these in our society, those that are often marginalized, and I am specifically talking about those who are suffering from mental health challenges and drug addictions. Right now, States across America are struggling to control, for example, a growing heroin epidemic, and many of these people are finding themselves addicted in a Federal system that does not adequately treat them. The Bureau of Prisons must find a way to assist inmates who are struggling with addiction and with mental health.

Again, I want to thank you, Chairman. This is a hearing that I have been very excited about. I want to thank our witnesses. I especially want to thank Charles Samuels, who has met with me personally. We have had great conversations. His tenure is actually

coming to an end, but he is a dedicated public servant representing the administration, and I know they are committed to reforms and have a record of making some progress on these issues that I have outlined.

Thank you.

Chairman JOHNSON. Thank you, Senator Booker.

And, again, we all want to thank the witnesses and welcome them. It is the tradition of this Committee to swear in witnesses, so if you will all rise and raise your right hand.

Do you swear the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. KERMAN. I do.

Mr. DILLARD. I do.

Mr. OFER. I do.

Chairman JOHNSON. Thank you. Please be seated.

Our first witness is Piper Kerman. She is the author of *Orange is the New Black,* a memoir about her experiences in Federal prison. She is also a Board Member of the Women's Prison Association, which works to promote alternatives to incarceration to women. Ms. Kerman.

TESTIMONY OF PIPER KERMAN,[1] AUTHOR, ORANGE IS THE NEW BLACK: MY YEAR IN A WOMEN'S PRISON

Ms. KERMAN. Mr. Chairman, Ranking Member, and Members of the Committee, I appreciate you inviting me here today. In my memoir, Orange is the New Black, I recount in detail the 13 months that I spent incarcerated in the Federal Prison System, with most of my time served at the Federal Correctional Institution (FCI) in Danbury, Connecticut.

I have worked with many women and men who are returned citizens, like me, and we all want to get back on our feet, to reclaim our rights of citizenship, and to make positive contributions to our communities. Our experiences are essential to understanding the reform that is needed in our criminal justice system so that it will provide for public safety in a way that is legal and humane and sensible, and that is why I am here today.

Women are the fastest growing population in the American criminal justice system, and their families and communities are increasingly affected by what happens to women behind bars. According to the Bureau of Justice Statistics, 63 percent of women in prison are there for a non-violent offense. Many are incarcerated due to substance abuse and mental health issues, which are overwhelmingly prevalent in prisons and jails. And, the rate of sexual abuse and other physical violence that women experience prior to incarceration is staggering.

Female prisoners suffer these problems at greater rates than male prisoners and these experiences are relevant both to their crimes and to their incarceration. But, these issues are not being adequately addressed by the Bureau of Prisons.

The research on criminal justice involved women and girls shows that the risk factors I mentioned require different approaches in

[1] The prepared statement of Ms. Kerman appears in the Appendix on page 52.

order to reduce women's recidivism and result in successful reentry. This is not unlike findings in other fields, such as health care, where research shows that women experience heart attack symptoms quite differently from men and their treatment needs differ, and this understanding has saved women's lives.

The Bureau of Prisons should adopt gender-responsive correctional approaches that interrupt cycles of unnecessary suffering. States like Washington provide a road map to do this successfully.

When I was locked up in Danbury, I knew women who were trying to raise their children during brief reunions in the visitors' room, while fending off sexual harassment and struggling with addiction and trying to get a high school education so that when they got out, they stood some chance of surviving, despite their felony conviction.

I saw women in Bureau of Prisons prisons denied necessary medical care and women with mental health issues wait for months to see the one psychiatrist who was available for 1,400 women. And, that is unimaginable in a system where at least 65 percent of women experience some kind of mental illness.

Equally shocking were the mandatory reentry classes inmates took to prepare to leave prison. I attended one on housing, which was led by a man who worked in construction in the prison, and the mostly poor and overwhelmingly minority women who were attending that class desperately wanted to know how someone with a felony conviction and few resources could find safe, affordable housing to live in after release. And instead, we heard about fiberglass insulation and roof maintenance and some other home improvement tips.

The reentry health classes that we took were taught by a culinary department officer who had no expertise or information on reproductive health, mental health, or substance abuse options post-release. He had, however, played professional baseball for a brief time, and, hence, his authority on the health topic.

Many of Danbury's policies were questionable, but it was relatively close to home for most of the women who were serving time there. Families could visit. Children could see their mothers, many of whom were raising their kids on their own before being sent to prison.

Yet, the BOP disregarded this when it chose to convert Danbury FCI to a men's facility in 2013. This sent women beyond the BOP's stated goal of no more than 500 miles from home, and it has also deprived many of them of programming that male prisoners enjoy, such as UNICOR employment, which is very important, or the residential drug and alcohol treatment program, which not only is one of the most effective programs the BOP has, but also is one of the only ways to earn a sentence reduction in the Bureau.

It is worth noting that the desire to empty that prison of women caused the Bureau of Prisons to examine prisoners' sentences and exercise its discretion granted by the Second Chance Act, signed into law in 2008 by President Bush. Hundreds of women were reassigned to complete their sentences in halfway houses or even in home confinement. And while briefly exercised in the case of Danbury FCI, the BOP has not used its authority under the Act to

safely reduce the Federal prison population and return as many prisoners as possible to their communities.

The BOP should place all eligible prisoners in halfway houses or home confinement at the earliest possible dates and should use compassionate release and sentence reduction programs, and this would help relieve the persistent overcrowding and keep staff and prisoners safer while reducing costs.

Finally, the BOP must be led by individuals who value the role of communities and families in rehabilitation and understand the particular needs of women. We appreciate the service of Director Samuels, and he leaves at the end of this year. He should be replaced by a leader who is committed to enacting these values into policy. I urge the administration to look outside of the existing Bureau leadership for strong candidates who will make the BOP a model system driven by innovation and creativity.

I close with the words of the legendary reformer and warden of Sing-Sing Prison, Thomas Mott Osborne, who famously asked, "Shall our prisons be scrap heaps or human repair shops?" Today, with the biggest prison population in human history here in the United States, we must insist on a different answer to this question.

Thank you.

Chairman JOHNSON. Thank you, Ms. Kerman.

Our next witness is Jerome Dillard. Mr. Dillard is the Jail Reentry Coordinator for Dane County, Wisconsin. He also served as the Director of Voices Beyond Bars, a group aimed at helping former inmates transition in the community by offering employment and computer classes. And, Mr. Dillard, again, I just want to thank you for traveling here from Wisconsin for your testimony. Please.

TESTIMONY OF JEROME DILLARD,[1] REENTRY COORDINATOR, DANE COUNTY, WISCONSIN

Mr. DILLARD. Thank you, Senator Johnson. In opening, I want to thank this Committee for having me. I want to thank you, Senator Johnson, and my other Senator from Wisconsin, Tammy Baldwin, for having me sit before you today.

I sit here as a formerly incarcerated citizen who served time in both Federal and State prison systems. My crimes were non-violent, driven by a long history of drug addiction.

While doing time in prison, I witnessed a system that was ballooning with predominately young African Americans who were serving long prison sentences—10, 20, 30 years—for drug crimes. This was troubling to me, seeing so many young men losing the prime of their lives to the criminal justice system. It was while doing time, I made a strong determination that I will do all I can to stay out of our prison system.

I have been out roughly 19 years now and I have had the opportunity to share my own journey of recovery at correctional centers, educational institutions, conferences, and in the community, giving my personal account on how peer support directly aided in the suc-

[1] The prepared statement of Mr. Dillard appears in the Appendix on page 104.

cess of my recovery with regards to substance abuse and mental health.

We often do not think of the formerly incarcerated citizens as assets in the work being done to address the issues of incarceration. The power of peer-led groups and organizations provides so many essentials needed for the successful reentry of individuals returning to our communities. An in-house prison support network of this type would be helpful for the process of rehabilitation. Some of the barriers to creating this sense of community are opposition from the Bureau of Prisons and the State prisons staff with fostering that "us" and "them" mentality. Real cultural competency training would be a value in all prison systems.

I want to say, in the work that I do, I realize that the barriers are tremendous. Individuals returning to the community from State and Federal prisons are often faced with huge amounts of debt—child support, restitution, supervision fees, and on and on—real barriers to individuals who are oftentimes subjected to the lower-paying jobs that are available in our communities.

I was given an opportunity to work in a mental health Alcohol and Other Drug Abuse (AODA) prison in our State. This is a unique facility that is invaluable because they provided mental health and trauma-informed care on an individualized basis. What I witnessed there in the programming that went on there, I cannot say enough about, because traumas are so prominent with this population.

As I talked to these men, many—and often I asked, how many men had their fathers in their lives, and the majority of the times, these individuals would say, my father was in prison, or I do not know my father, and I was raised by the streets. These are some of the traumas. Even fatherlessness is a trauma that usually goes unaddressed. And for those in our inner cities, they are humongous. They are huge.

In the time that I have, I really cannot elaborate on many of the things that I would like to say, but I am going to say this in closing. In working with our incarcerated and formerly incarcerated citizens over a decade now, I am beginning to see a shift in confronting mass incarceration. It is an issue that both political parties agree on, that America's addiction to mass incarceration is not working. It is costly. It does not restore people. And, I personally feel that the climate is right and the ground is fertile for real criminal justice reform.

The modern War on Drugs produced an overall prison population that remains unprecedented in world history. At the Federal level, the growth in the incarceration rate has been even greater and more sustained than in the States.

I am encouraged by some of the initiatives that are taking place on the local level in many States and counties. In my county, we are working to address the racial disparities and reduce the number of those incarcerated at all levels of the criminal justice system. And, great works are being done addressing these problems, and I feel that addressing these problems will require far more than tinkering with the sentencing policies of non-violent offenders or revamping prison programs.

To achieve a reasonable level of incarceration, we will need to substantially reduce both the numbers of people admitted to prison and the length of their sentences. In making a suggestion, I would like to say to the BOP to continue to solicit feedback from people who are serving time so they can craft programming that is to the prison population. The BOP programming needs to match the labor market data about high-growth industries. It also needs to be specific to the regions.

And, last of all, the BOP needs to advocate to Congress for laws that allow more merit time, early release, and incentives for good behavior or programming.

Thank you.

Chairman JOHNSON. Thank you, Mr. Dillard.

Our next witness is Udi Ofer. Mr. Ofer is the Executive Director of the American Civil Liberties Union (ACLU) in New Jersey. Through his work at the ACLU, he has worked on the State level to form a blueprint on how to reduce the prison population in New Jersey. He worked closely with Governor Chris Christie to pass bail reform legislation which takes effect in 2017 and is estimated to reduce the prison population in New Jersey by about 8,500 inmates. Mr. Ofer.

TESTIMONY OF UDI OFER,[1] EXECUTIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY

Mr. OFER. Thank you, Chairman Johnson, Ranking Member Carper, and Members of the Committee. My name is Udi Ofer and I am the Executive Director of the American Civil Liberties Union of New Jersey, and it is my honor and privilege to be here today on behalf of the ACLU and our more than one million supporters living across the United States, including in New Jersey.

Today's hearing comes at a critical moment in our Nation's history, when there is a rare opportunity to take bold action on criminal justice reform. Republicans and Democrats alike are taking a second look at our Nation's criminal justice system, and Republicans and Democrats alike are becoming much more pragmatic and much less ideological in their approach to criminal justice.

Following decades of punitive policies that have sent millions to prison and devastated communities, particularly low-income communities of color, Americans are now realizing that our Nation's prisons and jails have grown too big, and that all too often, the people who end up imprisoned really suffer from drug addiction or mental illness and should not be incarcerated in the first place.

We all know the story of the growth of our Nation's incarcerated population. Our Nation's jails and prisons hold almost 2.3 million people on any given day. The Federal prison population has increased from 25,000 prisoners in 1980 to more than 207,000 today, and all of this comes at an annual cost to taxpayers of tens of billions of dollars.

But, the costs have far more severe consequences than simply the fiscal expenses necessary to incarcerate 25 percent of the world's prisoners in a country with 5 percent of the world's population. The true costs are human lives, and particularly generations

[1] The prepared statement of Mr. Ofer appears in the Appendix on page 108.

of young black and Latino men who serve long prison sentences and are lost to their families and to their communities. And, the fact is that African Americans and Latinos are disproportionately engulfed in our broken criminal justice system.

So, it is clearly time for a change. We are at a crossroads, as Americans recognize the need to reform both our Federal and State criminal justice systems. So, with this in mind, I come before you today to urge you to seize this opportunity to reform prison practices, reduce the incarcerated population, and create a system that is smarter, a system that is fairer, and a system that is more cost effective.

And at the top of any reforms of Federal prison practices must be the issue of solitary confinement. Approximately 5 percent of Federal prisoners are in solitary confinement. That means that on any given date, 11,000 people in Federal prisons—11,000 people—are confined to a six-by-nine cell and deprived of basic human contact, with little to no natural light and minimal, if any, constructive activity for 22 to 24 hours a day. In some Federal facilities, the average time that a prisoner sits in continuous solitary confinement is 4 years.

You need to look no further than the front page of today's Science section of the New York Times—and it is the Science section, not the Politics section—to get a better understanding of the mental and physical consequences of long-term solitary confinement.

And, according to a recent independent review of the Federal Prison System solitary practices, there are major problems. Federal prisons send thousands of seriously mentally ill individuals into solitary confinement, people who should be receiving treatment, not sitting in "the hole," and Federal prisons use solitary on close to 1,400 people who are there for protective custody but instead are subjected to virtually the same conditions as prisoners who are in solitary for punishment.

So, what can we do about this? Well, there are many small yet important steps that the Bureau can take today and that are outlined in the independent review. Yet, the truth is, if all that we take today are small steps, then we will have lost this historic moment for bold change. Now is the time for historic change. Solitary confinement has no place in American prisons. Physical separation may sometimes be necessary for safety and for security, but isolation is not.

Therefore, we call on the Bureau of Prisons and we call on the Congress to resolve this issue once and for all. First, it is time to abolish the use of solitary confinement for persons under the age of 18 and for persons with mental illness. Senators Cory Booker and Rand Paul have already introduced legislation, the REDEEM Act, which would prohibit the use of solitary confinement on juveniles and we fully support this legislation.

Second, for all other prisoners, the Bureau should abolish periods of solitary confinement lasting longer than 15 days, period. We believe that implementing these recommendations will lead to a smarter and more humane system and will lead to a decrease in the Federal prison population by reducing recidivism rates.

Finally, a couple of quick words about New Jersey. Given the focus of this hearing on BOP practices, the lessons from New Jersey are not directly applicable, but there are some important lessons worth mentioning. New Jersey is not a perfect model. We have terrible solitary confinement practices, but there are some things that we have done well.

In 1999, New Jersey's incarcerated population peaked at more than 30,000. Today, it is at about 21,000, a 30 percent reduction in a decade-and-a-half. How did we achieve it? We achieved it through numerous policies, with the biggest ones being changing our harsh mandatory minimum sentences for drug offenses and a decrease in the number of parolees returned to prison for technical violations. And as mentioned by Senator Johnson, we have recently had a major victory in a bipartisan manner, working with Governor Christie, to overhaul our State's bail system, which we believe will lead to thousands of fewer people sitting in jail simply because they are poor.

So, look, nationwide, the bipartisan commitment to criminal justice reform is as strong as it will ever be, so the ACLU urges the Congress to take bold action to adopt our recommendations, which would help to increase fairness and justice at every stage in the system.

Thank you.

Chairman JOHNSON. Thank you, Mr. Ofer.

I do want to stress, you have mentioned the word "bipartisan" a number of times, and this is true. Some of the folks in this Committee have been describing problems and look for the areas of agreement, and this is something I think that we have broad agreement on. This system is not working, as Mr. Dillard pointed out. It is just not working. We have to take a look at the facts and admit that harsh and stark reality.

Ms. Kerman, you obviously have a pretty unique story here. You did not spend much time in your testimony—maybe people more tied into pop culture fully understand—but if you could just quickly describe what you were put in prison for, and at the tail end, I would also like you to tell me, what do you think your punishment should have been?

Ms. KERMAN. Thank you for your question, Senator Johnson. When I was in my early 20s, which is a very typical risk time for folks to be involved with crime or to commit a crime, I was involved with a relationship with someone involved with narcotics and I carried a bag of money from Chicago to Brussels in support of a drug trafficking enterprise.

I voluntarily left that situation. Good sense kicked in. I was very fortunate. I had a college degree already. I had many benefits and privileges, and so I was able to return to the United States and to get my life back on track and to put any involvement in crime behind me.

Many years passed before I was indicted in the Federal system, and ultimately, I was sent to prison 10 years after I committed my offense. I pled guilty to my crime very swiftly. I was very fortunate to only serve 13 months of a 15-month sentence.

One of the things that was so striking to me the very first day that I spent in prison was that so many of the women that I was

incarcerated with, who I would spend a great deal of time with, were serving much harsher sentences than I was. And as the days and the weeks and the months went on and I came to know those other women really well, it was impossible for me to believe that their crimes were so much more serious than mine. In fact, the only conclusion I could draw was that they had been treated much more harshly by the American criminal justice system than I had been treated because of socio-economic reasons, differences in class and, in some cases, because of the color of their skin.

I left the custody of the Bureau of Prisons in 2005. I had 2 years of supervised release, probation, which I completed successfully.

When I reflect on the punishment for my crime, I certainly cannot protest it when I think about the harshness with which poor people and disproportionately poor people of color are treated in this country.

It is hard, however, to believe that there was a lot of social benefit to the community drawn from my incarceration. It prevented no new crimes. I think, particularly when we consider the punishments that we have meted out for drug offenses, we have to reflect on the enactment of these mandatory minimum drug sentencing laws, generally in the mid-1980s. At that time, I think that those laws were intended to curb substance abuse and addiction and some of the crimes that grow out of substance abuse and addiction.

Today, many decades after we passed those laws, we have put millions and millions of Americans in prison and saddled them with felony convictions, and today, illegal narcotics are cheaper, they are more potent, and they are more easily available than when we put mandatory minimum sentencing laws on the books and incarcerated all those people. I think we can only draw the conclusion that in terms of curbing substance abuse and addiction, that those laws are a failure and that locking people up for drug offenses, particularly low-level non-violent drug offenses, is a huge waste of time and money.

Chairman JOHNSON. So, let me go back to what I wanted you to answer, the final question, though. I agree, it is not working.

Ms. KERMAN. Yes.

Chairman JOHNSON. I think there are two reasons for prison, punishment and deterrence.

Ms. KERMAN. Yes.

Chairman JOHNSON. So, what type of punishment is appropriate and that would deter people from, for example, trafficking drugs to young people, which is pretty damaging for society? I mean, what do you think would be the alternative? Have you given that any thought?

Ms. KERMAN. I think that a very appropriate part of my punishment, if it was not confinement in a prison, would have been a lengthy term of community service working with people who are addicted to drugs and with families that are suffering from the ravages of addiction. What I experienced while I was incarcerated was very intense close friendships with women whose lives had been devastated by substance abuse and addiction, and that really brought home to me the harm of my own actions, and I think that that is one of the most appropriate ways to deal with those kinds of harms.

Chairman JOHNSON. Good answer.

And, very briefly, because I want to get to Mr. Dillard, as well, the other women that were in prison, I know you do not have the statistics on it, but in general, were they there for also just basically drug crime?

Ms. KERMAN. Oh, in particular——

Chairman JOHNSON. The vast majority?

Ms. KERMAN. In both State and Federal systems, but overwhelmingly in the Federal system, women are incarcerated for non-violent drug offenses and for property crimes. But in the Federal system, I mean, I think if any member of this Committee had the opportunity to meet the hundreds of women that I did time with, you would probably walk away from getting to know those women with a deep feeling that their confinement in a prison cell or a prison facility was just a colossal waste and not an appropriate way of intervening in the things that put them into the criminal justice system.

Chairman JOHNSON. Thank you.

Mr. Dillard, obviously, we met in discussions about the difficulty of reentering society after you have served your time. Talk about the challenges. I mean, you were talking about the huge debt levels. You are sitting in prison and your child support just continues to build, and then you get out, it is very difficult to find a job, and one of the things I am working with Senator Booker on is a "ban the box" for Federal employees to serve as an example, so hopefully something like that would work to give people the opportunity to get a job.

But, even if you get a job, a lot of these are entry level. They do not pay a whole lot. And, yet, we expect people who just get out of prison to all of a sudden start paying off those debts. Describe what happens when they are unable to.

Mr. DILLARD. Well, the fact is, when you are faced with these barriers—and I, too, came home faced with many barriers—the fact is, I had support, I had individuals who kept me encouraged, and I had someone to give me analogy, and that was putting a little bit behind you at a time.

I was fortunate to be able to obtain a living wage employment about a year-and-a-half after being out. That was helpful, because after 13 years, I finally got a tax return. And that analogy of putting that debt behind you a little bit at a time is something that I teach to young men today.

The fact is, many of our young people have ties to the criminal justice system and there is so much hopelessness that comes with being tied to the criminal justice system that, often, they feel that there is no place for them in the workforce. Application after application, turn down after turn down, because, in many instances, of your criminal convictions. Individuals lapse into hopelessness, and from there, addiction can raise its ugly head, or hustling, or just becoming part of the norm in many of the communities that have had to result to these things.

Chairman JOHNSON. Again, in our meetings, one of the individuals we were talking with spoke that not paying child support ends up being a parole violation——

Mr. DILLARD. Yes.

Chairman JOHNSON [continuing]. Which lands you right back in jail, correct, which costs us $33,000 for a male prisoner, and, I think, Ms. Kerman, is it not about $50,000 for a female prisoner?

Ms. KERMAN. Yes.

Mr. DILLARD. Yes.

Chairman JOHNSON. So, again, it is these enormous challenges just trying to reintegrate into society, get a job, and then when you are unable to pay off your child support, which, again, we all want people to be responsible and pay for their children, but then you land right back in jail. Is that what I heard. Is that basically true?

Mr. DILLARD. Well, in some cases. But, the fact is, child support continues to accumulate even while you are doing time. I had a gentleman who was released from prison after 15 years, $60,000, $70,000 in debt with child support, along with all the other things that came. The only employment that he can find was working in a fast food restaurant at a minimum wage. And after taking home his second paycheck, he was, like, I cannot make it like this. I just cannot. Over 40 percent of his check was being taken before he even got it, and that is a discouragement, really, for him to continue working at a minimum wage position and not be able to pay rent or have transportation.

Chairman JOHNSON. OK. Thank you, Mr. Dillard. I am out of time. Senator Carper.

Senator CARPER. The Chairman said a few minutes ago there are two reasons for prisons, punishment and deterrence. I would say there is at least one more, and that is to try to correct behavior so that when people come out, they will be less likely to recidivate and simply to commit crimes again and return to our prison.

I mentioned earlier how Stan Taylor was Commissioner of Corrections when I was Governor for my second term, and his words that still ring true today, the overwhelming majority of people who are incarcerated are going to come out some day. They are not there forever. They will come back into our society and to our communities, and they can come out as better people or they can come out as better criminals.

Senator Booker, alluded to a moral imperative that we face, whether people of faith or not. He alluded to Matthew 25, when I was hungry, when I was thirsty, when I was naked, when I was sick and in prison, did you come to see me? I have been in every prison in Delaware. We transformed Ferris School, which really was a juvenile prison, into a real school. And, I have given this matter huge amounts of time and thought over the time that I was there and even now.

In the National Governors Association, we used to say—I would say to my cabinet when we would have cabinet meetings dealing with a particular issue, I would say, somebody, some Governor in some State has dealt with this issue. Figure out how to deal with it and do so successfully. We have got find that State, that Governor, and whoever worked on this particular challenge in that State.

A lot of what we are talking about here, somebody has done something really good that could serve as a model. States are laboratories for democracy, and before we go off for the Bureau of Prisons just starting from scratch, we need to look around our

country and say, well, where are some States that are doing some things really well?

In our State, we changed a juvenile prison into a real school. In our State, we decided when we had people in prison, we were going to have them for a while. Why not work with them on their educational skills, actually create a school within the prisons to work with them on their drug addictions, to give them an opportunity, whatever faith they might be, but to actually exercise their faith, learn about their faith, to prepare for transformation, to learn skills, whether it is upgrading computers, whether it is building furniture, whether it is learning auto repair, and literally taking the whole fleet for the State of Delaware, the car fleet, and basically provide maintenance in our prison system so that people at least have that kind of skill when they walked out.

What I would like to do is to ask each of you to give us one terrific example—it could be in a State or a local correctional system—one terrific example within the system, within the prison itself, or, frankly, without, because if we do not do a lot better on the early side, the early childhood side and so forth, we are not really going after the root cause. But, just give us one good example. It could be in the correctional system, it could be before, it could be after release, that you think we ought to really drill down and try our best to emulate. Thank you. Ms. Kerman.

Ms. KERMAN. Thank you, Senator Carper. I currently teach nonfiction writing in two State prisons in Ohio, and one of those prisons is a men's medium-security prison. It was built for 1,400 men. It currently houses 2,600 men. It is led by a young warden who was trained as a social worker at Ohio State University (OSU). He does things differently than any prison I have ever set foot inside.

The prison has more lifers than any other prison in the State of Ohio. It is one of two prisons with the lowest violence rate in that prison. So, that is a big change over time in that facility. That warden and his predecessors have done a great job at making that a much safer prison, and that warden has—and his staff have a tremendous amount of rehabilitative programming of every sort, whether it is vocational, educational, spiritual.

One of the first programs that was ever put in place there back in the 1990s was an interfaith dorm where prisoners of different faiths would come and live in that dorm for one year, do a special curriculum, learn how to deal with each other and their differences, and then go back out into general population as change agents.

That prison is a really interesting place and that warden's philosophy and the philosophy of all of his staff—because one man cannot do it all, all of his staff need to be on board for him to do that—is really inspirational, I think.

I want to make a note on some of the results that that prison gets, back to Udi's testimony about solitary confinement.

Senator CARPER. Ms. Kerman——

Ms. KERMAN. Yes?

Senator CARPER. I would like to listen to you for the rest of the morning, but I only have two more minutes, so I am going to ask you to just hold it right there if you will——

Ms. KERMAN. OK.

Senator CARPER [continuing]. And we will, hopefully, have a second round and we will come back and finish it.

Ms. KERMAN. OK.

Senator CARPER. I would note this. I am an Ohio State graduate, undergrad, and one of the things that attracted me to the KEY/Crest Program, which we instituted in our adult prison system at Gander Hill Prison that Barry McCaffrey, the Nation's Drug Czar, came to see, the guy who developed, helped us develop that and implement it in Delaware, was Jim Inciardi from Ohio State who literally came out of Columbus, Ohio, and, frankly, worked pretty well.

Mr. Dillard, same question. Give us just one great example. Piper has given us one. Give us one, as well.

Mr. DILLARD. Well, I personally feel that the work is on the offenders themselves, and it was a lifer who really made a difference in my life, who spoke life into me. And throughout my prison sentence, I realized how the older inmates really worked with and tried to encourage the younger ones. I still feel that you cannot leave formerly incarcerated citizens out of the equation. Mr. Ofer.

Mr. OFER. So, if I may, I am going to give two quick examples.

Senator CARPER. Go ahead.

Mr. OFER. One is solitary confinement, since that was the focus of my testimony. There are examples of States that have dramatically reduced solitary confinement without causing risk to staff and to inmates, and a good example is Colorado. In 2011, Colorado placed in solitary confinement about 7 percent of its incarcerated population. Today, it is about one percent of its incarcerated population. We have seen a dramatic decrease in the use of solitary by banning the use of solitary against some vulnerable populations, like people with serious mental illness, and by restricting the number of days that you could be sent. So, that is one.

The second example is bail reform, and what we have done in New Jersey and what other States and some municipalities are looking at, in New Jersey, we had 10,000 people sit in jail awaiting their trial because they could not afford a few thousand dollars in bail. We have completely revamped that system, where now your bail and whether you are going to be released pre-trial or not is determined by your risk assessment and not by whether you are poor or rich.

We believe that that change in and of itself will lead to about three-quarters of the 10,000, so 7,000 to 8,000 fewer people sitting in jail. Before this reform, the average time that a person sat in jail awaiting their trial was 314 days. These are people that are presumed innocent until proven guilty and they were being treated like guilty, and this is a phenomenon all over the country. And, this is one of the ways that we can dramatically reduce our jail population in the United States.

Senator CARPER. Let me just close by saying this. Senator Booker and I talked about the moral imperative that we have in this country, to look out for the least of these. We also have a fiscal imperative. And while our budget deficit is down a lot, it is still substantial, and we have a fiscal imperative to meet the moral imperative in a fiscally responsible way, hence the need to find out what is

working, do more of that, find out what is not working and do less of that. Thank you so much.

Chairman JOHNSON. Thank you, Senator Carper.

Before I turn it over to Senator Booker, because you mentioned my name and did not quite get it right, I said that we jail people to punish and to deter, but then I also fully mentioned the mission statement of the Bureau of Prisons, to ensure that offenders are actively participating in programs that will assist them in becoming law-abiding citizens when they return to our communities, and, of course, I highlighted Ms. Kerman's testimony where she quoted Thomas Mott Osborne, "Shall our prisons be scrapheaps or human repair shops?" I strongly hope that our goal is that they are human repair shops.

So, with that, Senator Booker.

Senator BOOKER. Thank you, Mr. Chairman.

Udi, let us jump in real quick. So, solitary confinement. Can you please describe this, because as I have had these conversations with friends and others, people often think that solitary confinement is a result of someone having done something wrong in prison, and why is solitary confinement so commonplace? Is it because prisoners are doing things wrong in prison?

Mr. OFER. Well, we have seen as a Nation a dramatic increase in the use and reliance on solitary over the last couple of decades. We do not have exact reliable scientific data since we actually do a terrible job as a country tracking how many people are placed in solitary, but there is consensus that its use has increased dramatically, particularly in response to overcrowding, and where prison officials are overwhelmed and their quick reaction is to send people to the hole.

So, we have examples from New Jersey, we have examples from around the country of people being sent to solitary for things like talking back. I will give you a New Jersey example, out of New Jersey State Prison in Trenton, where an inmate by the name of Sean Washington, in 2013, he was a clerk at the library and he wanted to leave the library to go bring some legal papers to one of the other inmates. Yet, a corrections officer said, you cannot leave, and the facts here are a bit disputed, but the worst facts, the facts that the State claims, is that Mr. Washington then said, "Mother f-er" to the correction officer, "do not tell me what to do." That is the worst facts. What was his punishment? Ninety days in solitary confinement.

That is a real example. Those are examples that we see all across the Nation.

Senator BOOKER. I am just wondering, just for time, so we know that people are being sent to solitary for many different reasons.

Mr. OFER. Right.

Senator BOOKER. Some of them have to do with administrative issues and the like. Does it work in terms of in somehow affecting the behavior of prisoners? Is there any productive value in the Bureau of Prisons?

Mr. OFER. Well, I am going to push back for a second on some language that you used, in that some people are sent to solitary for administrative reasons. That is a loaded term, because the Bureau

of Prisons and other prisons commonly call solitary administrative segregation——

Senator BOOKER. Right.

Mr. OFER [continuing]. And it sounds really harmless, but in effect, it is solitary and people are sent there for really minor reasons, and some reasons are for protective custody, like I mentioned in my testimony.

For example, the lesbian, gay, bisexual and transgender (LGBT) community, which faces disproportionate harassment from other inmates in prisons, a lot of times, they will be sent to involuntary protective custody to protect them from inmate violence, yet they are being punished. We see this happening all the time.

In the Bureau of Prisons, for example, according—oh, you asked what was—does it actually work? So, recently, there was an independent review that was released to the public in February of this year by the Center for Naval Analyses (CNA) that looked at solitary practices in our Federal prisons and it looked to this question. Does inmate behavior change following solitary? And their response was, absolutely no.

Senator BOOKER. I would just like to pause there. Can we have that report put into the record[1] for this hearing.

Chairman JOHNSON. Without objection.

Senator BOOKER. And then I want to just also say that not only LGBT, lesbian and gay prisoners, but, obviously transgender——

Mr. OFER. Transgender, absolutely. But, let me actually say what the CNA report actually found, because it is very important. It looked at an inmate's disciplinary record 12 months before being sent into solitary and 12 months after coming out of solitary, and it found virtually no change whatsoever.

Senator BOOKER. So, let us get to your article you held up today, the consensus upon medical experts. What is the damage, the trauma, the effect on an individual to be in solitary confinement, you said a shockingly, often on average, of 4 years? I have talked to numerous inmates who have experienced that length or more. What is the damage done to someone in general, and would you also include in that someone who already has a mental health challenge?

Mr. OFER. First of all, when I think of this issue, and to use an example that is contemporary, I think of it similar to climate change, in the sense of there are certain people that just deny the science. Yet, within the scientific community, there is consensus. There is consensus about climate change and there seems to be consensus also about solitary confinement.

Senator BOOKER. Please do not lose this Committee by talking about climate change. [Laughter.]

Let us stick to the bipartisan consensus here. [Laughter.]

Mr. OFER. But, what I mean is that there is consensus in the scientific community about the harms of solitary confinement, and there are really two kinds of harms. One is that it exacerbates preexisting conditions, so mental illness that existed before is exacerbated and becomes worse.

And, second, it also produces mental illness and also physical illness, things like anxiety, depression, hypersensitivity to stimuli, bi-

[1] The report referenced by Mr. Ofer appears in the Appendix on page 144.

polar disorder, there have been documentations of that. The list is long, and I am happy to provide the Committee with citations to every——

Senator BOOKER. I think that would be helpful if you would provide more citations.

Mr. OFER. We will do that.

Senator BOOKER. I want to switch. First of all, I just want to say, both to Mr. Dillard and Ms. Kerman, it is extraordinary that you are here with your testimony about what the experience of actual people who have been behind bars, and that is extraordinary.

And, Ms. Kerman, I would like to just, in the little bit of time that I have left, just drill down on something that is often not talked about, but what is happening as a result of overcrowding. We saw this in Danbury when it was converted into a low-security men's facility. You were close to your family, and I am really wondering, what impact does being in prison in close proximity to loved ones have on an inmate, and what impact would gender-specific programming have on a woman's ability to successfully reenter. If you could, in the one minute I have left, just hit on both of those issues really briefly.

Ms. KERMAN. OK. Proximity to home, family, and community is overwhelmingly important for both men and women who are confined to prison or jail. The opportunity to——

Senator BOOKER. And, let us just be clear. The majority of women in prison have children, and the majority of imprisoned people, period, are the No. 1 breadwinners for the family before they are incarcerated.

Ms. KERMAN. Absolutely. The overwhelming number of women in prison are mothers, and most of those mothers are the mothers of minor children, kids under the age of 18, who experience sort of a seismic impact when their mothers are incarcerated because a lot of those moms are single moms who have primary responsibility for their kids.

So, the opportunity to touch your children, to hold, for your children to be reassured that their mother or their parent is OK is incredibly important both to parent and child. The opportunity to see your own parents or family members, to maintain ties to the community, broadly considered, to which you will almost inevitably return—Senator Johnson is absolutely correct. The vast majority of people who are in prison are coming home from prison.

So, those lifelines to the outside community are incredibly—we cannot overstate how important they are to public safety, to people's safe and successful return home to the community, because when prison—when correctional systems, whether it is the BOP or otherwise, cut those lifelines by making visits very difficult, by placing people very far from their families, or by making prisons inaccessible in other ways, by making phone calls exorbitantly expensive, or by—many jails have "no contact" visits through glass, which is a huge disincentive to have a visit—those lifelines are cut and the person who is incarcerated is much less likely to have both the family support, the safe and stable housing, the access to networks which might help them gain employment, all of which are primary concerns for successful reentry. And that is true whether

you are talking about men or whether you are talking about women.

When we are talking about female prisoners, just very quickly and briefly, we know that the three things that drive women's involvement in crime in their incarceration are substance abuse, mental illness, and, again, that overwhelming experience of violence, either sexual violence or physical violence. Eighty percent or more of women and girls in the system report that happening to them before they were incarcerated.

So, the problem with incarceration—prisons and jails are very harsh places by design—is that for prisoners who have experienced very significant trauma, like rape, childhood sexual abuse, domestic violence, many of the commonplace correctional practices are very reminiscent of some of those abuses. And, so, that creates a serious challenge in terms of regular engagement with female prisoners in terms of their rehabilitation and in terms of their, again, ability to return home safely.

Senator BOOKER. In deference to my colleagues, I am over time, but thank you for that substantive——

Ms. KERMAN. Absolutely. Thank you.

Chairman JOHNSON. Thank you, Senator Booker.

And, by the way, when Mr. Ofer delved into climate change, he did not lose the bipartisan agreement. [Laughter.]

I think we, by and large, agree there has been climate change, always has been, always will. Senator Heitkamp.

Senator BOOKER. And vaccines work, is that correct? [Laughter.]

Chairman JOHNSON. Yes, they do.

Senator BOOKER. Yes, they do.

Senator HEITKAMP. Thank you, Mr. Chairman.

At the risk of being embroiled in that side discussion, I was the Attorney General in North Dakota, spent a lot of time—actually, most of the drug task forces were under my jurisdiction and we ran a lot of those, and it was at a time when there was a growing concern in 1992 with the drug problem and with more and more violent crime. And as a result, we saw incarceration rates really skyrocket because of desperation.

And, I will tell you this. It has been my experience that we constantly treat the symptoms, but never treat the disease, and that is really where we are today, talking about how do we treat the symptoms and not how do we treat the disease.

I will tell you a story about a very wise man. I did a juvenile justice project, and one where we made it a little easier to transfer kids into the adult system. But, I traveled around the State of North Dakota with a prison warden by the name of Winston Satran. He was a very wise guy, and at the time in North Dakota, you could actually interview every prisoner who came into the prison system, and he would sit down and he would say, tell me about your life. And as they talked, they would say, my parents were divorced at 11 and I went to live with my grandma, and he would write "11" in their prison file, because in his opinion, that prisoner was 11 years old emotionally.

And, that is where we get stuck, because a lot of this is related to trauma. A lot of this is related to not understanding trauma. And we exacerbate it by not only treating the trauma, but engaging

in behaviors that further the trauma, whether it is isolation from family, whether it is isolation from any human contact at all.

And, so, let us be honest about the task that this society has imposed on the Bureau of Prisons. None of this should be any judgment on the Bureau of Prisons. We have given them an impossible task. They have to take in—and prison crowding is part of that. They have to maintain some level of security. And they are as desperate for solutions as what they can be. But, we are here talking about things that are way downstream, and we are not here talking about things that are upstream.

And, so, the juvenile justice system is led, really, by a lot of very enlightened people at the Department of Justice, has really begun a transformation into trauma-informed and trauma-based therapies, looking at what can we do to treat trauma, how can we basically prevent a lot of abuse, and a lot of abuse is self-medication. A lot of addiction, it is chemical, I get it. I get that that is maybe the old model. But, a lot of it is self-medicating for the trauma that has been experienced in people's lives.

And, so, with all of that, I would like to know how we could design a system of prevention so that we do not see more people. What would you all, in your experience, like to see in communities that would prevent the kinds of outcomes that we are seeing right now in the Bureau of Prisons? And we can start with you, Ms. Kerman.

Ms. KERMAN. I think it seems that there is a tremendous amount of recognition—thank you for the question, Senator Heitkamp—that substance abuse and mental health problems, including full-blown mental illness, but also the everyday demons that many people suffer at some point in their lives, contribute to people's bad choices and breaking the law. And, so, a significant commitment to handle those health problems in the public health system as often as possible rather than criminal justice system——

Senator HEITKAMP. Can I ask just quickly, of the women that you worked with and were incarcerated with, how many of them were given a choice of drug court or some kind of intermediate kind of intervention?

Ms. KERMAN. Yes, that is very rare in the Federal system. That is much more common in State systems or county systems of justice. There is a program in New York called Justice Home, where women who are facing at least a year of incarceration, when their district attorney and their judge agree, are able to enter this program called Justice Home. They stay at home, generally with their children, and are, face a set of accountability measures, but also get the mental health interventions or the substance abuse interventions, the parenting classes, the vocational training, whatever is specific to their case that is needed for them to get better outcomes.

In New York, it costs about $60,000 a year to incarcerate somebody. That program costs about $17,000 a year. If we threw in the cost of foster care for a family with two children, the costs would mount to $129,000 a year.

Senator HEITKAMP. Thank you.

Ms. KERMAN. So, yes. That is a good example.

Senator HEITKAMP. Mr. Dillard.

Mr. DILLARD. Thank you for your observations, Senator Heitkamp. Trauma-informed care is truly something that is needed if we are going to be preventive. All I can use myself as an example of someone who had traumas at the age of 12, 13 years old, who walked around with them for 35 years, never addressed, and I am just bearing them. When I was diagnosed, I had been severely depressed most of my life, one reason that I self-medicated with illegal drugs. Had I been diagnosed, maybe I could have been given legal drugs and avoided the criminal justice system.

The fact is, we never look at the cause. We just look at the effect. And many of these young men and women who I encounter in the work that I do today have tremendous traumas, and we are working as a peer organization to help them work through that to avoid walking around a hurting people, because we know that hurt people. And, if we do not address those traumas early on, then further down the road, after recidivism, we are still going to be paying a much higher cost.

Senator HEITKAMP. Thank you. Mr. Ofer.

Mr. OFER. So, I am going to give a perspective informed by the fact that I spend a lot of my time in Newark, New Jersey, which is a terrific city, and it is a city that is plagued by poverty, and in certain communities, there is violence. And, what I see in Newark, and really a lot of urban areas across New Jersey and even across the country, is that the only agency that is available in that municipality to address social needs, or at least the agency that is primarily available, is the police department. And, to me, that is the root cause of the problem.

You have well-meaning police officers, you have well-meaning city officials that literally have no one else to go to if there is, let us say, some minor misbehavior happening on the street that is minor, but that should not be treated by the criminal justice system.

And, I will criticize also diversion programs. While they are certainly better than sending someone directly to jail or prison, my reaction is, this person should not have been entangled with the criminal justice system in the first place. They should not have been arrested and then diverted to alternative programs. We need to buildup the resources of municipalities, of States, to have other agencies to go to when they are interacting with people with mental illness or with drug addiction problems.

Senator HEITKAMP. And, if I could just close with a comment, the stigmatization of that label is something you will carry the rest of your life.

Mr. OFER. Yes.

Senator HEITKAMP. It will prevent you from getting student loans. It will prevent you from getting a job. And, so it is with a great deal of care that we should take that next step, because we are, in fact, relegating that person to a certain quality of life for the rest of their life, especially given the age of the Internet, where we can find out anything about anyone.

And, so, I just wanted to make a broader point, that we are here to talk about what we are going to do with high incarceration rates, but we cannot look at this problem without looking at the

broad scope of services that are provided and how we can work more effectively for prevention.

Chairman JOHNSON. Thank you, Senator Heitkamp. Senator Ayotte.

OPENING STATEMENT OF SENATOR AYOTTE

Senator AYOTTE. Thank you. I want to thank all of you for being here.

I think, like my colleague, Senator Heitkamp, we both were Attorneys General in our State before we came here to the Senate, and one of the things that I had worked on as an AG was reentry programs. And, I am a strong supporter of the Second Chance Act and supporting its reauthorization, but saw it from an Attorney General context where even people who were incarcerated for serious crimes, that we did not give them any path for success going forward, because they came out, if they had a substance abuse problem, the underlying issue was never dealt with. If there were mental health factors, that was not dealt with. No job. No place to live. If you put yourself in those shoes and you are that person and you are put out on the street, then, I dare say that all of us around this dais probably would not be able to put it back together.

So, I wanted to get your thoughts. Dr. Dillard, I saw that your focus is really, as I understand what you are working on, it would be some form of reentry program, and we saw it in our State get some momentum and then sort of fizzle and wanted to get your thoughts on reentry-type programs and what more we could do to make them more effective to try to end this cycle and to get people on to productive lives. And then I have some other followup questions, but I would appreciate it.

Mr. DILLARD. Well, I think reentry is a crucial point if there is planning done and individuals are giving different options. I know the Federal system, 6 months in a halfway house is something that I went through that was very beneficial for me. I just was not released to the streets, and I was able to obtain employment during that period and save some money to be able to rent a room, at least, when I was done with my Federal time.

What I am seeing today, though, is young men coming out of our State and county systems homeless, 17, 18 years old, who cannot go live with their mother because they have been told, you cannot go there because of substance abuse connected to their housing. And, they are couch surfing. And, oftentimes, when they are couch surfing, it is probably with those who are not doing so well or the anti-socials that had an influence on them being placed in the criminal justice system in the very first place.

Housing initiatives are huge. I do not have the solutions, but I can say that we are working on them in the region that I am working in. Nonprofits and faith-based organizations are engaging with us in providing housing at an affordable rate.

Preparation is huge. Individuals have to identify certain things while in custody in order to have a paradigm shift that this cannot be an option. This cannot be an option.

I had a client to tell me that committing a new crime was not his first choice, but it was his very last option, and I know the troubling times that he was in, sleeping on park benches, could not go

to the shelter for various reasons, and he committed a new crime. As he told me, it was not his first choice, it was his very last option. And, so, the reentry process, along with all the barriers.

I think mentoring from formerly incarcerated or connections with organizations that hire formerly incarcerated, because we are Ambassadors. I look at us as being those who can help them through those trying times and pivot points of reentry.

Mr. OFER. Senator, may I respond to that question very quickly?

Senator AYOTTE. Sure.

Mr. OFER. This is an oversight hearing on the Bureau of Prisons, and the independent review that I keep referencing to, and I am happy to submit my annotated copy—you will have a lot of highlighting—actually looked at this question of the Bureau of Prisons' practices on reentry programming, and here is its finding in one sentence. "There is no formal Bureau-wide reentry preparedness program specific to restrictive housing and inmates in these settings have very limited access to reentry programming."

The Bureau does not do a good job in reentry programming. About 2,000 people a year in the Federal Bureau of Prisons (FBOP) go from solitary back to community. One of the things the study found is that many of them—they do not know the exact number, because the Bureau does not track it—are sent directly from solitary back to communities. That is a terrible practice that needs to stop immediately. There needs to be a focus on reentry programming in the Federal Bureau of Prisons.

Senator AYOTTE. Thank you.

And, Ms. Kerman, I wanted to ask you, one of the things that we are seeing, and I saw this when I was AG, as well, but we are seeing just on a devastating scale in our State right now is opioid and heroin addiction. I have been working on legislation called the Comprehensive Addiction and Recovery Act. I am hoping that we are going to take this issue up here to not only the—I hope the Second Chance Act, but also this Comprehensive Addiction Recovery Act.

There was some discussion you had about this idea of alternative courts up front. What would you do as you think about this issue? How many people did you encounter that had addiction issues that were underlying why they were in prison? And how do you see—this, to me, to Senator Heitkamp's point, I fully agree. We cannot arrest our way out of this. This is a public health crisis.

Ms. KERMAN. Yes.

Senator AYOTTE. But, I wanted to get your thoughts on what you think we should be focusing on those.

Ms. KERMAN. Thank you, Senator. What is happening in New Hampshire is also happening in Ohio and all over this country in terms of huge spikes in deaths from heroin and other——

Senator AYOTTE. It is devastating. I mean, you would not believe the parents that are coming to me. It is just heartbreaking.

Ms. KERMAN. Yes, it is. It is devastating. It is fundamentally a public health question first and foremost, and so it is intersections with the criminal justice system really should be secondary, particularly as we continue to see violent crime rates very low.

And, so, while obviously people who sell or use drugs are breaking the law, remembering that intervening in that addiction cycle

is the single most important thing and cannot be accomplished with a prison or a jail cell, is completely central.

We see a lot of folks in the States trying lots of different things, and I am obviously neither a doctor nor an expert in addiction, but we see safe harbors in places like, I believe, Gloucester, Massachusetts, and some other parts of the New England States have really tried very innovative approaches to getting folks the medical help they need and having that be the primary concern rather than incarceration.

When we look at States like New York, New Jersey, California, the States that have reduced their prison populations the most and also have simultaneously continued to enjoy huge declines in violent crime, one of the things that we have seen in those States, and I know Udi could weigh in on New Jersey, is a huge decline in prosecutions and incarceration of people for low-level drug offenses and a recognition that public disorder is a reflection of a health problem and that is the way to tackle it.

Senator AYOTTE. Thank you.

Chairman JOHNSON. Thank you, Senator Ayotte. Senator Baldwin.

OPENING STATEMENT OF SENATOR BALDWIN

Senator BALDWIN. Thank you.

First of all, I want to thank our panelists. What a tremendous opportunity it is to hear from you and interact with you.

Mr. Chairman, I really want to join the thanks for holding this hearing, also to the Ranking Member. As you said in the outset and many have commented, this is a very big and very complex issue, and so I hope we will have additional opportunities, and I want to say that I am glad that you are recognizing this Committee's role in that discussion and I hope that we can keep that up.

There are a number of things I wanted to touch on. I heard the Ranking Member talking about upholding the models in States that are working, and I usually love to brag about my State, but in this particular case, I am just going to share some of the statistics about racial disparities in the incarcerated population in our State.

In Wisconsin, African Americans constitute only 6 percent of the State population, a little bit more. Thirty-five percent of those incarcerated in State prisons are African American. According to a recent study from the University of Wisconsin in Milwaukee, 13 percent of Wisconsin's African American men of working age were behind bars, which is almost double the national average of 6.7 percent. And the figures were particularly shocking and dismal for Milwaukee County, where more than 50 percent of African American men in their 30s had served time in prison. Forty-five percent of the inmates at our Federal correctional facility, Oxford, are African American, and 19.3 are Hispanic. And, I hope as we continue to work on this very complex issue that that will be on our minds.

I also just wanted to mention, and people were talking about their previous service, attorney generals. I was never attorney general. I practiced law in a small general practice firm at the very beginning of my career, mostly general practice. A couple of times,

I took misdemeanor public defender cases. That is really my only immediate interaction.

But, I was becoming involved in county politics and State-level legislative office at this time where I felt like I saw the precursors of what we are seeing now being debated. So, I had the honor, actually, as serving as Chairwoman of the Corrections Committee in the State legislature for one term. I actually took our committee to prisons for tours, for visits for conversations with people who worked there, people who were inmates there. We had sometimes legislative hearings in the prisons. We went to the intake facility, one of the maximum-security prisons, one of the medium-security prisons for men, one of the minimum-security prisons for men. We went to the women's prison on a couple of occasions and visited work-release facilities.

At the same time, the legislature was talking about should we allow private prisons to be built and run in Wisconsin? Should we contract with other States to deal with our overflow issues and have them house our Wisconsin prisoners? And the counties were doing the same thing, because some of the jails at the county level were overflowing.

And the debate, the substantive criminal justice debate in our State at the time, and this is the early 1990s, three strikes you are out, elimination of probation parole. We were creating new felonies. We had an A felony and a B felony. We created an AB felony. New crimes were being created. And, there was a lot of debate about the elimination of prison-based vocational programs. Mandatory minimums were a big topic. You could see all of this sort of in the future, and now the future has come and it is not going to be overnight that we figure out what missteps we have had and how we deal with this in a saner way.

I have a couple of questions, and if I do not get to all of them, I am hoping that you will be willing to submit some answers in writing for some things we might not get to.

Quickly, Mr. Kerman, you mentioned that women are the fastest-growing prison population right now. I remember years ago when I was visiting the women's prison in Wisconsin, it seemed that, to me, there were gender differences in how they dealt with certain issues. We have talked a lot about solitary confinement. Is there a gender difference in how these issues are dealt with in women's prisons? For example, I remember being very concerned about overmedication of women in the women's prison to deal with behavioral issues as opposed to placement in solitary confinement. Is this something we should still be looking at?

Ms. KERMAN. We should absolutely be looking at the use of solitary confinement in men's and women's prisons. I echo Udi's testimony that solitary confinement is often used not for the most serious infractions, like an assault, for example, but rather for very low-level infractions. Women are overwhelmingly likely to be incarcerated for a non-violent crime and are very unlikely to use violence while they are incarcerated. Women's facilities do not tend to struggle with violence as one of their guiding issues in terms of security. Solitary confinement is overwhelmingly used as a punitive measure.

Female prisoners are disproportionately likely to suffer from mental illness. Mental illness in men's facilities is a huge problem. It is an even bigger problem in women's facilities.

One of the tragic things about solitary confinement is that mentally ill people have a more difficult time following the rules of a prison, and so what you see is spiraling sanctions which ultimately land them in solitary confinement, a place profoundly inappropriate for anybody with mental illness. A regularly healthy person who is placed in solitary confinement for 10 days, after 10 days will start to significantly deteriorate mentally, emotionally, psychologically, let alone a mentally ill person placed in those circumstances.

Senator BALDWIN. Since I only have a couple of seconds left, let me ask a quick question about reentry and both in-prison and after prison access to vocational and educational programming, and you can certainly feel free to elaborate after the fact in writing, because I know I have such limited time.

But, again, I recall the restriction of any sort of public funds or individualized financial aid assistance to those, particularly in State prison, because that was something I was looking at closely. I believe that has continued over time, and we have additional restrictions once a person is back in the community, they want to seek additional vocational or higher education generally. It makes it impossible for the financial aid.

You have talked already, Mr. Dillard, about people emerging burdened with debt not related to higher education. Tell me a little bit about the options for people to secure post-high school education upon release.

Mr. DILLARD. Well, I am seeing more opportunities opening up for individuals post-release. At one time, there was you check a box and you could get student loans. I am happy to hear that the Pell Grants, there is a pilot going on within the Federal system with Pell Grants. I am so happy to hear that, because it is a fact that individuals prior to 1994—I know many individuals who served time prior to that who came out with Associates' degrees and went on to achieve Bachelors' and Masters'. The fact is, 98 percent of those who get a Bachelor's or a higher degree never return to prison. I mean, that is something that we cannot ignore, and I think that we should support as far as higher education within the system.

Senator BALDWIN. Thanks.

Chairman JOHNSON. Thank you, Senator Baldwin.

We do have a second panel, and we could keep going on. This has been fascinating. Again, I want to thank this panel.

As we talked beforehand, the purpose of every hearing, from my standpoint, in this Committee is to define a problem, lay out the reality so we collectively can admit we have it. I think you have accomplished that goal big time——

Senator BOOKER. Mr. Chairman.

Chairman JOHNSON. Yes.

Senator BOOKER. If I may, this is such a complex issue and we have dealt with such distinct verticals here, from solitary confinement to the lack of reentry programs, it might be good to pick one

of those verticals, given the vastness of this problem, and maybe hold another hearing where we can invite——

Chairman JOHNSON. I was just going to get there. This is just a first in what I think will end up being a series of hearings. We actually have a mission statement for this Committee, a little unusual for a Senate Committee. It is pretty simple: to enhance the economic and national security of America. I think this issue touches both.

One of the things we have tried to do in this Committee, too, is find the areas of agreement. I think what you have seen in this hearing is that there is a great deal of bipartisan agreement that what we are doing just is not working, and not because of lack of effort by our next panel of witnesses, by any stretch of the imagination.

So, Mr. Ofer, I would encourage you and your organization to continue to press for this and work with those of us that want to solve this problem. I think your points on solitary confinement are dead on and we need to fix that.

Mr. Dillard, God bless you for having turned your life around and taking your circumstance and offering that to your fellow man to help other people find redemption and, again, turn their lives around, as well.

Ms. Kerman, I think with your unintended celebrity, I think you have done an excellent job of raising these issues. I have already spoken to my staff. I liked your answer to the question in terms of what are alternatives. And from my standpoint, a rigorous dose of community reparation and those types of programs, community service, I think is probably appropriate for people that have committed crimes. We do need some punishment. We need deterrence. But, hopefully, in those community service, you just might heal and you just might find that a far more effective way at dealing with these issues than locking somebody up and really seeing the result that is simply not working.

So, again, I just want to thank everybody here on this panel. I want to continue to work with you and work with Members of the Committee on a bipartisan basis. This is just a first of what will be, I am sure, a series of, I think, very important hearings. So, thank you very much.

We will call up our next panel.

By the way, if you have time, I would love to have you stay and listen to our next panel, as well. But, you do not have to feel obligated to.

[Pause.]

Mr. Samuels, before you sit down, I am going to ask you to stand right away again, because it is the tradition of this Committee to swear in witnesses, so if you will both rise and raise your right hand.

Do you swear the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. SAMUELS. I do.

Mr. HOROWITZ. I do.

Chairman JOHNSON. Please be seated.

Our first witness in this panel will be Charles E. Samuels, Jr. Mr. Samuels is the Director of the Federal Bureau of Prisons and was appointed on December 21, 2011. He is a career public administrator in the Federal Bureau of Prisons, previously serving as the Assistant Director of the Correctional Programs Division, where he oversaw all inmate management and program functions. Director Samuels was also responsible for enhancing the agency's reentry initiatives. Mr. Samuels.

TESTIMONY OF CHARLES E. SAMUELS, JR.,[1] DIRECTOR, FEDERAL BUREAU OF PRISONS, U.S. DEPARTMENT OF JUSTICE

Mr. SAMUELS. Good morning, Chairman Johnson, Ranking Member Carper, and Members of the Committee. I thank you for your time and focus on the important issue of Federal corrections.

I am pleased to discuss with you today the operations of the Federal Bureau of Prisons. I am also pleased to speak on behalf of our 39,000 dedicated correctional workers across the country who are on the job 24 hours a day, 7 days a week, to support the Bureau's public safety mission.

We protect society by confining offenders in facilities that are safe, humane, cost efficient, and appropriately secure, and we provide offenders programs to help them become law-abiding citizens. Simply stated, we protect society and reduce crime.

But, we face significant challenges. The Bureau does not control the number of offenders who enter our system or the length of their stay. We are required to house all Federal offenders sent to prison while maintaining safety, security, and effective reentry programs.

We house offenders convicted of a variety of offenses, many serving long sentences and many with extensive histories of violence. Drug offenders make up almost half of our population. We house many individuals convicted of weapons, sex, and immigration offenses, to include individuals convicted of international and domestic terrorism. The Bureau is the largest correctional agency in the country, with more than 207,500 offenders in 122 Federal prisons, 13 private prisons, and 178 community-based facilities.

Our agency began to expand rapidly in the 1980s, due largely to the Nation's War on Drugs. From 1980 to the present, we experienced an eightfold increase in the size of our inmate population. Crowding in Federal prisons reached nearly 40 percent systemwide, and even higher at medium-and high-security prisons, where the more violence-prone offenders reside. The tremendous growth in the inmate population outpaced staffing resources and negatively impacted institution safety. Our ability to effectively supervise prisoners and provide inmate programs depends on having sufficient numbers of staff available at our prisons.

Recently population pressures abated slightly. In fiscal year 2014, we saw the first decline in the inmate population in more than 34 years, and we project declines to continue for the next couple of years, but crowding will remain a challenge.

Staff safety, as well as the safety of the public and offenders we house, is my highest priority. Every day, our staff put the safety of the American people above their own to keep communities safe

[1] The prepared statement of Mr. Samuels appears in the Appendix on page 123.

and secure. Some of the saddest days in my 27-year career occurred one week in 2013, when two staff were killed in the line of duty. Correctional Officer Eric Williams was killed on February 25, and the next day, Lieutenant Osvaldo Albarati was murdered. These tragedies are powerful reminders of the real dangers our staff face.

To enhance safety, the Bureau has taken advantage of technologies for contraband detection and perimeter security. We are piloting pepper spray for staff. And, we are requiring the use of protective vests. We have increased our correctional officer staffing at high-security institutions during evenings, weekends, and holidays.

Over the past few years, we have been proactive in addressing concerns regarding the use of restrictive housing. Since 2012, we substantially reduced the number of inmates in our special housing units and special management units. Less than 7 percent of our population is in restrictive housing, and very few inmates are housed without another individual in the cell. Our focus is to ensure inmates are placed in restrictive housing for the right reasons and for the right amount of time.

We created new secure mental health units for inmates who need specialized treatment as well as a high degree of supervision to protect themselves and others. We look forward to making additional reforms in the area of restrictive housing.

We have a saying in the Bureau, that reentry begins on the first day of incarceration. This means that we assess each offender by reviewing issues related to criminal behavior, including substance abuse, education, and mental health. We offer numerous programs to target offender needs and prepare them to transition successfully to their communities. Many of our programs have been proven to reduce recidivism, such as the Residential Drug Abuse Treatment Program, Federal Prison Industries, and vocational educational programs.

We have programs for mentally ill offenders, including those with histories of trauma. We also have programs for offenders with cognitive impairments, sex offense histories, and those with severe personality disorders. We provide programs to help offenders deepen their spiritual faith, and we have programs specifically tailored to the needs of female offenders.

The Bureau relies on a network of community-based facilities, residential reentry centers, or halfway houses, as well as home confinement. Community placements help offenders readapt to the community and secure housing, jobs, medical care, and more.

Chairman Johnson, Ranking Member Carper, and Members of the Committee, this concludes my formal statement. I am proud of the work our staff do to keep Americans safe. Again, I thank you for your time and focus on the important issue of Federal corrections.

Chairman JOHNSON. Thank you, Director Samuels.

Our next witness is Michael Horowitz. Mr. Horowitz is the Inspector General for the Department of Justice. During his tenure as the Inspector General, the Office of Inspector General has identified a number of areas for possible reform within the Bureau of Prisons, including its budget, inmate programming, especially as it relates to the elderly inmate population, increasing safety and se-

curity risk for inmates, and implementation and management of the Compassionate Release Program. Mr. Horowitz.

TESTIMONY OF MICHAEL E. HOROWITZ, INSPECTOR GENERAL,[1] U.S. DEPARTMENT OF JUSTICE

Mr. HOROWITZ. Mr. Chairman, Ranking Member Carper, and Members of the Committee, thank you for inviting me to testify today.

The Justice Department faces two interrelated crises in managing the Federal Prison System. Prison costs continue to rise, while Federal prisons remain significantly overcrowded. In an era of tight budgets, this path is unsustainable.

Since fiscal year 2000, the Bureau of Prisons' budget has nearly doubled. It now accounts for 25 percent of the Department's discretionary budget. The BOP has more employees than any other DOJ component and the second-largest budget at the DOJ, trailing only the Federal Bureau of Investigation (FBI).

One of the primary drivers of these cost increases, in addition to the increased prison population, is health care, which cost the BOP over $1 billion in 2014—a 61 percent increase since 2006. This rapid increase can partly be attributed to the aging of the Federal inmate population. In a recent OIG report, we found the number of inmates age 50 and older increased by 25 percent from 2009 to 2013. By contrast, the population of inmates under age 50 actually decreased by one percent, including a decrease of 29 percent for inmates under age 30. This demographic shift is notable because aging inmates cost more to incarcerate.

Our report also found that BOP institutions lack appropriate staffing levels to address the needs of the aging inmate population. For example, while social workers are uniquely qualified to assist aging inmates, BOP employs only 36 social workers nationwide.

We further found that the physical infrastructure of BOP institutions cannot adequately house aging inmates and that the BOP has not conducted a nationwide review of the accessibility of its institutions since 1996. Additionally, we found the BOP does not provide programming opportunities specifically addressing the needs of aging inmates.

We also concluded that based on their lower rates of recidivism, certain aging inmates could be viable candidates for early release, a program that Congress has authorized. However, we found that in just over one year following the Attorney General's announcement of an Elderly Compassionate Release Program, the Department and the BOP only released two elderly inmates pursuant to it.

These findings are similar to what we reported in our 2013 review of the BOP's Compassionate Release Program for all inmates. We found that BOP's program had been poorly managed and was implemented inconsistently. Following our review, the BOP expanded its Compassionate Release Program and has modestly increased the number of inmates released under it.

In our 2011 review of the Department's International Prisoner Transfer Program, another program Congress has authorized and

[1] The prepared statement of Mr. Horowitz appears in the Appendix on page 132.

which permits foreign national inmates to serve the remainder of their sentences in their home countries, the OIG found that the Department rejected 97 percent of transfer requests and transferred less than one percent of inmates to their home countries to complete their sentences. We concluded the Department needed to make a number of improvements to the program, including ensuring it accurately determined whether inmates are eligible for the program, and we are currently completing a followup review to that report.

Another area where the BOP costs have increased substantially is for private contract prisons, which are largely used to house inmates, many of the BOP's 40,000 non-U.S. national inmates. The BOP's budget for contract facilities is over $1 billion, and the proportion of Federal inmates housed in BOP contract prisons has increased from 2 percent in 1980 to about 20 percent in 2013. Indeed, two of the three largest DOJ contractors are private prison providers.

In addition to addressing rising costs, the Department must also continue to address efforts to ensure the safety and security of staff and inmates. Prison overcrowding represents the most significant threat to the safety and security of BOP staff and inmates with Federal prisons at 30 percent over rated capacity. Indeed, in every one of its agency financial reports since 2006, the Department has identified prison overcrowding as a programmatic material weakness, yet the problem remains unresolved today.

In addition to overcrowding, the unlawful introduction of contraband presents a serious threat to safety and security. The unauthorized use of cell phones has proven to be a particularly significant risk, and the GAO has reported that the number of cell phones confiscated by the BOP more than doubled from 2008 to 2010.

Additionally, sexual abuse in prison remains a serious safety and security issue. The OIG has continued its longstanding efforts to investigate sexual abuse by institution staff at Federal prisons and detention facilities. In addition, we recently reported on the Department's efforts to implement and comply with the Prison Rape Elimination Act.

Finally, a significant management challenge for the Department has been measuring the success of its prison programs. An essential building block to achieving performance-based management is having reliable data, an issue that has proven to be a challenge for both the Department and the BOP. A comprehensive approach to the collection and analysis of data on how well BOP programs are reducing incarceration rates, deterring crime, and improving public safety will help the Department focus its resources and make strategic investments.

Thank you for the Committee's continued support for our work, and I would be happy to answer any questions the Committee may have.

Chairman JOHNSON. Thank you, Inspector General Horowitz.

Director Samuels, let me start with you. First of all, I do not envy your task, and I really do want to thank you for your service, which has been longstanding. So, let me start there.

According to your bio that I have in front of me, you began as a correctional officer in March 1988. Because we have all quoted statistics here that in 1980, the prison population in the prison system was 25,000. Now, it is over 200,000. Can you just give us your perspective in terms of what all has happened, what you have witnessed over your career.

Mr. SAMUELS. Thank you, Senator. From my perspective, having joined the agency as a correctional officer in 1988, and around that time, the Bureau's population was a little more than 60,000, I think historically, when you look at the Bureau of Prisons and you go back to 1940 and from 1940 to 1980, the Bureau's population pretty much remained flat for many years, in excess of 20,000.

So, in 1980, which is the primary target for this discussion, we as an agency, we had approximately 24,000 inmates in the Federal system. We had less than 9,000 employees, 41 institutions, and we were able to operate the entire Bureau of Prisons for $330 million.

So, when you look at the increase from 1980 to 2013, we were at more than 800 percent population growth and our staffing did not keep pace with that growth. And, with our mission, where we are tasked with anyone and everyone who is convicted and turned over to the Department of Justice and placed in the custody of the Bureau of Prisons. We have a job to do, a significant job, and it takes staff to do the work that is required.

Chairman JOHNSON. Let me ask you, from your perspective—again, you have been there—what drove that dramatic increase in prison population?

Mr. SAMUELS. Well, the war on drugs in the early 1980s was a significant driver on the growth of the population, and as a result, we were having more offenders come into the system. And, we have a longstanding practice within the Bureau of Prisons, and this goes all the way back to the 1930s, that our reentry efforts are always in play, and that is to ensure that we are providing rehabilitation. But, the challenges associated with what we have to do is we are trying to protect the inmates as well as the staff who are in our facilities, but the driver has been the war on drugs.

Chairman JOHNSON. Has there been any legitimate increase due to a crackdown on violent crime, that we just really, again, appropriately, cracked down on that, or is that really, like, we did not become a more criminal society. We were always arresting those people, convicting them and putting them in jail. Are we putting them in there longer? I want you to address that potential aspect of this, as well.

Mr. SAMUELS. In regards to violent offenses, there is a mixture of individuals in Federal prisons, as you all aware, non-violent criminals and those with violence. And within our population, I think it is very safe to say that we have very violent offenders in our population, to include a significant amount of gang members. In the Federal system, we have more than 21,000 security threat group members who pose a significant threat to the public, inmates, and staff.

Chairman JOHNSON. So, again, if we are talking about gang violence, would that also be, again, generally driven by drugs?

Mr. SAMUELS. It can be driven by drugs if the gangs and those who are associated with that activity, if it is part of the structure within the gangs for monetary gain.

Chairman JOHNSON. OK. Let me, again, stick with Director Samuels here and just ask some of the questions in terms of Inspector General's testimony. Why have we not been more proactive in terms of some of these early release programs that have been authorized? I mean, is there a risk aversion there, because, I mean, who wants to be responsible for releasing somebody into the public that is going to commit another violent crime. Can you just kind of speak to why we have not taken advantage of those programs a little bit more robustly.

Mr. SAMUELS. Yes, Senator. As Director of the agency, my authority is very limited when you look at taking advantage of the various programs that are being referenced. With compassionate release, and I will start there, we as an agency did a thorough review and we determined a couple of years ago when we were looking at the number of individuals who would meet the criteria just for release based on terminal illness, we discovered that there were a little more than 200 inmates in the Bureau of Prisons, and once they were identified, you have to go further in making sure that for those individuals who are even being considered have the necessary resources if they are, in fact, given the opportunity through a motion and are released under that program. So, 200 inmates agency-wide with a population at that time that was at 220,000 is a very small number.

Chairman JOHNSON. So, again, we are talking about compassionate release. We are talking about early release. We are talking about release to foreign nationals. And, under all three of those types of programs, are you saying the law or the regulation is just written too restrictively and just does not give you the latitude to utilize those programs more fully? Then, Inspector General, I will be asking you the same question.

Mr. SAMUELS. Well, we have expanded, as you know. With the Compassionate Release Program, we moved from medical to nonmedical. And even when we look at those cases, and many are being referred, when you are looking at the criteria as well as being responsible for public safety for any of those individuals having the propensity to continue more criminal activity, we have to take that into account.

With the Treaty Transfer Program, and I do share the concerns that the Inspector General has raised, we identified through the audit a problem there and we have since that time provided a number of training opportunities for our staff as well as educating the inmate population on their rights under consideration for the program, and we have seen an increase. However, when we submit the applications for consideration, there is another process that takes place with the Department, working with the various countries who have agreements under the Treaty Transfer Program, to make determinations on when those individuals are removed.

Chairman JOHNSON. And, of course, they would probably rather have the United States bear the cost of keeping those people in prison themselves.

Inspector General Horowitz, can you just kind of, again, speak to why, from your perspective, why some of these programs have not been utilized more fully.

Mr. HOROWITZ. I think there are a couple of reasons, and I would agree with Director Samuels, in many of them, it is not because of the BOP decisionmaking, it is elsewhere in the Department or the way the programs have been structured and the restrictions that have been placed on their use. For example, elderly release, age 65 and over is where the threshold was set. The Attorney General announced that with great fanfare in August 2013 the increase in that use of that program, yet there are only two, we find, inmates being released under that program a year-plus later.

Why is that? Well, in part, it is because of the 4,000-plus inmates who are over age 65 in the Federal Prison System, they have to meet certain very strict criteria, and both with regard to meeting the criteria, and as we found in that program and Treaty Transfer, the discretionary calls that have to be made. And, perhaps it is risk aversion. Perhaps it is a feeling that someone got a jail sentence, they should complete their sentence.

Chairman JOHNSON. Let me ask, appropriately strict criteria?

Mr. HOROWITZ. We had concerns with the elderly provisions, for example, requiring people to serve a long period of time and to demonstrate a lengthy period of service of a sentence. What that meant was for inmates who were the least dangerous, presumably had low sentences, they could not get released because they had not served a long period of time. That seemed odd to us.

Chairman JOHNSON. So, that is something we should really take a look at.

Mr. HOROWITZ. Right.

Chairman JOHNSON. OK. Thank you. I do not want to go too much over time. Senator Ayotte.

Senator AYOTTE. Thank you, Chairman.

Director Samuels, I actually want to ask you about a particular prison in my State that is important, especially. It is in Coos County. It is FCI Berlin. And, I wanted to ask about what the status is of staffing at that facility. Warden Tatum has indicated that the facility was staffed at about 290 and that there were about 1,200 incarcerated individuals there. Can you give me an update on levels and also what the ultimate goal is for capacity there and staffing?

Mr. SAMUELS. Yes. Thank you, Senator Right now, with the plan for continued activation of the facility, we are working very closely with the warden and staff there to ensure that our recruitment efforts remain on target, and we are also ensuring that as we build a population, that we are making sure that the inmate-to-staff ratio is where it needs to be so we do not have more inmates in the facility until we are very comfortable with the number of staff that we have at the facility. And, this is continuing to progress.

I know there was a concern at one period of time where the applicant pool was not necessarily where we would like it, but with the recruitment efforts, we are starting to see that we have a very good pool for hiring individuals to work at the facility.

Senator AYOTTE. So, one followup I wanted on the applicant pool. This is an area of our State where people are always looking for

more jobs, and so to get people from the area that have strong backgrounds, one of the issues that has been a challenge is the 37-year-old age restriction. And, has the Bureau of Prisons actually re-examined this? I know I had previously written the Bureau of Prisons on this issue, but it is important that my constituents have an opportunity that live in the area to work there.

Mr. SAMUELS. Yes. Thank you again, Senator. Our focus is to make sure that we are aggressively hiring from the local community as well as looking at veterans, and we do have the ability for individuals who are applying who have served to grant waivers, and we are in the process of doing that.

Senator AYOTTE. Well, that is very good to know, and I appreciate your prioritizing hiring people from the community. I know they are anxious and would like opportunities to work there, as well as our veterans, so I really appreciate your doing that, and I think you will find that there are a really dedicated group of people in the area, so thank you for that.

I wanted to followup on the prior panel. There was quite a bit of discussion and criticism, actually, on the reentry program piece from the Bureau of Prisons and the commitment toward where we are when someone has finished their time and putting forward successful programs and path to success, which I am interested, because with our recidivism rate, it costs us a lot financially and also to the individual, to the quality of life that the person has an opportunity to set a new start, if there is not a good system in place for success. So, I wanted to get your comments on what you heard in the prior panel on this issue.

Mr. SAMUELS. Well, thank you again, Senator. I, again, will say to everyone that reentry is one of the most important parts of our mission, along with safety and security of our facilities. And, the expectation Bureau-wide is for all staff, all the men and women who work in the Bureau of Prisons, to have an active role in our reentry efforts.

On any given day in the Bureau of Prisons we have more than 52,000 inmates who are participating in education. We have more than 12,000 individuals actively participating in our Federal Prison Industries Program, which is our largest recidivism reducing program in the Bureau of Prisons. Those who participate are 24 percent less likely to be involved in coming back to prison. And for vocational training, more than 10,000 inmates are participating. And, for those individuals who participate compared to those who are not, the recidivism reduction is 33 percent. And, you all are very familiar with our Residential Drug Abuse Program, and we also have our non-residential programs, as well.

And, we are very adamant in ensuring that these programs are provided to all inmates within our population, to have them involved, for a number of reasons. It is safer to manage prisons when inmates are actively involved in programs, and we are definitely trying to do our part to ensure that for recidivism reduction in this Nation, we are taking the lead.

For the number of individuals who come into the Bureau of Prisons, despite all the challenges and the figures that you are hearing, the men and women in the Bureau of Prisons do an amazing job. When you look at the specific numbers relative to recidivism for

the Federal system, when individuals leave, we have 80 percent who do not return to the Federal system, 80 percent. We have always known that the overall recidivism for the Federal system is 40 percent; 20 percent return to the Bureau and 20 percent go into the State systems.

And, I would just also add that there is a study that has been done, that for the State correctional systems, and it is 30-plus States, when you look at the overall average for recidivism, it is 67 percent.

So, I would still say that we have a lot of work to do. I mean, the goal is to have a hundred percent individuals never returning. But, as I have already stated for the record, the amount of growth that has occurred over that time period, we are very limited with our staffing, but it does not remove us from the commitment to our mission. If our staffing had kept pace with the growth over the years, I do believe that I would be sitting here reporting that the 80 percent would have been much higher.

Senator AYOTTE. So, I want to give the Inspector General an opportunity to comment on how you think we are doing on reentry and any work that you have done on that.

Mr. HOROWITZ. We are actually, Senator, in the middle of a review of the reentry programs and the use of reentry, and we are in the middle of field work going to the institutions to look at those programs, look at the education programs, because of the concerns we had heard. So, I cannot give you a report yet out on it. I think we will have something later in the year for you to look at. But, it is a very significant concern.

I will just pick up on what Director Samuels said about staffing. That is a significant issue. That is a significant safety issue, security issue, reentry, because what you see is, first of all, by most accounts, the Federal staffing ratio of inmate to staff is worse than many of the State systems, what they have, and that has been exacerbated over time as the prison population has grown.

There is a cascading effect of that. The Director and the staff have to pull people out of other programs to do correctional work, that they cannot be doing some of the other programs we are all talking about. And, so, that, I think, is lost sometimes and something certainly we are looking at right now is that cascading effect. If you understaff the prisons, the Director has to, first and foremost, make sure the prisons are safe.

Senator AYOTTE. I hope when you issue this report that you will also give us guidance on what the models are. What are the best models for reentry? If we are going to invest more resources in this to create a better path for success for people so that they do not—so we can reduce the recidivism rate, I think your recommendations on the piece of what is working best, where we should invest resources, would be really helpful. Thank you.

Chairman JOHNSON. Thank you, Senator Ayotte.

While we are quick on this subject, I was handed a note that apparently only 10,000 out of the 210,000 population are participating in that reentry program. Can you just quickly describe why, both of you? I mean, it sounds like a very successful program. Why are not more people engaged in it? Because I think, in total, we re-

lease about 45,000, I think from the briefing, about 45,000 prisoners every year.

Mr. SAMUELS. Yes. If the 10,000 is in reference to the vocational training programs, we only have a limited number of opportunities that we can provide based on the number of inmates in our system, and that goes back to the crowding. With increased crowding, you have waiting lists in the Federal Prison System, no different than any other system. And, the goal is to try to push as many of these inmates through, and as we complete classes, we bring more individuals in for participation.

Chairman JOHNSON. It is what I expected as an answer. I wanted to get that on the record. Inspector General.

Mr. HOROWITZ. Yes. I think that is generally what we are finding, is there are limited resources. With limited resources mean limited number of classes.

Chairman JOHNSON. OK. Senator Booker.

Senator BOOKER. Thank you very much.

Director Samuels, I really appreciate you being here, but more importantly—or, excuse me, also, I appreciate the fact that you visited me in my office and take a lot of the issues and concerns. You represent the administration as a whole, as the President has. You have done some extraordinary steps around overall criminal justice reform and I am grateful that you are here today. It means a lot.

I also want to just echo, you are a part of the law enforcement community and your officers put themselves at risk every single day to protect this Nation, and I am grateful for the sacrifices that your officers have made. I am glad you mentioned, as we see on the Federal and State level, we do have officers not just losing their lives in the line of duty, but also officers who are injured pretty severely, often, in the line of duty, as well, and we as Americans should recognize that and that sacrifice and commitment.

I want to talk to you really quick and focus my questions on solitary confinement and begin with solitary confinement of juveniles. There is a bipartisan dialogue going on right now about putting real limitations on the use of solitary confinement. Now, we know that this is an issue that faces thousands and thousands of children across America, but when it comes to the Federal system, this is actually a very small amount. It would probably surprise a lot of people that we are just talking about kids in the matter of dozens.

So, this is in two populations, really. It is children that are tried as adults that are housed in adult facilities, and then the contracts, if I am correct, that you do with State facilities for juveniles, as well.

Do you think it is feasible that, as is being discussed in Congress right now, and I have been in a lot of the discussions in the Senate, that we just eliminate solitary confinement, or severely limit it for children, being very specific, for instance, by placing a 3-hour time limit on juvenile solitary confinement and banning it really, for punitive or administrative purposes? Is that something that you would see as feasible and something that you would be supportive of?

Mr. SAMUELS. Thank you, Senator. I believe that for this issue, and in the Federal system, as you have already mentioned, we con-

tract out this service. We do not have any juveniles in an adult correctional facility. And, the expectation that we have with the service providers for us is that at any time they are considering placing a juvenile in restrictive housing, they are required to notify us immediately. And, even if that placement were to take place, there is a requirement, also, that they have to monitor those individuals every 15 minutes.

So, in regards to your question with looking at the restrictions that could be considered, I would say that for our purposes regarding this, that it is definitely something that should be considered and looked at as a practice.

Senator BOOKER. And, so, if Congress were to act on legislation putting those severe limitations on the practice, with limitations of just a matter of hours, that you would agree that is something that is feasible?

Mr. SAMUELS. Yes.

Senator BOOKER. I really appreciate that, and that is actually encouraging to the discussions going on right now. And, frankly, it is a small population, but doing it on the Federal level would send a signal to really resonate throughout our country and, frankly, is already being done in some jurisdictions.

Pivoting to adult solitary confinement, if I may, this practice, as you know, has been harshly criticized. If you were listening to the other panel, there is a lot of data from the medical community specifically, and also civil rights community and human rights communities. A May 2013 report, which I know you are also familiar with, from the GAO found that the Federal Bureau of Prisons did not know whether its use of solitary confinement had any impact on prison safety, did not know necessarily how it affected the individuals who endure the practice, or how much, frankly, it is costing taxpayers in general.

Just this year, a recent internal audit by the Bureau of Prisons noted inadequacies in mental health care and reentry preparedness for people in solitary confinement. As was said in the previous panel, many people max out in solitary and then find themselves going right into the general—I should not say general population, but going back into the public.

In many ways, I think these reports are kind of a wake-up call of the seriousness of this issue, and so I first wanted to say, do you know right now how many people are in solitary confinement beyond 12 months, or, say, 24 months, or 36 months? Do you have that data?

Mr. SAMUELS. Senator, I can provide that data for you.

Senator BOOKER. OK. So, we do track those folks who are staying in, often for years in solitary?

Mr. SAMUELS. Yes. And, Senator Booker, First, I would like just to state for the Bureau of Prisons, we do not practice solitary confinement. In my oral testimony and my written testimony, our practice has always been to ensure that when individuals are placed in special housing, we place them in a cell with another individual, to the greatest extent practicable and our staff make periodic rounds to check on the individuals. And, I also believe that it is important——

Senator BOOKER. And, I am sorry, I just really need to be clear on that. Your testimony to me right now is that the BOP does not practice solitary confinement of individuals singularly in a confined area.

Mr. SAMUELS. You are correct. We only place an individual in a cell alone in special housing if we have good evidence to believe that the individual could cause harm to another individual and/or if we have our medical or mental health staff give an evaluation that it would be a benefit to the individual to be placed in a cell alone. We do not under any circumstances, nor have we ever had a practice of placing individuals in a cell alone.

Senator BOOKER. OK. That is astonishing to me, and I would love to explore that further, because all the evidence that I have is that it is a practice at the Federal level. So, you are telling me that there are not people that are being held for many months alone in solitary confinement, is that correct?

Mr. SAMUELS. When you look at the Bureau of Prisons agency-wide, that is not a practice. We have three forms. We have our Special Housing Units (SHU), which are the majority of individuals throughout the country placed in restrictive housing. We also have a program we call——

Senator BOOKER. So in the SHU, which they are not individually held.

Mr. SAMUELS. No, sir. And, on average, agency-wide, the average amount of time that individuals are spending, on average—again, total—is a little more than 65 days.

Senator BOOKER. And, so, the SHU is not solitary confinement. There is not an individual in a cell alone.

Mr. SAMUELS. That is not the practice in the Bureau of Prisons. It never has been the practice.

Senator BOOKER. I hope there will be another round.

Chairman JOHNSON. Senator McCaskill.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. Thank you.

Mr. Samuels, what percentage of the inmates that you are responsible for have been convicted of a violent crime in the Federal courts?

Mr. SAMUELS. Convicted of a Federal crime in——

Senator MCCASKILL. Of a violent crime.

Mr. SAMUELS. A violent crime——

[Pause.]

Approximately 5 percent.

Senator MCCASKILL. OK. So, we have 5 percent violent, 95 percent non-violent. I think the thing that people need to understand, which I am not sure people do, is that 5 percent that committed violent crimes, you do not even have primary jurisdiction, probably, on most of those crimes in the Federal system.

I do not think people realize that the Federal law enforcement system was not designed or ever intended to address what most people think of as crime in this country. It was originally intended to be just for those kinds of crimes that, because of the interstate nature of them, they needed to be handled by the Federal Government. That would be crimes involving the drugs going from country

to country, then eventually we started nibbling away at that and we started doing bank robbers, and then we started doing interstate kidnappings or interstate—and I know this, because we handled a whole lot of murder cases when I was the prosecutor in Kansas City, and nothing was more irritating to me.

We had the best homicide detectives, I believe, in the Midwest in the Kansas City Police Department. We had experienced prosecutors who handled murders every day, and invariably when there was a really high-profile murder case, all of a sudden, the FBI would start sniffing around and try to grab that case and find some kind of interstate part of the crime so that they would take the case, as opposed to us, who handled murder cases all the time and, frankly, in my opinion, biased as it may be, had much more expertise.

I say all this because you are spending $7 billion, and 95 percent of that money is being spent on non-violent offenders. That is an astounding number on non-violent offenders, an astounding number. So, my question is, how many times have you been brought into the policy questions of who is being prosecuted in the Federal system and why, because you guys do not get 911 calls. Nobody calls the FBI with a 911 call. I used to make the point to my friends who were FBI agents, hey, they did not call you. They called us. So, the Federal system gets to pick what this is not required. They get to decide what they want to prosecute, unlike State prosecutors, who have to make a decision on every single case.

So, are you ever called in to the policy discussions about the growth of Federal law enforcement and this massive amount of prosecution that is going on and the growth in the prison system, because these decisions are being dictated by the Department of Justice in how many cases they are actually filing. Are you ever consulted on any of those decisions?

Mr. SAMUELS. Senator McCaskill, I would offer that the Bureau of Prisons, when the discussions are taking place, we are brought into the discussion when needed by the Department. But, I also would share, which I am sure you are aware, that for any policy decisions relative to who is being prosecuted, that remains with my colleagues in the Department who will be more than anyone else regarding this issue capable of responding to that.

Senator MCCASKILL. So, let us get at the stuff that you can do. Let us talk about the Elderly Offender Program. The way you entered into some of the contracts, you did not specify out what the costs of home detention was versus your detention, correct? In other words, what you did is you did not—you were not able in the pilot—is this not correct, Mr. Horowitz, that they were not able to discern what a release into home detention was costing versus incarceration in one of the prison facilities?

Mr. HOROWITZ. That is correct. The GAO found that in their review of the pilot.

Senator MCCASKILL. Correct. So, you are not in a position that you can even analyze what the costs of a home detention program versus prison would be, correct?

Mr. SAMUELS. Well, since that time, once the finding was made, we have been working to isolate those costs.

Senator MCCASKILL. OK. And how are you doing that?

Mr. SAMUELS. We have put together procedures within our Administration Division, the staff who are responsible for the contracting oversight, to monitor——

Senator MCCASKILL. OK. There were 784 of 855 applicants for the Elderly Release Program that were denied. Seven-hundred-eighty-four out of 855 were denied. Can you explain why they were denied, that massive amount? And, these are all elderly. These are not young people.

Mr. SAMUELS. I can take your concern back, but from the knowledge that I have regarding this, many of those individuals, it was dealing with the issue of being eligible based on the criteria that was put in place.

Senator MCCASKILL. Who sets the criteria?

Mr. SAMUELS. The criteria for the pilot?

Senator MCCASKILL. Yes. Who set it?

Mr. SAMUELS. That was established by Congress.

Senator MCCASKILL. So, we are the ones that said that if it is a low-level offender that got an 18-month sentence, they could not go to a home program unless they had served 18 months?

Mr. SAMUELS. Well, the Department was involved with the final determination on what the criteria would be. But, that was something that was done through conversation between Department and Members of Congress.

Senator MCCASKILL. Well, I would love to know who was in on that conversation, if you would provide that to the Committee. And, I would like to see the criteria, because if you have 95 percent of your population is non-violent, and we know that the recidivism rate for people over the age of 55 is somewhere between 2 and 3 percent—by the way, that is a recidivism rate that any reentry program or any drug court program or any State court system would die for. That is an amazingly low recidivism rate. I do not understand how we are turning down 784 of 855 applicants for a pilot program.

It seems to me that the institution is being stubbornly stuck in the status quo, stubbornly stuck in the status quo. And, I am so excited that we have critical mass around here. As somebody who, against a lot of political headwind, started one of the first drug courts in the country as an elected prosecutor, I convinced the people in my community and the police department that a drug court was a taxpayer factory, because the people who went into drug court were either on welfare or they were stealing. They were not paying taxes. And, all the non-violent crimes they were committing was because they were drug addicted. And that drug court movement—ours began in 1993. It spread all over the country and the world because it worked so well.

Do you know what I had to do? I begged the Federal Government to participate in our drug court program. Did not want to hear a word about it. I could not even get them to send us their mules, the girlfriend mules. They would not even send us those for—I mean, I was saying, let me take your cases, your low-level drug offender cases. Would not hear of it in the 1990s.

And, I am just not sure that we have moved that much in the Department of Justice, and I hope we can all work together.

I know my time is up. I have some questions for the record about Reeves County, that contract. Why in the world are we using a county as a go-between on a prison contract? And, also, these criminal alien prisons that we have, that half of them are immigration offenses, and I am curious about the $1 billion price tag on that. So, I will get you those questions for the record.

Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator McCaskill.

I do not want to put words in your mouth, but I think we are finding another area of agreement here, the Federal Government getting involved in something that, from my standpoint, is better left to the States and local governments, because they are just better at it. They are closer to it. They use a little more common sense approach.

I have frequently said, Washington, DC, the Federal Government definition of it, is the law of unintended consequences, and I think we are seeing a lot of that here today—again, not because of good intentions, and not because of people working hard and sacrificing, but I think that is just basically true.

I want to be respectful of the witnesses' times. I know Senator Booker had another question here. I am happy to do that. But, let us not abuse the time.

Senator BOOKER. No, I am grateful, and I think we are having semantic problems, Mr. Director. So, the DOJ defines solitary confinement as the terms isolation or solitary confinement mean the state of being confined to one cell for approximately 22 hours per day or more alone or with other prisoners. The health consequences for solitary confinement, period, are well learned, and this is a common practice in the Federal system. But, it is not just with other prisoners. In the SHU, often, in the Special Management Units (SMUs), it is common, as well, and the average stay in that is 277 days. And in the Administrative Maximum Prisons (ADX), the average solitary confinement is 1,376 days.

So, this is a real problem and it does exist, and forgive me if my semantics were wrong, but I think I have more precision now.

Mr. SAMUELS. No, sir, and I did want to clarify, and I appreciate you bringing the subject back before, that at the ADX, and when I testified in 2012, at that time, we had a little more than 400 inmates at the ADX in Florence, Colorado, which makes up less than one-third of one percent of our entire population. And for that population, those individuals are placed in a single cell, and the majority of that population, also, when you look at their offenses, 46 percent have been involved in some homicide at some point in their lives.

Senator BOOKER. Again, but the reality is, I do not care if it is a homicide, non-violent drug crime, what are we getting for taxpayers for putting them in an environment in which human rights folks consider that torture, and we have a medical community that has a consensus about torture, or the harmful, excuse me, traumatizing effect of that.

And, so, what I am just saying is—and again, the crime, violent, non-violent, I am just saying that this is a Nation that does not endorse torture or believe that we should traumatize folks, and if there is no data that supports us actually having something posi-

tive coming out of this, it has to be a practice that we should end or severely limit. And, that is what I am just saying. I am trying to do a data-driven approach relying on experts and science.

And, just because I want to stay on the good side of the Chairman, I am going to shift off of this issue, because I have enough questions to last another 10 minutes and I do not think I am going to get that. I will tread upon——

Chairman JOHNSON. No, you are not.

Senator BOOKER [continuing]. His indulgences as long as possible.

So, just real quick, a real quick point. The Bureau of Prisons houses 14,500 women. As we talked about in the last panel, overwhelmingly, these women have children, children of a minor age. The trauma visited upon children, and those often the primary caregivers, there is a lot of issues, and so I just want to get to this one reality, that in Danbury, Connecticut, which is a mere 70 miles away from the New York City area—I like to call it the Greater Newark area—which is an easy reach for visitors from the Northeast, that is going to be changed and those women are now going to be moved, slated right now to move to Alabama, to a facility there which is about 1,000 miles away from the Greater Newark area, a drive that takes more than 16 hours.

And, so, why was the 500-mile policy enacted, which is a good thing, which is something I endorse due to the cost of travel. Would you commit to revising the rule to have a presumption of 75 miles, if possible? Do you understand?

Mr. SAMUELS. Yes.

Senator BOOKER. Is there a chance to revise that rule?

Mr. SAMUELS. Senator, when we looked at the mission change for Danbury, we made every effort to try to make sure through fairness for those offenders who not only were living in the New England States as far as their residence, but we had many offenders there who were from California, who were from Texas, and what we tried to do is make sure that with the realignment, that we move those individuals who were not from that part of the country so they could be closer to their families——

Senator BOOKER. So, we are taking care of the Californians, but there are a lot of people from the Northeast, a lot of women with small children who are having those connections effectively severed, and that is very problematic.

I am just going to shift for now, if I can, and I apologize. I just want to quickly just look at the private prison issue real quick and shift to Mr. Horowitz, if I can. I do not want you to feel like I was ignoring you in this hearing.

Are you concerned about the growth of private prisons that contract with the BOP, and what have you—that these prisons are accountable to the public, because we have real issues with these contracts, with a total costing us about $5.1 billion for taxpayers—and these are for-profit companies that, according to The Sentencing Project, 33,830 BOP prisoners were held in private facilities in 2010, and by the end of 2011, that number has grown significantly, to over 38,000. And, I am concerned about oversight.

And then there is a lack of reporting, information that is just—I can get a lot of information easily from the prisons that are being

run by the Director, but there is this unbelievable, really offensive to me, lack of information and data about our private prisons and what is going on there.

And, so I want a last part of that question, and then I am done, just will wait for the answer, is the abuse reports of immigrant detainees. Now, I understand these folks are non-American citizens, but they are human beings, and the report of abuse at our private prisons are troubling. Thousands of men live in 200-foot Kevlar tents in some of these facilities that each house about 200 men. The facilities are described as filthy, insect-infested, horrible smells, constantly overflowing toilets. This is an affront for this Nation, for what we stand for.

For me, it is an affront, and I am just wondering, what steps are you taking to hold these prisons accountable, to lift the veil that protects the American public from knowing what is being done with billions of these taxpayer dollars.

Mr. HOROWITZ. We are taking several steps, Senator. We issued the report on the Reeves County facility earlier this year, focusing on that particular private prison. Some of the issues we found there were of concern, much like you have just mentioned. Staffing levels, for example, as you know, Reeves County had a riot several years ago. One of the issues was supposedly staffing levels. We had concerns about staffing. We had concerns about the billing and the contracting practices. We made a variety of recommendations on that, as to that facility.

We are currently looking at the Adams County facility in Mississippi, Leavenworth in Kansas, private prisons, as well as a broader review looking at the BOP's monitoring of overall contract prisons, because that is an issue of concern, as the spending has increased and the number of prisoners has gone from 2 percent to 20 percent of the overall Federal prison population. That is an issue of concern. So, we are doing those reviews.

Several of the contract prisons, like Reeves, like Adams, like the Willacy facility, the Northeast Correctional Center of Ohio, have all had riots in the last several years. Those are contract prisons being used by the BOP and it has raised the concerns that we are looking at closely.

Senator BOOKER. And, why not better reporting? Why cannot I or the public get the same kind of transparency in reporting that we would get with the prisons that are directly under the purview of Director Samuels?

Mr. HOROWITZ. And that is something we are looking at, as well, because it is an issue both—we are looking at what kind of reporting the BOP is getting from these institutions, in addition, what kind of information is flowing and is accessible, and why is not more being done to be transparent about that.

Chairman JOHNSON. Thank you, Senator Booker, and you can have my personal assurances that I will continue to work with you personally. We will continue to use this Committee to highlight these issues and work toward solutions. I think this is an important issue.

I want to thank, again, both of you gentlemen for your service to this Nation, for your thoughtful testimony. I want to thank all the witnesses. I think we really did accomplish my primary goal of

every hearing, which again, is to lay out the reality. Let us admit we have a problem. We have one here. I am not saying we have the real ready solutions, but we certainly have taken that first step and we have admitted we have the problem.

So, with that, the hearing record will remain open for 5 days, until August 19 at 5 p.m. for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 12:37 p.m., the Committee was adjourned.]

APPENDIX

Opening Statement of Chairman Ron Johnson
"Oversight of the Bureau of Prisons:
First-Hand Accounts of Challenges Facing the Federal Prison System"
August 4, 2015

As submitted for the record:

Good morning and welcome.

I want to thank all of our witnesses for joining us this morning for this important hearing on the Federal Bureau of Prisons. I especially want to thank Jerome Dillard for traveling from Madison, Wisconsin to testify this morning.

In 1980, the Federal Bureau of Prisons spent $330 million to incarcerate 25,000 people. Today, the federal government incarcerates close to 210,000 people at a cost of $6.912 billion.

Incarceration for drug offenses is often cited as the primary cause for the dramatic rise in incarceration rates over the last 35 years. The data bears out that 50 percent of all current federal inmates have been incarcerated for drug offenses. While states and localities have experienced a great deal of success experimenting with drug courts and other alternatives to prison, the federal government has remained relatively rigid, with long prison sentences remaining the standard for many offenses.

Lengthy sentences for drug crimes have resulted in an aging federal inmate population. Nearly half of all federal prisoners are over the age of 40, and nearly half have sentences greater than ten years. This results in higher health care costs. Last year the Bureau spent $1 billion just treating the medical needs of federal inmates. Today, we will hear from the Department of Justice Inspector General about how the Bureau plans to handle our aging inmate population.

Last month I had the privilege of meeting with a small group of formerly incarcerated men in Madison, Wisconsin. What I learned was that these men want to turn their lives around and stay out of prison. They are willing to work hard and become productive members of society. There are many challenges that people face leaving the prison system, and my hope is to raise public awareness about these challenges.

Today, we are going to hear from Piper Kerman, author of the memoir *Orange is the New Black: My Year in a Women's Prison*, about her experience with the federal prison system. Ms. Kerman's first-hand account of her experience with the federal prisons will provide the committee with insight into how we can improve the system.

We're also going to hear testimony from Jerome Dillard, who spends every day working with men and women coming out of prison and has a deep understanding of the enormous challenges that they face. Mr. Dillard can also speak to personal responsibility. He spent time in a federal prison and can give us his first-hand account of the challenges he faced – and still faces today.

As the chief oversight committee of the United States Senate, this hearing represents an important first step in describing the complex problems of incarceration in the United States.

I hope by accurately defining this problem we can begin to take steps to solve it.

Opening Statement of Ranking Member Thomas R. Carper
"Oversight of the Bureau of Prisons: First-Hand Accounts of Challenges Facing the Federal Prison System"
August 4, 2015

As prepared for delivery:

Thank you, Mr. Chairman. I want to thank Senator Booker for encouraging us to hold this important hearing. I also want to thank all of you for coming as witnesses.

My day job before I came to the U.S Senate was being Governor of Delaware for eight years, where I was very actively involved with the National Governor's Association. In Delaware, we don't have sheriffs' jails, county or city jails. We have a state correctional system for adults and a separate one for juveniles. In my second term as Governor, retired General Barry McCaffrey came to Delaware. At the time, he was the nation's drug czar. He wanted to come and visit a program in the city of Wilmington at the Gander Hill Prison. The program had done a good job of reducing recidivism by about half, or from about 75 percent to 40 percent. He wanted to find out how we, in Delaware, were able to reduce recidivism, and brought with him an ABC camera crew.

I'll never forget, because he actually went into the prison and looked at the program to see how it worked. General McCaffrey and I met with about 50 inmates in a room smaller than this hearing room. I'd been to many of the inmates' high schools, their middle schools, their grade schools, their churches, their ball games. I said to the men, before we got started, most of them 19, 20, 21, 22 years old: 'How did you guys end up getting here?' 'What happened in your lives or didn't happen in your lives that led you here?'

About five or six men spoke up before we took our tour and they all told stories that were very similar. They said,

> *'I was born when my mom was young. I never knew my dad. When I ended up in kindergarten, other kids could actually read, they knew their letters, they knew their numbers. I couldn't. I got in the first grade and I started falling behind. In the second grade, third grade, fourth grade, just falling further behind. About the fourth grade, I realized that if I just acted up in class the teacher would stop calling on me. Eventually, I'd be put out in the hall by about the fifth or sixth grade. Finally, when I was in the seventh grade or eighth grade, I was suspended from school. For a while, I liked that because I was no longer embarrassed by how little I knew. When I was in ninth grade, I got expelled and I found myself on the outside. In the world, everyone wants to be popular. If you're a good athlete, you can be popular in school. If you're smart, you can be popular in school. If you're good with girls, you can be popular in school. I was none of those. I was on the outside and I wanted to feel good about myself and the only way I could feel good about myself was to take drugs or to consume alcohol. When I did that, I felt good about myself. I didn't have the ability to pay for those things so I ended up in a life of crime and I ended up in this prison.'*

Every one of them told the same story.

The Commissioner of Correction during my second term as Governor of Delaware, Stan Taylor, used to say, *'95 to 98 percent of people incarcerated in our state are going to end up being released and come back into our society. We can send them back out into our society as better people and better parents, or better criminals. It's our choice and it's the choice of the inmates themselves.'*

This Committee and I are focused on root causes. If we take young men and young women, not-so-young men and not-so-young women, and actually do something about their addictions while they're incarcerated, that's helpful. If we do something about the lack of education, that's helpful. If we do something about their lack of work skills and the ability to get up in the morning and have a job to go to, that's helpful. All of the above is helpful.

States are laboratories of democracies and we can learn a lot from them, and we can learn a lot from one another. Today, we're learning from you and we look forward to this very much. Again, Senator Booker, I want to thank you for suggesting that we be here and let's have a good hearing. Thank you.

Testimony of Piper Kerman before the Senate Committee on Homeland Security and Governmental Affairs'
"Oversight of the Bureau of Prisons: First-Hand Accounts of Challenges Facing the Federal Prison System" Hearing
Tuesday, August 4, 2015

Mr. Chairman, Ranking Member and distinguished members, I appreciate having the chance to come here today to make the case for adopting gender-specific policies and programs as a way to improve public safety, in a manner that is not inhumane to anyone serving in federal prison.

I spent 13 months from 2004-2005 as a prisoner in the Federal Bureau of Prisons (BOP) system, with most of my time served at the Federal Correctional Institution (FCI) in Danbury, Connecticut.

If you are familiar with my book, Orange is the New Black, you know I have committed myself to taking my own experiences in prison and using them to try to make critical improvements to this country's criminal justice system. Since my release, I have worked with many women and men who are returning citizens, all bound by a common purpose, to get back on our feet, reclaim our rights of citizenship and make positive contributions to our communities. The first-hand experiences of people who have survived prison or jail are essential to understanding the changes needed to reform our criminal justice system so that it improves public safety, without resorting to inhumane treatment of people that lasts long beyond the sentences they are given. I am here today in that capacity, to share my story.

Women in BOP Custody

With more than 200,000 people in its custody, the Federal Bureau of Prisons has grown to become the nation's largest prison system.[1] The federal prison population has increased more than eight-fold since 1980[2], reflecting the United States' unique and regrettable reliance on

[1] Federal Bureau of Prisons, Inmate Statistics, July 30, 2015, *available at* http://www.bop.gov/about/statistics/population_statistics.jsp#pop_report_cont
[2] Federal Bureau of Prisons, Past Inmate Population Totals, *available at* http://www.bop.gov/about/statistics/population_statistics.jsp#old_pops

incarceration to inappropriately and ineffectively address social problems like substance abuse, mental illness and poverty.

Women are the fastest growing population in the American criminal justice system, and their families and communities are increasingly affected by what happens to them behind bars. A significant majority (63%) of women in state prison are there for a nonviolent offense[3]. Many women are incarcerated due to substance abuse and mental health problems, which are overwhelmingly prevalent issues in prisons and jails. For women there is also a staggering, widespread incidence of victimization by sexual abuse or other physical violence before incarceration. However, these issues are not being addressed adequately in the federal prison system. Below I outline some of the ways in which the Bureau could and should improve.

The Bureau of Prisons should adopt gender-specific policies and programs along the lines of best practices in states such as Washington that reduce recidivism rates, and give women opportunities to reintegrate into their communities and succeed post-incarceration.

Gender-responsive correctional approaches are guided by women-centered research. They are strengths-based, trauma-informed, culturally competent, and holistic. These approaches recognize the importance of relationships as a target of intervention for women. Finally, they account for the different characteristics and life experiences of women and men who are involved with the criminal justice system, and respond to their unique needs, strengths and challenges[4].

Most research in the correctional field has been conducted on men. The research that has been done on women shows that the risk factors I mentioned, and others specific to women, require different approaches than the BOP takes for men in order to reduce women's recidivism and achieve more successful outcomes. This is not unlike findings in other fields

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[3] In 2012, 37.1% of women in state prison were held for a violent offense, compared with 55.0% of men. E Ann Carson, Bureau of Justice Statistics, Prisoners in 2013, Tbl. 9, September 30, 2014, *available at* http://www.bjs.gov/content/pub/pdf/p13.pdf

[4] National Resource Center on Justice Involved Women, Gender Responsive Discipline and Sanctions Policy Guide for Women's Facilities, Key Definitions, n.d., *available at* http://cjinvolvedwomen.org/sites/all/documents/DisciplineGuideSection1Overview.pdf

such as healthcare, where gender-specific research shows that women experience heart attack symptoms quite differently from men. This understanding in turn led to gender-specific responses to these symptoms.

Female prisoners are different from male prisoners in a number of obvious and less obvious ways. In addition to having a higher percentage of mentally ill people among their ranks, incarcerated women are often single moms with young children. Very high incidences of sexual and physical assault[5] are a reality for women in prison, jail and immigration detention centers, both before and during their incarceration. It is essential to consider this trauma in order to establish rehabilitation that works, and to avoid correctional settings that make things worse.[6]

Instituting gender-responsive policies garners significantly improved outcomes including reductions of inmate-on-staff assaults and inmate-on-inmate assaults, segregation placements, disciplinary reports, one-on-one mental health watches, petitions for psychiatric evaluation, crisis contacts, self-injury incidents and suicide attempts[7].

These policies clearly make women's correctional facilities safer for prisoners and staff, which is the first step towards creating a rehabilitative environment. If we want to reduce recidivism for women and help them be more successful when they return home, we need to address their specific risk factors and needs – gender-responsive policies and programming, such as the following, account for these differences.

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[5] In state prison, 57.6% of women reported past physical or sexual abuse, compared to 16.1% of men. In federal prisons, 39.9% of women reported past abuse, compared to 7.2% of men. In jails, 47.6% of women reported past abuse, compared to 12.9% of men. Caroline Wolf Harlow, Bureau of Justice Statistics, Prior Abuse Reported By Inmates And Probationers 1 (1999), *available at* http://www.bjs.gov/content/pub/pdf/parip.pdf. More than a third of women in state prisons or local jails reported being physically or sexually abused before the age of eighteen.

[6] Human Rights Watch, *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons* (1996), *available at* http://www.hrw.org/legacy/reports/1996/Us1.htm [hereinafter *All Too Familiar*] ("One of the clear contributing factors to sexual misconduct in U.S. prisons for women is that the United States, despite authoritative international rules to the contrary, allows male correctional employees to hold contact positions over prisoners, that is, positions in which they serve in constant physical proximity to the prisoners of the opposite sex.").

[7] National Resource Center on Justice Involved Women, Gender Responsive Discipline and Sanctions Policy Guide for Women's Facilities, Exhibit 1: Benefits of Implementing Trauma-Informed Approaches at MCI Framingham Frequency of Incidents in 2011 and 2012 ,n.d., *available at* http://cjinvolvedwomen.org/sites/all/documents/DisciplineGuideSection1Overview.pdf

- Gender-responsive policies, first and foremost, recognize that there are different gender-specific needs and modify facility operations, supervision, management, programs and services to address them.
- They ensure that all staff who work with women are trained in trauma-informed care, understand gender-responsive principles and how justice-involved women are different from men, and at a minimum, have effective communications and intervention skills.
- These policies influence facility culture so that there is a physical environment that is conducive to change (positive messages on walls, positive images), an attitude of respect among staff and inmates, positive encouragement for family visits and interactions, and calming environments (reduced noise level, banging, shouting).
- Practices and procedures are implemented that do not (re) traumatize or trigger women's trauma, such as letting women know ahead of time what is going to happen during a procedure, telling them what is happening during the procedure, and checking in with them after the procedure is conducted. Other similar examples include limited use of solitary confinement or segregation (which may trigger women), more limited use of strip searches (which may be reminiscent of rape), and limited or no use of restraints during pregnancy and delivery.
- Gender-responsive risk and needs assessments (such as the Women's Risk and Needs Assessment developed by Dr. Pat Van Voorhis and colleagues at the University of Cincinnati) should be used to identify specific risk factors such as past trauma, abuse and anger. Treatment programs should be available that address the risks and needs identified through these assessments.

It is critical for the Bureau of Prisons to address the unique situation of women in prison when making choices about policies and programming for institutions that hold them. In addition to the roadmap to system-wide implementation that Washington State offers, the National Resource Center on Justice Involved Women – funded by the U.S. Department of Justice Bureau of Justice Assistance in partnership with the National Institute of Corrections – is an organization that the BOP can collaborate with to work rapidly for adoption of gender-responsive policies and

programs. Additionally, the Adult and Juvenile Female Offenders Network[8] – a national network of corrections workers, academics and community practitioners – has been working for decades to establish gender-responsive policies and programs in American prisons and jails, and its members should prove valuable advisors to the BOP if it wishes to fulfill its responsibilities to the women in its custody.

One of the biggest needs is to keep these women, many of whom are single moms, close to their kids. When I was in Danbury for 13 months, I met women who were raising their children in the visitors' room during brief visits, fending off sexual harassment, and struggling to get a high school education so when they got out they stood a chance at surviving. I saw women denied necessary medical care, and I saw women with mental health issues wait for months to see the one psychiatrist who was available for 1,400 women.

While Danbury FCI and FPC had many questionable and damaging policies, and limited rehabilitative programming, at least for many of the women incarcerated there it was not too far from home. Families from New England, the tri-state area, Pennsylvania and the Capital region could visit via train. Children could see their mothers, who were often the primary caregivers before being imprisoned. And yet, the BOP disregarded this important lifeline to the outside, one of the most powerful factors that decreases recidivism.

In July of 2013, I was shocked to learn that the FCI in Danbury where I served most of my time would be turned into a men's prison. The Danbury facility included a low-security setting, which housed approximately 1,200 women when I was incarcerated, and a minimum-security camp with approximately 200 prisoners, where I served most of my sentence. The BOP planned to keep women prisoners in the minimum-security camp and now house men in the larger, low-security setting.

Women incarcerated in Danbury were designated from their place of residence in the Northeast. There were women from Maine, New

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[8] Association on Programs for Female Offenders (APFO), an American Correctional Association, *available at* http://www.ajfo.org/

Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania and Washington D.C. – a huge geographic region and a densely populated part of the United States. Suddenly 1,200 of the 1,400 prison beds in the Northeast for women in the federal system would disappear because of the BOP's choice. At the same time, the Bureau planned to open a new facility for women in Aliceville, Alabama – a remote part of the state without easy transportation access.

Many people responded quickly to this bad decision by the BOP, including 11 U.S. Senators who demanded better decision-making and planning for women in federal custody. Ultimately, after public outcry demanded better planning, the BOP decided it would construct new housing for approximately 200 more women at the Danbury facility. I am not aware of any decrease in the number of women being committed into federal custody, and just as I was then, I remain concerned about where the BOP will put 1,000 female prisoners from the Northeast who will no longer have appropriate prison space anywhere near their homes.

I would like to submit for the record the September 2014 report **Dislocation and Relocation: Women in the Federal Prison System and Repurposing FCI Danbury for Men**, prepared by the Arthur Liman Public Interest Program at Yale Law School, and the report of the **National Association of Women Judges (NAWJ) and Women in Prison Committee (WIP)** on their visit to BOP's Metropolitan Detention Center (Brooklyn, New York, March 20, 2015). Both reports detail the significant problems with the BOP decision to change the Danbury FCI to an institution housing primarily men.

Despite assurances to the 11 U.S. Senators who requested better decision-making for female federal prisoners, the BOP has not kept their promises to provide adequate correctional settings for women in the Northeast. The Bureau has not yet broken ground on the additional housing for women at FCI Danbury. During my time in prison, I was transferred from Danbury to the federal Metropolitan Correctional Center in Chicago (MCC) to serve as a witness in a federal trial there. The Chicago MCC is 26 stories high and houses approximately 700 men. There were approximately 35 women in the female unit there – it's the worst place I've ever been in my life. Federal

jails are not intended for long-term housing, and thus lack programming, physical plant and other acknowledged essentials for a person serving a prison sentence, which are intended to hold them accountable and rehabilitate them so they can return safely to the community. Despite this, people often spend long periods of time locked up in federal jails. When I was in the MCC, there was a woman who had been held there for two years.

At the Chicago MCC, women were kept locked on the 12th-floor unit for many days at a time; access to the library, to physical recreation and the outdoor area was sporadic at best; no women were allowed to participate in GED programs or any educational opportunities; female prisoners were not allowed to work and earn money; we had no direct access to any medical staff, or in fact any administrative staff; and we were largely reliant on a single correctional officer to get any concerns addressed. Many women on the unit were severely mentally ill. The last two months of my incarceration were exponentially more difficult than the first 11 because of the conditions in the Chicago MCC, and I have many more resources and opportunities than most women incarcerated in federal prisons.

Today, in the wake of the Danbury FCI mission-change decision, many women remain incarcerated in federal jail facilities that are completely unsuitable for serving prison sentences, and that lack programming and rehabilitation for women. Women in federal custody have less access compared to male federal prisoners to important rehabilitative programs like UNICOR (vocational training in prison industry programs that provide the highest compensation among federal prisoner jobs) and the Residential Drug & Alcohol Program (an intensive program that cuts a year from a prisoner's sentence).

Many women have been sent far from their families and communities, much further than the BOP's stated parameter of 500 miles from a prisoner's home.[9] For a family that lives in poverty in New Hampshire, the Bronx or Pennsylvania, a place like Aliceville, Alabama, Dublin, California or Waseca, Minnesota might as well be the moon in terms of children and

[9] Federal Bureau of Prisons, Custody and Care: Designations, July 30, 2015, available at http://www.bop.gov/inmates/custody_and_care/designations.jsp

other family members being able to visit. But these are some of the federal prisons to which women from the Northeast will now be sent, as there is no replacement for approximately 1,000 beds lost in the Northeast in the wake of Danbury FCI's mission change. The majority of women in prison were their children's primary or sole caregiver prior to incarceration.[10] When these women are incarcerated, maintaining any semblance of a relationship with their children largely depends on regular visitation.[11] A child's need to see and hold his or her mother is one of the most basic human needs.

The Danbury situation should be viewed not as an isolated incident but as emblematic of the BOP's indifference to the situation and outcomes of female prisoners. Important things to consider about women in federal custody are disconnection from young children and family who rely heavily on these mothers prior to incarceration; vastly and disproportionately inadequate living conditions compared with male prisoners; and, a marked lack of rehabilitative programming or work opportunity that is tailored to address women's pathways into prison and the best ways to ensure their safe and permanent return home.

To fulfill its public safety mission and to avoid discriminatory practices, the BOP must adopt gender-responsive policies, programs and facility design, following the best practices of corrections departments in states like Washington and Iowa. At the Washington Corrections Center for Women for instance, the Gender Responsiveness Action Plan allows female prisoners to attend seminars focusing on healthy relationships, safety awareness, health, nutrition, handling anger and stress, and goal setting[12].

And to keep female prisoners, and indeed all prisoners, safe while in custody, the BOP must fully implement the Prison Rape Elimination Act

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[10] Lauren E. Glaze & Laura M. Maruschak, Parents in Prison and Their Minor Children, U.S. Dep't Of Justice, Of Justice Statistics Special Report, 4, (2008), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/pptmc.pdf

[11] Susan D. Phillips, The Sentencing Project, Video Visits For Children Whose Parents Are incarcerated: In Whose Best Interests? 1-2 (2012), *available at* http://sentencingproject.org/doc/publications/cc_Video_Visitation_White_Paper.pdf (describing the importance of and barriers to visitation of incarcerated parents).

[12] Jennifer Sullivan, Female Inmates Treatment is Evolving, The Bulletin, November 7, 2013, *available at* http://www.bendbulletin.com/news/1262705-151/female-inmates-treatment-is-evolving

(PREA) regulations and ensure compliance with rigorous, independent audits for all facilities.

When you cut people off from their families it is tragic. And when you cut people off from employment, you condemn them to a sentence much longer than the one they got in court.

The BOP's practice of incarcerating people far from their homes, which is true regardless of gender but even more acute for female prisoners, shows their disregard for their role in making sure prisoners have a chance to re-enter society and get a second chance. Unlike in some state systems such as Ohio, where rehabilitative programs including vocational training are directly linked to churches, employers, and other organizations in the communities where prisoners will eventually return, the BOP truly cuts people off from the outside world. The very limited program opportunities I encountered or observed while incarcerated that focused on readiness to work were either contained within the BOP with no ties to the outside economy or employers, or purely theoretical. As a result, these programs were very difficult for most prisoners who had limited education and experience in the mainstream economy to put into practice.

The BOP must make a broader and more substantive commitment to keeping prisoners close to their community, and individual federal prisons must foster relationships with community organizations and employers from the places where most of their prisoners call home. A good starting point would be national employers like Home Depot, Target and Walmart who already "Ban the Box" and employ returning citizens[13]. BOP regional directors should have responsibility for establishing substantive relationships and programs similar to these with regional businesses who recognize that second chances are important. Organizations like the Center for Employment Opportunities and the National Employment Law Project are well prepared and experienced to help facilitate creating effective partnerships on a national scale to get people returning from federal prison working, and reduce recidivism. A substantive approach to re-entry

[13] Breaking: Sentencing Commission Grants Full Retroactivity for Amendment 3, FAMM, July 18, 2014, *available at* http://famm.org/breaking-sentencing-commission-grants-full-retroactivity-for-amendment-3/

preparation would be a sea change within the Bureau of Prisons, and is one by which the Bureau should be measured and held accountable. This isn't just a benefit to the prisoners who will need to find work when they get out. It is a benefit to society to have people returning with the wherewithal to resume their place among the ranks of hard-working people.

Before we even think about where women should be incarcerated, we should consider IF they should be incarcerated. There are other ways for them to serve their time that result in less damage to them and their families. When we look to the states, we see such innovations, such as JusticeHome in New York. JusticeHome allows some women who plead guilty to felonies to remain in their homes with their children. The women report regularly in court and are visited weekly by case managers to make sure they receive supervision and guidance about jobs, education and management of their homes and children. Some must receive treatment for drug addiction and mental illness. The cost of JusticeHome is about $17,000 per family. What is priceless about this program, as opposed to the BOP's Danbury decision, is that it is working hard to keep families together which we know is an effective way to reduce crime, and to stop a cycle that can condemn entire families to the penal system.

Returning to the example of Danbury, the BOP's desire to empty the FCI of women led them to examine prisoners' sentences and exercise BOP discretion granted by the Second Chance Act. As such, dozens of women were released from prison custody to community confinement in halfway houses, or even to home confinement to complete their sentences[14].

While the BOP used the Second Chance Act in Danbury, BOP has not utilized all of its authority under that Act to enable as many eligible prisoners as possible to return to their communities elsewhere. The BOP does not place all eligible prisoners in halfway houses at the earliest available dates, nor does the BOP use compassionate release and sentence reduction programs as much as it could. The result is overcrowding – BOP is

[14] Maurice Emsellem & Michelle Natividad Rodriguez, National Employment Law Project, Advancing a Federal Fair Chance Hiring Agenda, January 2015, *available at* http://www.nelp.org/content/uploads/2015/01/Report-Federal-Fair-Chance-Hiring-Agenda.pdf

currently 25% over its capacity[15] – which has made keeping staff and prisoners safe significantly more difficult.

The BOP could exercise this discretion, granted in the Second Chance Act, and apply it to all BOP prisoners as a matter of policy and practice, which could move thousands out of federal prison facilities to complete their sentences in their communities. In addition to reducing overcrowding, utilizing the Second Chance Act would keep incarcerated people closer to their homes, creating benefits for prisoners and their communities. They would be following the precedent of the U.S. Sentencing Commission's 2014 decision to reduce the length of time that certain federal prisoners are spending in incarceration.[16]

Currently the BOP chooses not to exercise this authority unless it is expedient to them, as in the case of Danbury FCI. In light of the fact that a huge percentage of BOP prisoners have been convicted of nonviolent offenses (like the overwhelming number of the women I did time with) and that federal sentences have been disproportionately harsh for decades, the Bureau should use every opportunity available to move people back to their communities to complete their sentences while taking measures to protect public safety like appropriate monitoring, rehabilitation programs, and job training courses for prisoners. Reducing the number of people who currently fill our federal prisons will make the prospect of substantive rehabilitation more plausible in those facilities. Whenever possible, we should be building accountability measures that are community based to strengthen public safety rather than imagining that the exile of a prison sentence is what will change harmful behaviors or make victims of crime whole again.

BOP Leadership and Innovation

The Bureau of Prisons will soon have a leadership change when Director Samuels retires this year. I urge the President and the Department of

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[15] Judi Garrett, Bureau of Prisons, Email Interview, July 30, 2015.
[16] Hearing before the Senate Judiciary Committee, Oversight of the Bureau of Prisons Hearing, Liman Statement for the Record, November, 12, 2013, *available at* http://www.law.yale.edu/documents/pdf/Liman/Senate_Judiciary_Committee_BOP_Oversight_Hearing_Liman_Statement_for_the_Record_Nov__12_2013.pdf_website.pdf

Justice to look outside of the Bureau for strong candidates to lead the BOP to a place of innovation, and to a future in which the federal government operates a model correctional system committed to rehabilitation and accomplishing public safety in a humane way. To achieve safety and security in correctional systems and also accomplish the rehabilitation that the American public expects, prisoners must have increased access to meaningful activities and rehabilitation, to work opportunities, and to incentive-based programs including those that can earn sentence reductions. This is good for institutions as a whole – prisoners, staff and administration – and proves the point of getting good outcomes in correctional systems. It is always a question of strong leadership and recognition that it is human beings that fill our prisons and jails.

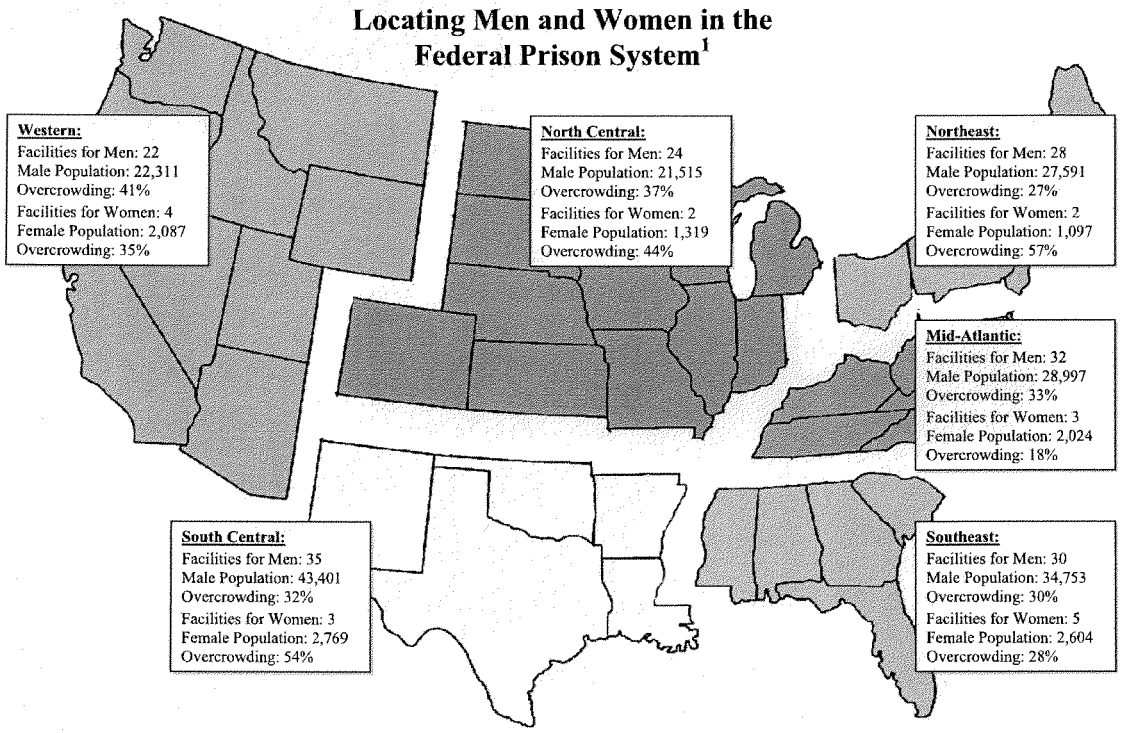
The BOP should empower Alix McLearen, Administrator of the Female Offender Branch, to make recommendations that they will implement by the end of the year to address issues raised here, and Congress should hold the BOP responsible for violating their own policies by reviewing if women are within 500 miles of home, if mental and substance abuse issues are being handled in a humane way, and if sexual assault and harassment is on a serious decline.

I appreciate that there are many fine people working in the BOP who want positive outcomes for their hard work, but the truth is that in recent decades, innovation and any systemic efforts toward productive change within the walls of prisons or jails has been seen in the states, not in the federal system. My observation as a former prisoner and someone who continues to spend a lot of time behind the walls of prisons and jails is that how those facilities function, whether well or poorly, is overwhelmingly a leadership question. Indifference and neglect are attitudes and values that come from the top down, and they are all too visible in American prisons and jails. However, individual wardens and other correctional leaders can also foster an incredible culture change for both prison workers and prisoners. I have seen this with my own eyes, and it gives me continued hope for progress in transforming our troubled prisons and transforming the lives of the Americans who fill them.

I close with the words of Thomas Mott Osborne, the legendary prison warden and reformer who served in New York in the 1900's. In 1913, Osborne went undercover as a prisoner for a week to make sure he understood the work and responsibilities of the people who run prisons. During his tenure as warden of Sing-Sing prison and as a staunch opponent of harsh punishment, Osborne famously posed the question: "Shall our prisons be scrap heaps or human repair shops?" Today, with the biggest prison population in human history housed here in the United States, we must insist on an answer to this question.

Excerpted from Liman Statement for the Record for the Nov. 2013 Senate Judiciary Committee BOP Oversight Hearing

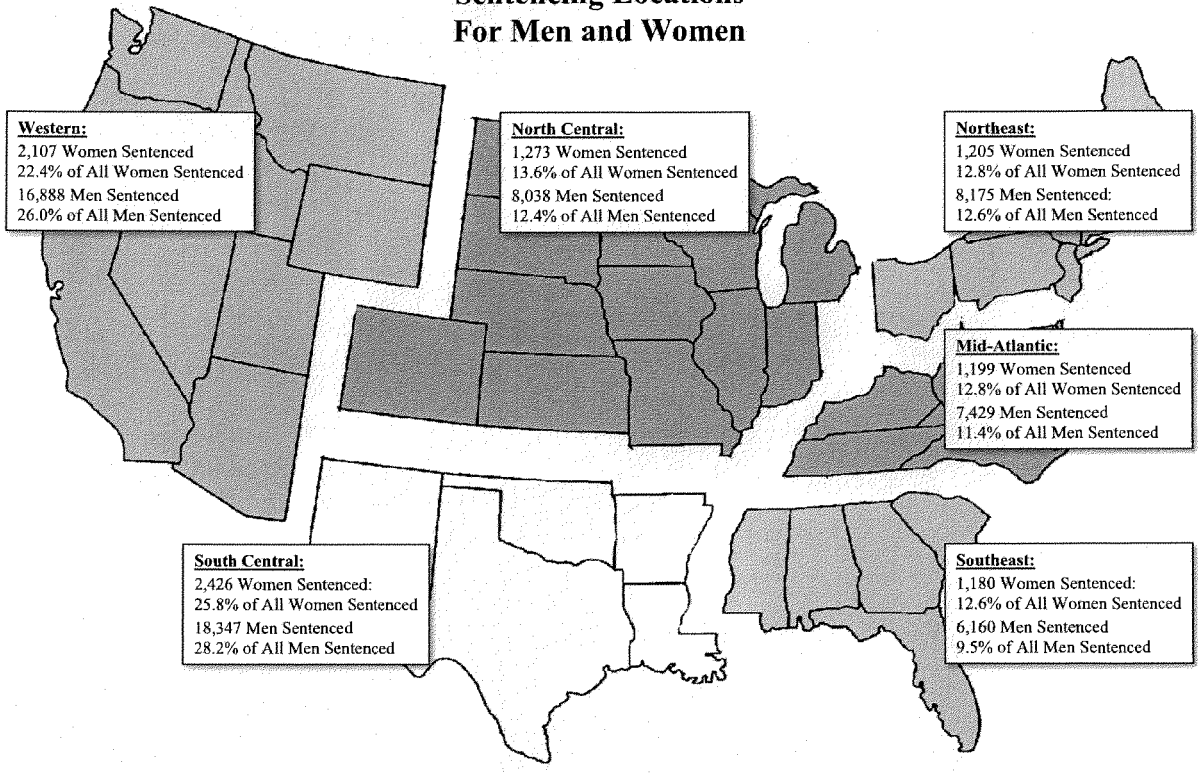
Locating Men and Women in the Federal Prison System[1]



[1] Alaska (Western), Hawaii (Western), and Puerto Rico (Southeast) are not shown. There are no B.O.P. facilities in Alaska or Hawaii, and no post-conviction facilities in Puerto Rico.

Updated October 2013

Sentencing Locations For Men and Women



This map shows the total number of sentences – prison, jail, and non-incarcerative – aggregated up from judicial districts to BOP regions. Note that Alaska, Hawaii, and Puerto Rico are not shown, but the sentences of individuals from each district are reflected in the totals. U S. Sentencing Commission, 2012 Sourcebook of Federal Sentencing Statistics.

Updated November 2013

STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS	APPLICABILITY PRISON/WORK RELEASE/FIELD		
	EFFECTIVE DATE 5/19/14	PAGE NUMBER 1 of 5	NUMBER DOC 590.370
POLICY	TITLE GENDER RESPONSIVENESS		

REVIEW/REVISION HISTORY:

Effective: 5/19/14

SUMMARY OF REVISION/REVIEW:

New policy. Read carefully.

APPROVED:

Signature on file

BERNARD WARNER, Secretary
Department of Corrections

5/2/14
Date Signed

STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS	APPLICABILITY PRISON/WORK RELEASE/FIELD		
	EFFECTIVE DATE 5/19/14	PAGE NUMBER 2 of 5	NUMBER DOC 590.370
POLICY	TITLE GENDER RESPONSIVENESS		

REFERENCES:

DOC 100.100 is hereby incorporated into this policy; DOC 300.380 Classification and Custody Facility Plan Review; DOC 320.400 Risk and Needs Assessment Process; DOC 350.200 Offender Transition and Release; DOC 380.200 Community Supervision of Offenders; DOC 530.150 Family Centered Services; Offender Health Plan

POLICY:

I. The Department recognizes the impact of gender differences on offender pathways into the criminal justice system and will allow gender responsive principles to direct classification, supervision, and programming for all offenders.

   A. Gender responsiveness is recognizing and accounting for the important differences between men and women in psychological development, socialization, culture, exposure to trauma, and life experiences. Gender responsive practices are relational, trauma informed, strength based, and culturally relevant.

II. The Department recognizes the importance of the family and will reinforce a family focused culture for offenders and encourage contact between offenders and their support systems when it is determined safe to do so.

III. The Department will align and prioritize its resources to provide evidence based, gender responsive interventions.

DIRECTIVE:

I. Responsibilities

   A. The Assistant Secretary for Prisons/designee will:

      1. Coordinate with the Assistant Secretary for Offender Change/designee to implement gender responsive, trauma informed, family focused, and strength based programming and practices and the related culture change agency wide.

      2. Collaborate with Department leadership to establish a strategic plan for gender responsive and trauma informed principles and practices.

      3. Assist in developing and implementing policies, procedures, and impact legislation that are gender responsive and trauma informed.

      4. Work with external stakeholders, including offender families, to increase awareness of gender responsive principles and enhance collaboration.

II. Classification and Case Management

A. Counselors/Community Corrections Officers (CCOs) will:

1. Match offenders to gender responsive interventions according to their assessed needs, as available.

2. When appropriate, use a strength based, family focused approach that includes the offender to ensure coordination and continuity of gender responsive services and interventions from reception to re-entry.

III. Programming and Treatment

A. Interventions should be trauma informed, strength based, and emphasize building self-efficacy. Programs and treatment will integrate gender responsive principles and practices. Gender specific interventions may be offered in the following areas:

1. Education and employment
2. Developing healthy relationships with children, family, and partners
3. Domestic violence
4. Substance abuse treatment
5. Emotional regulation (e.g., managing anger, anxiety, depression, loss)
6. Cognitive/problem solving and coping skills to build self-efficacy
7. Life needs (e.g., hygiene, nutrition, finances, physical/spiritual wellness)

B. Substance abuse interventions will be trauma informed and address co-occurring mental health issues, as appropriate.

C. Offenders should have an opportunity to provide input on program design and services when applicable.

IV. Health Services

A. Health Services employees/contract staff will provide services to address gender specific medical and mental health issues consistent with the Offender Health Plan and applicable protocols and guidelines.

V. Re-entry

A. Community Corrections employees will continue to develop partnerships and resources in the community to assist in successful offender re-entry.

1. When determined safe to do so, transition and re-entry planning will engage family and pro-social support systems using a strength based, family focused approach.

B. When making referrals, employee/contract staff will make deliberate efforts to introduce offenders directly to a provider and provide the offenders with detailed information about the service before they release to the community.

VI. Facility Physical Plant and Operations

A. Gender specific needs will be considered when planning capital projects or renovating/modifying existing facilities.

1. When possible, programming and visiting spaces will be multi-purpose to support a variety of activities.

B. Staffing patterns will address differing operational needs based on population gender and will include same gender staffing when appropriate.

VII. Training

A. The Department will develop training in gender responsive principles and practices for all employees, contract staff, and volunteers. Training will address:

1. Introduction to gender responsive and trauma informed principles and practices, including review of relevant research.

2. Awareness of traditional gender roles and sensitivity to cultural differences.

3. Importance of gender responsive practices to incarceration and successful re-entry.

B. Training for employees, contract staff, and volunteers who interact with offenders will also include, but will not be limited to:

1. Gender responsive communication skills, including strategies to avoid re-traumatizing those seeking assistance.

2. Trauma awareness, including:

a. How trauma shapes and informs one's perceptions, and
b. Gender differences in trauma histories.

3. Recognizing effective coping methods and healthy relationships.

DEFINITIONS:

The following words/terms are important to this policy and are defined in the glossary section of the Policy Manual: Intervention, Pathway, Self-Efficacy, Strength Based, Family Focused Approach, Trauma, Trauma Informed Practice. Other words/terms appearing in this policy may also be defined in the glossary.

ATTACHMENTS:

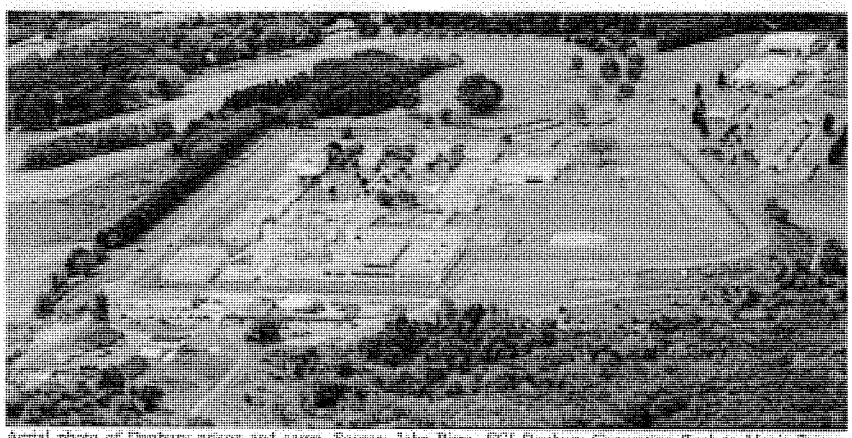
None

DOC FORMS:

None

Dislocation and Relocation: Women in the Federal Prison System and Repurposing FCI Danbury for Men

Anna Arons, Katherine Culver, Emma Kaufman, Jennifer Yun,
Hope Metcalf, Megan Quattlebaum, and Judith Resnik
Arthur Liman Public Interest Program*
Yale Law School
September, 2014



Aerial photo of Danbury prison and camp. Source: John Pirro, *FCI Danbury Converting Back to Men's Prison*, News Times (July 1, 2013), available at http://www.newstimes.com/news/article/FCI-Danbury-converting-back-to-men-s-prison-4645323.php.

This Report tracks the lack of progress in keeping federal prison space in the Northeast available for women and the impact of the absence of bed-spaces for women on the implementation of federal policies committed to reducing over-incarceration. The problems began in the summer of 2013, when the federal Bureau of Prisons (BOP) announced plans to transform its only prison for women in the Northeast—FCI Danbury—into a facility for men.[1] The BOP explained that this self-described "mission change" was a response to the need to provide more low-security beds for male prisoners.

At the time of the announcement, the Danbury prison complex was composed, as it had been since 1994, of two separate facilities for women: a low-security Federal Correctional Institution (FCI) and an adjacent satellite camp for minimum-security prisoners. At full capacity, the FCI housed about 1,100 women and the camp held approximately 150 women. Both were often over the stated capacity.

The BOP's 2013 proposal was to fill the main prison with men and to maintain the adjacent smaller camp as the only facility in the Northeast for women in the federal prison system. The BOP planned to transfer women who were at FCI Danbury elsewhere, including to a new federal prison in Aliceville, Alabama, some 1,100 miles from Danbury and therefore, in many cases, far from their homes and families.

This proposal raised concerns, voiced by women prisoners, their families and friends, and lawyers, as well as by the Women in Prison Committee of the National Association of Women Judges (NAWJ); the American Bar Association; the Osborne Association; and professors at Yale Law School, which had provided legal services to inmates at Danbury since the 1970s.[2] The press also focused on the situation and ran op-eds and editorials questioning the closing of beds in the Northeast for women.[3]

In August of 2013, eleven senators from the Northeast wrote to the director of the BOP and asked that the plans to use the facility for men be put on hold until the BOP provided Congress with more information about "the rationale behind this dramatic change in the mission of the Danbury facility and the impact it will have on women and families from our states."[4] In the fall of 2013, the chief judges of twelve federal district courts in the Northeast also asked Attorney General Eric Holder to reconsider the proposed plan.[5] The judges explained that if "the planned mission change for Danbury goes forward, our ability to recommend incarceration near family members and children for male inmates will continue, but we will have no ability to do the same for female inmates."[6]

On November 4, 2013, two days before a scheduled BOP congressional oversight hearing, Senators Chris Murphy and Richard Blumenthal of Connecticut, joined by Senator Patrick Leahy of Vermont and Kirsten Gillibrand of New York, announced that the BOP had informed them of a revision to its plans for Danbury.[7] In addition to creating a facility for men, the BOP announced it would convert the existing minimum-security satellite camp into a low-security facility for women, and that it planned to construct a new minimum-security camp for women on the Danbury site. The goal was to have enough beds for women who were U.S. citizens and sentenced from the Northeast; non-citizens from the Northeast would still face the prospect of being incarcerated at great distances from their families. The Senators' press release reported that the "entire transfer and construction process w[ould] take 18 months to complete."[8] Further, the "agency . . . assured the senators that it [wa]s making every effort to keep the U.S. citizen inmates in the Northeast and maintain the same level of programming available by the end of the process."[9]

Yet, ten months later, at the end of August of 2014, no ground has been broken at Danbury for new construction, and the BOP has declined to provide a detailed timeline for the

completion of the new facility. Indeed, it appears that the requisite environmental impact assessment may just be getting underway. According to current projections, that process could take eight months to complete even if no problems arise, and the construction thereafter could take another fourteen months. Those projections suggest that the new facility might not be completed until 2017. In the interim, many women who were at FCI Danbury have been placed in federal jails (the Metropolitan Detention Center in Brooklyn and the Federal Detention Center in Philadelphia) and in institutions much farther from the Northeast. Others have been sent to Danbury's satellite camp and to residential treatment centers (RTCs), and some have been released.

The current treatment of women incarcerated from the Northeast is at odds with federal criminal justice policy priorities. All branches of the government have recognized the problem of over-incarceration and enacted initiatives to reduce federal prison populations and to ensure that the time inmates spend behind bars—and the funds taxpayers invest in incarceration—are put to good use, equipping women and men for a successful return to their communities.

In 2008, President Bush signed into law the Second Chance Act, which had bipartisan support, as it aimed to "break the cycle of criminal recidivism," "build ties between offenders and their families, while the offenders are incarcerated and after reentry into the community," and "to assist offenders reentering the community from incarceration to establish a self-sustaining and law-abiding life by providing sufficient transitional services . . . ."[10] The Second Chance Act authorizes the BOP to release inmates into community correctional facilities for as long as the final year of their sentences and to shift individuals to home confinement for as long as the final six months.[11]

The Executive Branch has also taken up several initiatives aiming to shrink prison populations and to aid inmates' rehabilitation. In June of 2013, the White House issued a call to reduce the collateral consequences of incarceration on inmates' children and families.[12] In August of 2013, Attorney General Eric Holder announced that he was directing federal prosecutors to focus their efforts on serious cases and to consider alternatives to incarceration for non-violent offenders.[13]

In April of 2014, the Department of Justice began an effort to identify non-violent drug offenders with long prison sentences whom it will consider for sentence commutation.[14] To be eligible for this clemency initiative, federal prisoners have to meet several criteria, including that they have served at least ten years of their sentence and likely would have received a substantially lower sentence if convicted today. The goal, according to President Obama, is to help "restor[e] fundamental ideals of justice and fairness" to our penal system by releasing those who "would have already served their time and paid their debt to society," had they been sentenced under current law.[15]

In May of 2014, the United States Sentencing Commission voted to reduce sentences for most drug offenders by about 17 percent.[16] And in July of 2014, the Commission opted to make those reductions retroactive; as a result, it estimates that approximately 50,000 individuals who are currently in federal prison will be eligible to seek a reduction in their sentences.[17]

But the BOP's decision to incarcerate women from the Northeast far from their homes and families or in urban jails that lack programming opportunities undercuts these federal policies. To provide just one example, while FCI Danbury provided female inmates with a Residential Drug Abuse Program (RDAP), urban jails do not currently offer this opportunity.[18] RDAP is a 500-hour, nine- to twelve-month intensive drug treatment program; if inmates successfully complete the program, they become eligible for a sentence reduction of up to twelve months, as well as other benefits.[19] Unless RDAP is brought to the jails in Brooklyn and Philadelphia, Northeast women who are currently confined there will face the difficult choice of seeking to be moved further from their homes and families to participate in RDAP or losing the opportunity to obtain the therapeutic and sentence-reducing benefits of the program.

In short, the optimism that greeted the November 2013 announcement of the revised plans for Danbury may not have been warranted. A return to the issue is required by all who are concerned about enabling women in the federal prison system to share equally in the opportunities to remain close to their families and communities while in detention, to participate in programs and work, to have access to the outdoors, and to maximize their opportunities for successful reentries.

Given this problem and the need to renew a focus on women in the federal prison system, the Liman Program at Yale Law School provides this report, which relies on a mix of statistical analyses; interviews with prisoners; research; and information drawn from exchanges with lawyers, judges, Senate staff, academics, and advocates. The report provides one window into the impact of federal prison policies, the degree to which location of prisoners affects their opportunities, and the ways in which women in the federal prison system are currently disadvantaged.

Part I details the impact of placement on incarceration, program opportunities, family ties, and reentry. Part II describes the facilities at Danbury prior to the announcement of the mission change. Part III outlines the BOP's proposal to close Danbury to women and the responses that prompted the shift in course and the agreement to build a new facility for women in Connecticut. Part IV details some of the experiences of women inmates as a result of the BOP's repurposing of Danbury. Over the course of nearly a year, the Liman Program corresponded with prisoners from Danbury as they were transferred to city jails and prisons across the county. Students and faculty spoke with prisoners' family members and interviewed women in Danbury and then in jails in Philadelphia and Brooklyn. As we detail, the dislocation for many women has been profound, as dozens sentenced in the Northeast are being held in crowded city jails with little access to light, the outdoors, or to the programs that could expedite their release.

Part V addresses how the Danbury mission change could become an opportunity for the BOP to respond to women incarcerated in its system. The change in the use of Danbury sheds light on the harms imposed by putting individuals at great distance from their families and communities and the degree to which women are disadvantaged. Taking Danbury as a starting point for a broader conversation about the links between gender and prison geography, we focus on how new construction and "gender-responsive" programming could make the new facility a model for improving infrastructure; increasing access to health care and legal services, programs,

and visitors; and designing an institution attentive to the distinctive issues incarcerated women face.

I. Women in the Federal Prison System: Proximity, Programs, Families, and Reentry

The benefits of keeping prisoners close to their homes are well documented.[20] Inmates who participate in educational programs[21] and who receive visits while incarcerated function better in prison[22] and have a better chance of staying out once they are released.[23] As the studies explain, "social connections that are maintained during the period of incarceration can be an important resource in helping released prisoners achieve positive post-release outcomes."[24] Where inmates are incarcerated affects what programs will be available to them, the likelihood that they will interact with volunteers from the surrounding community, and their ability to receive visits. Inmates who are connected to their families, friends, places of worship, and communities and who have opportunities for education and other programs while incarcerated are better able to readjust to life outside prison.

Prisoners are not the only people who benefit from proximity; their families do as well. As of 2008, the United States imprisoned more than 810,000 parents, and children under the age of 18 who had an incarcerated parent numbered more than 1.7 million.[25] During the last few decades, the number of children with a mother in prison has more than doubled,[26] and mothers entering prisons were far more likely than fathers to have lived with their children in single-parent households.[27] Studies also detail that children of prisoners often have behavioral and emotional problems, experience difficulties at school, and become involved in the juvenile and criminal justice systems themselves.[28]

Compounding these hardships, available information about the geography of federal prisons demonstrates that children have difficulty visiting their incarcerated parents. The obstacles to visiting are acute for children of women prisoners. Some years ago, a study found that mothers in the federal prison system were incarcerated an average of 160 miles further from family than their male counterparts.[29] More recently, in an October 2010 report titled *Mothers Behind Bars*, the National Women's Law Center concluded:

> [T]he number of women incarcerated in the Federal Bureau of Prisons (BOP) system increased from 1,400 to over 9,000 between 1980 and 1998. There were 13,746 women in Federal BOP custody as of June 2009, according to the most recent data available. Approximately 56% of these women have children. Because there are only twenty-eight federal facilities for women, most women are too far from their families to receive regular visits.[30]

Not surprisingly, a study focused on mothers at a maximum-security state prison concluded that "perhaps the most significant determinant of whether an inmate receives visits is the distance between her home county and the prison to which she is committed."[31]

The Bureau of Prisons itself recognizes the importance of proximity to reducing recidivism and maintaining family ties. In 2013, the Department of Justice (DOJ), with White

House support, launched what it termed an "aggressive campaign" to mitigate the harms that incarceration of parents imposes on children.[32] The DOJ website explained: "Research shows that maintaining contact and healthy relationships in spite of the barriers represented by prison walls is not only possible but beneficial, for both the children and their parents. We owe these children the opportunity to remain connected to their mothers and fathers."[33] Accordingly, the Justice Department directed the BOP to support "programs to enhance family relationships, improve inmate parenting skills, and redesign visitation policies in its system."[34] On June 19, 2013, the Director of the BOP sent a memo to every inmate incarcerated in the federal system in which he encouraged them to visit with their children; he explained that "there is no substitute for seeing your children, looking them in the eye, and letting them know you care about them."[35]

The Bureau of Prisons also has a program statement on location: it states that the BOP aspires to incarcerate inmates within a "reasonable" proximity to the areas of their "anticipated release."[36] Specifically, BOP Program Statement 5100.08, issued in 2006, provides in part:

> The Bureau of Prisons attempts to place each inmate in an institution that is reasonably close to the anticipated release area. Ordinarily, placement within 500 miles of the release area is to be considered reasonable, regardless of whether there may be an institution closer to the inmate's release area.[37]

One question is whether the 500-mile range offers a "reasonable" opportunity for visits and connections enabling pre-release planning. Another question is how that goal is implemented for women and men in the federal system. The data summarized below show that, as of 2013, people in BOP custody, and particularly women in BOP custody, were often placed further than 500 miles from their homes.

As of August 24, 2013, the BOP incarcerated 218,864 prisoners. The vast majority (204,289, or 93.3 percent) of prisoners were men. Women numbered 14,575, or 6.7 percent. A small percentage of federal prisoners were pre-conviction, but most (190,142) were post-conviction. Again, the post-conviction population is made up mostly of men—178,242, or 93.7 percent; and 11,900, or 6.3 percent, were women.

The BOP divides its system into six regions,[38] and provides information on the facilities and the beds available in each of these six regions.[39] In addition, data from the United States Sentencing Commission detail how many men and women are sentenced in each judicial district in the federal system.[40] Federal prisons are not distributed evenly across the country, nor are they placed proportionately to the districts in which people are sentenced. Further, the locations of BOP facilities do not permit many federal prisoners to be proximate to the communities where they were sentenced, and women have more limited placement opportunities than do men. The Bureau of Prisons does not provide the relevant data; what can be understood – largely based on data from the U.S. Sentencing Commission – is the relationship between where prison facilities are located and the jurisdictions from which individuals are sentenced. Specifically, as of August of 2013 – before FCI Danbury closed to women:

- Fifteen percent of the men and 9 percent of the women in the federal system were housed in the Northeast Region. Of the people who received federal

sentences, 13 percent of the men and 13 percent of the women received sentences in the Northeast.

- Nineteen percent of the men and 22 percent of the women in the federal system were housed in prisons in the Southeast Region. In contrast, ten percent of the men and 13 percent of the women sentenced in the federal system received sentences in the Southeast.
- Sixteen percent of the men and 17 percent of the women in the federal system were housed in the Mid-Atlantic Region; 11 percent of the men and 13 percent of the women in the federal system received sentences in the Mid-Atlantic Region.
- Twelve percent of the men and 11 percent of the women in the federal system were housed in the North Central Region. The numbers sentenced in this Region come close to the numbers incarcerated in the Region: 12 percent of the men and 14 percent of the women were sentenced in the North Central Region.
- Twenty-four percent of the men and 23 percent of the women in the federal system were housed in the South Central Region. Here again, the numbers are close to parallel: 28 percent of the men and 26 percent of the women were sentenced in the South Central region.
- Thirteen percent of the men and 18 percent of the women in the federal system were housed in the Western Region; in contrast, 26 percent of the men and 22 percent of the women were sentenced in the Western Region.

Closing FCI Danbury to women exacerbated the imbalance in the Northeast. The BOP defines the Northeast Region to include ten states: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont. The Northeast Region has 28 facilities for men that house about 27,600 men. Before 2014, the Northeast had only two facilities for women: FCI Danbury and its adjacent minimum-security camp. Today, no federal prisons for women remain, and the camp, which has a rated capacity of 146 but often houses 200 women, is overcrowded.[41]

II. Conditions at Danbury until 2013

Understanding the impact of the closure of Danbury requires a brief overview of its use prior to its repurposing. Below, we sketch the history of the facility, the relevance of its location to visits and volunteers, the kinds of programs and work opportunities available, and the difficulties that women incarcerated there faced in terms of deteriorating infrastructure and the limited medical care. In brief, FCI Danbury offered a great deal but also was in need of significant improvements.

When FCI Danbury first opened in 1940, it housed male inmates.[42] The adjacent minimum security camp opened in the early 1980s, and it also housed men.[43] In the early 1970s, Yale Law School began a clinical program that assisted inmates there, and the school's law professors and students have been visiting Danbury ever since.

By the late 1970s, the number of federal facilities had grown, but women in the federal prison system had few housing options, and none were in the Northeast. In October of 1979, the House Subcommittee on Courts, Civil Liberties and the Administration of Justice held hearings on "The Female Offender." In his introductory remarks, Representative Robert W. Kastenmeier described the hearings as the first to focus on the problems and needs of women in the federal prison system. In testimony, concerns were raised—including from participants in the Yale Law School clinical program—about the lack of facilities for women in the Northeast and in other regions from which many women prisoners were sentenced.[44]

In 1994, in recognition of the growing population of women prisoners nationwide and of the absence of a facility for them in the Northeast, the BOP repurposed FCI Danbury and its camp as facilities for women.

That change was important because prisoners at Danbury benefit from its location in several respects. Danbury has ample outdoor space: at one point, the facility had handball and tennis courts, a soccer field, a baseball diamond, and a running track.[45] Moreover, Danbury is located only 70 miles from New York City; 150 miles from Boston, and 60 miles from Hartford. The facility is accessible by car and by public transit; the MetroNorth train stops less than four miles away, and four Amtrak stations are within 30 miles.[46]

Visitors could come to spend time with inmates on weekends and one weekday.[47] In addition, until 1999, Danbury hosted a regularly scheduled "Children's Day" program, which permitted prisoners and their children to interact in the Danbury yard, where activities for children were available. Religious groups sponsored buses from New York City to bring the visitors, and volunteer groups provided musical performances, puppet shows, and the like.

Danbury had several kinds of programs. It offered a Residential Drug Abuse Program that provided inmates with help in recovering from addiction and a route to earn time off from their sentences. Prisoners could also participate in the "Bridge Program," which offered inmates with post-traumatic stress disorder opportunities for group therapy, and the popular "puppy program" to train dogs who then were assigned to federal agencies. Educational opportunities included classes to help prisoners earn a G.E.D., and a paralegal certificate class to enable women to do some of their own legal research and develop marketable skills. The facility's chaplain led faith-based activities, and outside volunteers offered other programs. In addition, Yale Law School faculty and students provided legal assistance to a small number of inmates.

Not all of these programs were in place nor fully staffed by 2013; further, inmates reported other problems related to staff procedures and health care. Children's Day and the Bridge Program had both been discontinued, and some of the educational offerings were limited. The physical plant was a source of concern. In 2013, women at Danbury reported frequent plumbing problems, including flooding and sewage backups, and they worried about mold. Staff procedures were also problematic. For many years, the BOP was an outlier in permitting cross-gender pat searches in non-emergency situations, a practice that created particular difficulties for women who had been victims of sexual trauma or who had religious objections to being touched by men.[48] In 2010, a woman alleged this practice offended her religious beliefs; assisted by law students and faculty at Yale, she succeeded in obtaining federal court

protection.[49] Access to healthcare was another challenge, and students and faculty working with inmates described examples of cases in which women with serious illnesses received inadequate care.[50]

In short, Danbury offered a good deal and suffered from significant limitations. A key benefit was that FCI Danbury enabled some 1,300 women to remain in the Northeast, close enough to home to maintain ties with their families, to have access to programs and volunteers, and to permit them to remain proximate to many of the communities to which they would return.

III. The BOP's Decision to Use FCI Danbury for Men

In the summer of 2013, the Bureau of Prisons announced that it planned to transform FCI Danbury into a facility for men.[51] As described, the initial plan was to keep the camp as a minimum-security institution for women and to turn the FCI into a men's prison; some women were to be sent more than a thousand miles away to a new, and remote, federal prison in Aliceville, Alabama.

Concerns came from many sectors. In July, *Slate* published an op-ed by Yale Law Professor Judith Resnik, who questioned the wisdom and fairness of the plan;[52] in early August,, eleven senators from the Northeast wrote to the BOP and asked the BOP to put the mission change on hold until questions were answered.[53] The *New York Times* Editorial Board raised concerns,[54] as did former Danbury inmate Piper Kerman, who wrote an op-ed published in the *Times* and described the proposal to move women far away as imposing a "second sentence."[55] The chief judges of twelve federal district courts in the Northeast urged Attorney General Eric Holder to reconsider the proposed plan.[56]

Representatives from the National Association of Women Judges (NAWJ) met with the BOP and the Department of Justice; the NAWJ issued a resolution raising concerns about the mission change and calling on Congress to hold hearings about the BOP's treatment of women prisoners.[57] As noted, several other groups—including the American Bar Association, the Osborne Association, the Corrections and Community Reentry Committee of the New York City Bar Association, the Human Rights Defense Center, and others—spoke out against removing women from FCI Danbury.[58] Students in the Liman Program at Yale Law School joined with faculty to study the potential effects of the change on incarcerated women. Further, some of the women incarcerated at Danbury contacted lawyers, politicians, advocacy groups, and judges to seek their assistance in avoiding transfers far from home.

On November 4, 2013, Senators Murphy, Gillibrand, Leahy, and Blumenthal announced that the BOP had changed its plan for Danbury.[59] The BOP explained to the Senators that it had reconsidered and would construct a new facility for women at the Danbury site.

According to the Senators' press release, the BOP would still turn FCI Danbury into a facility for men. In addition, the BOP would reconfigure the satellite camp into a low-security prison for women, which would be capable of housing all low-security women sentenced in the Northeast. BOP would also build a new camp for women on adjacent land. The bed space was to be allocated to citizens sentenced from the Northeast. The BOP projected an 18-month timeline

for completion of the entire transfer and construction process.[60] As a consequence of this announcement, many understood that the new facility for women was to be completed by the spring of 2015 – that is, 18 months from the announcement.

Because the BOP continued to plan to relocate women, albeit some temporarily, students and faculty in the Liman Program sought to understand how the BOP decisions would be implemented and the effects of the dislocation and relocation on women prisoners and their families. We were able to learn about some of the challenges that women experienced as a result of the BOP's decision to use FCI Danbury primarily for men. Through corresponding with many inmates and their families, and by visiting and interviewing more than a dozen of the women incarcerated at Danbury and thereafter at FDC Philadelphia and MDC Brooklyn, we detail some of their experiences.

IV. The Dislocation of Relocation

Assignment to a prison is difficult for anyone; once placed, prisoners learn to manage the challenges of incarceration. The BOP decision to move women out of Danbury imposed greatly on the women who had – some for years – made constructive use of their time there. As detailed below, the way the BOP has managed the move thus far has imposed significant, and often unnecessary, dislocations.

A first observation is that the repurposing of the facility has caused anxiety and dislocation, some of which could have been ameliorated by the provision of information through formal channels. Prisoners are dependent on the Bureau for official information. Yet we have learned that the BOP has not regularly given updates on the status of plans for FCI Danbury and its adjacent facilities. Indeed, often citing "security concerns," the BOP does not generally give women advance notice of their own transfers, nor has the BOP worked cooperatively with inmates to minimize the problems.

Specifically, from June 2013, when the prospect of FCI Danbury closing to women first emerged, until March 2014, when the FCI was emptied of women, rumors abounded, and those in detention were unsure of what was happening to them. Moreover, the transferred women have not—as of this writing—been given clear information by the BOP about the expected timeline for the reopening of Danbury.

Second, like other federal facilities, the population at Danbury included women from a variety of places. As of September 2013, the BOP estimated that about 58 percent of the women that it housed at Danbury were from the Northeast or the Mid-Atlantic regions.[61] Danbury was, therefore, not the facility most proximate to the home communities of a significant group of women. The change at the FCI resulted in BOP decisions to move some women closer to their families. Further, in light of the concerns raised, the Bureau reviewed those in detention at Danbury, and the BOP released some to halfway houses or to their homes. In short, for some in detention, the change at Danbury helped them gain release or relocation that helped them. Yet it is not clear that the BOP has continued the appropriate intensive review of individual cases to identify other women who could be sent to halfway houses or home.

Third, those who hoped to stay in the Northeast have faced—and continue to face—many challenges. The glimpse we provide below, which draws on information from a small fraction of women at Danbury, helps to bring some of these experiences to the fore.[62]

Danbury: The Fall of 2013 until March 2014: A common theme was women's frustration with the BOP, which had stated its interest in fostering strong family ties and yet planned to move Northeastern women further from their homes. Women described visits as an invaluable connection to the outside world; as bringing a "burst of new energy"; and as making them feel and act "like a new person." One woman noted, "I want my incarceration to have the least impact on my family, on my daughter, as possible. But that's just not how it works." Given that reality, maintaining as strong a relationship as possible with her young daughter remained a top priority. Another woman concluded: "We're a business. It's not reentry or . . . family ties. They don't care."

A second theme was confusion about who was leaving, where they were going, and when. In early November of 2013, a number of women at Danbury were told to "pack out," but their transfer was cancelled shortly thereafter. By mid-November, there was a rumor among some Danbury prisoners that the facility would be emptied between December 1 and January 15, with all non-citizens going to FCI Aliceville, a prison in Alabama, and about 100 women from the Northeast going to MDC Brooklyn, a city jail.

When students visited Danbury in November, prisoners reported that they were not receiving clear information from staff, and that some of the staff had told them that they too learned about transfers just hours ahead of when they were to occur. For example, one woman said that eighty to ninety women were boarded onto a bus to Aliceville, but fifteen were removed from the bus without explanation just before it left. As our interviewees explained to us, non-citizens were sent to Alabama, and prisoners from Washington, D.C. also left Danbury—reportedly most were transferred to Hazelton, a prison in West Virginia, and a few went to a federal jail in Philadelphia.

We were told that the BOP also released some women who had twelve months or less remaining on their sentences and were therefore eligible for placement in halfway houses. As described, the Second Chance Act authorizes the BOP to send eligible inmates into residential reentry centers for the last year of their sentences and to home detention for the final six months.[63] Nevertheless, as we understand it, prior to the mission change, it was unusual for women to get more than six months of halfway house time.[64] Yet, we were told, the increased use of the Second Chance options was short-lived. Several women indicated that the BOP stopped using those provisions once the facility had been emptied to a sufficiently low capacity to permit BOP to proceed with the mission change.

Given the announcement of an 18-month construction timeline, women in Danbury expected to see signs of planning or construction beginning for the new facility. But when no evidence of such work emerged, women complained that the proposed return was likely ephemeral. In November of 2013, a prisoner described the plans as a "smoke and mirror show" and reported that her supervisors had told her that there had not yet been a bidding process, or even a survey, for the construction of a new facility.

Around Christmas of 2013, several women at Danbury reported that the BOP had begun renovations to the FCI to prepare for the men; improvements were underway in the living spaces, hallways, and bathrooms. As rebuilding began, the women reported that staff had restricted their movements and, at times, imposed lockdowns. Women also told interviewers that their access to resources and programming was reduced, and that in December, the general library closed and the law library was open only one hour a day. Programs related to education and dog training shut down, we were told, in late December.

However, a group of women remained at Danbury, and their work continued through much of the winter. Prisoners reported being removed from their regular paying jobs and assigned to physically intense work such as ripping up tiles and removing beds. We were later told that if women refused to do "mission change work," they were sent to the Solitary Housing Unit. By March of 2014, women interviewed estimated that there were about 150 women prisoners left at the FCI, and that they had been consolidated into two units. We heard complaints about the lack of working plumbing and other facilities.

We were told that, in their last weeks at Danbury, the remaining women were not given official news on their impending transfers; some learned of their moves the night before they occurred. Information passed informally; rumors were that a group of approximately seventy women were transferred to FCI Waseca, a prison in Minnesota, and another group of about sixty to the MDC in Brooklyn. By mid-March, the transfers were complete.

After Danbury: March 2014-August 2014, and Federal City Jails As our interviewees told us, most women from the Northeast who are U.S. citizens were transferred from Danbury to federal detention centers in Brooklyn and Philadelphia. Further, as we—and the women with whom we spoke—understand it, the women are slated to remain in these jails until the construction of new facility on the FCI Danbury grounds is complete. The difficulties these women have reported make plain that large urban jails are not designed for long-term stays or for facilitating reentry, nor can they be easily reorganized to do so.

MDC Brooklyn and FDC Philadelphia are both high-rise facilities located in urban centers. As of this writing, Brooklyn houses 2,002 inmates, while Philadelphia houses 988.[65] BOP institutions are classified into one of five security levels: minimum, low, medium, high, and administrative.[66] Brooklyn and Philadelphia are both administrative institutions and, thus, they house inmates of all custody levels and all security point scores. Because of the wide variation in the criminal histories and charges or convictions of those housed in administrative facilities, women placed there are in a higher level of security than they were when at FCI Danbury.

Our interviewees reported that about sixty women were transferred from Danbury to MDC Brooklyn; some said that the facility was "completely unprepared" for their arrival. We heard that staff at MDC Brooklyn had not received prisoners' medical records, ordered meals for them, or prepared basic necessities such as shower shoes and pajamas. Further, the women told us that they were placed in a unit that had not been used for a long time, and hence was in poor physical shape. The women transferred to a jail in Philadelphia arrived in a more staggered fashion, and those we met in Philadelphia did not describe the kind of disarray that we heard from women in Brooklyn.

Prisoners in both Brooklyn and Philadelphia have had to adjust to conditions very different than those at Danbury: they have greatly reduced privacy, outdoor time, and access to natural light in the jails. We heard from women at the federal jail in Brooklyn that their unit had an open floor plan, with cameras throughout, and that the lights were left on 24 hours a day. We were told that male staff walked through the unit to count prisoners at 3:00 a.m. and 5:00 a.m., times when the women were asleep.

Privacy issues in the city jails are exacerbated by the fact that women cannot go outside. We are told that the recreation "yard" in Brooklyn is an indoor room across the hall from the women's sleeping area, and that it has a few windows high on the walls. In Philadelphia, we heard that the "outdoor" space consists of a room with concrete walls with very small windows at the top.

Women reported that they experienced more barriers to obtaining legal services in the jails than they had at Danbury. In Philadelphia, they said, no separate legal library exists and the only law-related book in the general library is Black's Law Dictionary. In Brooklyn, as of spring 2014, we heard that women had not been able to go to the law library.

Women incarcerated at both facilities reported that they were not able to be involved in the same programs—nor comparable programs—in their new placements as they had been able to do at Danbury. At Brooklyn, we were told that women have access to G.E.D. classes, a basic banking class, and non-residential drug treatment programs. Women in Philadelphia told us that aside from a communication/meditation class and a "job fair" course, no programs existed for them. Both at Brooklyn and Philadelphia, women reported that their work opportunities were in the laundry and, in Brooklyn, also as orderlies, responsible for keeping their own units clean.[67]

Two key programmatic deficiencies stand out: the lack of access to RDAP and the absence of apprenticeships and UNICOR jobs. As we have discussed, RDAP offers intensive drug treatment, and successful completion produces various benefits, including the potential for a reduction of up to a year from a sentence.[68] UNICOR is the trade name of Federal Prison Industries, Inc. (FPI), a wholly owned federal government corporation that provides work opportunities to inmates of the Federal Bureau of Prisons (FBOP).[69] Studies have shown that inmates who participate in UNICOR are 14 percent more likely to be employed one year following their release from prison than are non-participants.[70] They are also 24 percent less likely to recidivate for up to 12 years following their release from prison.[71] Inmates who work UNICOR jobs may earn up to $1.15 per hour, and perhaps slightly more if they are eligible for premium pay. While these wages are modest, they are higher than those offered by other types of prison employment, which pay between twelve and forty cents per hour.[72]

On the other hand, the transfers to city jails have eased access to visits and family for some women. Both facilities afford better visiting hours than Danbury did. At MDC Brooklyn, we are told that phone calls cost less than at Danbury and many women are closer to where their families live. As one woman put it, "I'm closer to home, and that's what matters to me."

What the women do not know is how long they will be at the urban jails. If the current projections hold true, their stays may last several years.

V. Using the Changes for Danbury as an Opportunity for Improving Facilities for Women in the Federal System

Recall that in 1979, the House of Representatives Subcommittee on Courts, Civil Liberties and the Administration of Justice convened a hearing, described as the first time "that Congress has focused on the problems and needs of women offenders, and particularly those in the Federal Prison System."[73] The Chair of the Subcommittee expressed concern over "charges that women are getting short-changed when it comes to facilities, rehabilitation, health services, and job training."[74]

Thirty-five years later, these concerns persist. In addition to pressing for return of women to Danbury by 2015, the new construction at Danbury should be used as an opportunity to build a model women's facility that meets the federal goals of incarceration—easing reentry through programming and fostering ongoing connections to the communities and families of inmates. To do so, we provide a series of recommendations both to respond to the immediate challenges that women face during the transition and to make lasting improvements for the future. Underlying all of these recommendations is one central goal: the BOP should endeavor to construct the new facility at Danbury as expeditiously and thoughtfully as possible so that women can return to and flourish in it.

Interim Recommendations

As the details of the experiences of women in transition make plain, the transfer of women into urban jails has created a number of urgent needs, which should be addressed as quickly as possible.

First, in light of the limitations of the urban jails, the overcrowding in BOP facilities,[75] and the BOP's recognition that "female offenders are less likely to be violent or attempt escape,"[76] all efforts should be made to identify women who can benefit from alternative placements. The BOP ought to use its authority under the Second Chance Act to release eligible women into halfway houses for the final twelve months of their sentences and to home confinement for the final six months. By exercising that authority, the BOP could reduce overcrowding, improve educational opportunities for inmates, and strengthen family relationships.[77] Moreover, as a 2012 report estimated, were the BOP to increase by three months the time that inmates spend in "home confinement," the BOP could save at least $111.4 million each year.[78]

Second, in light of the President's new clemency initiative, and the Sentencing Commission's decision to make recent drug sentence reductions retroactive, access to legal services has become all the more important. Staff at the facilities to which women have been transferred should provide guidance to enable eligible women to obtain legal assistance and facilitate contacts as well as communications with lawyers from the districts where women were sentenced.

Third, for those women who remain incarcerated, access in the Northeast to RDAP, health care, apprenticeships, educational programs, and UNICOR jobs is critical. Moreover, wage-earning opportunities are an essential aspect of keeping in touch with family; by earning money, women can pay for stamps and phone calls as well as to make necessary purchases at the commissaries.

Fourth, given the limitations of urban jails as facilities for housing women and that new prisoners from the Northeast will be entering the BOP system, the BOP should make options available in addition to two city jails. The BOP lists fourteen federal correctional institutions in its Northeast region.[79] Two of these FCIs, Fort Dix in New Jersey and Otisville in New York, are centrally located within two hours or less from New York City. Fort Dix is a low security facility, as Danbury was;[80] Otisville is listed as medium security.[81] Another low security facility, Allenwood, is in Pennsylvania, about three hours from New York City.[82] Thus, while women are not able to be at Danbury, the BOP should explore all options – from release and halfway houses to other placements – to enable women prisoners from the Northeast to have access to programming, to jobs, to lawyers, and to reentry planning, as well as to visits from their families.

Long-Term Recommendations

***Use the Construction Opportunity Wisely and Design a Facility for Women*:** The building of a new facility creates an opportunity for longer-term thinking about how best to serve the needs of incarcerated women, both in the Northeast and elsewhere. As social commentators from Jeremy Bentham to Michel Foucault have argued, architecture matters. A new prison means that new decisions could be made about facilities, housing arrangements, work and outdoor activities, and visiting rooms.

The most consistent problems women cited in our interviews were conditions of the physical facilities at both the FCI and the camp at Danbury, and then at the urban jails. If the camp is to continue housing women while the FCI building is converted to a men's facility, basic structural problems—mold, flooding, and sewage problems—need to be addressed. In addition, the camp currently lacks an attorney visiting room. Ensuring that the camp facilities enable women to have adequate access to legal services is essential.

Nor should the BOP settle for constructing a facility that is merely habitable. Recently constructed state prisons for women—such as institutions in Iowa and Washington—aim to create a distinctive setting in which to facilitate rehabilitation.[83] The new Mitchellville prison in Iowa, for example, incorporates outdoor classroom space into its design. The idea, which was the result of a collaboration between landscape architecture students at Iowa State University and the officers and inmates who would live and work in the new facility, was that time spent outside could "benefit and improve the mental, physical and emotional well being of the offenders, staff, and visitors."[84] Indeed, women at Danbury valued their access to the outdoors, which the prison's physical layout made possible. The new facility should expand opportunities to spend time outside and consider how to renovate the landscape as well as create a new structure to house inmates.

Attention should also be paid to the indoor spaces. In interviews at Danbury before the mission change, some women expressed distress about barracks-style housing that limited women's privacy from each other and from male officers. These concerns are especially acute for women with a history of abuse and those for whom modesty is a religious requirement.

***Ensure Access to Counsel, Courts, and Legal Resources*:** The federal system now offers those in prison the possibilities of release through the Second Chance Act, clemency, and sentence reductions for certain kinds of offenses. In addition, many women face child custody and other family law issues, which are governed by state law. Women thus need access to both federal and state legal resources. Such access should be provided through multiple avenues, including materials in law libraries, legal classes for inmates, and access to community-based advocacy and legal service providers. Danbury once offered a paralegal certificate class, a model of the kinds of programs that can and should be reintroduced.

***Facilitate Contact with Home and Family*:** Among all prisoners, women are particularly likely to have children and to have been the primary caregivers in their families.[85] One study of the federal system concluded that most of the women were the parents of minor children.[86] Yet visiting can be difficult,[87] and the remote locations of prisons, limited hours for visiting, a lack of transportation, and the inability of caregivers to arrange visits create impediments.[88] Enabling children and parents to visit is central to helping women while they are incarcerated and to facilitate their successful transition out of prison.[89] These programs also benefit the children, who are themselves at higher risk of becoming involved in the juvenile and criminal justice systems.[90]

The BOP has already begun to shape an agenda around children. As noted, in June of 2013, the BOP Director sent a letter to inmates about the importance of maintaining family connections. And in December of 2013, the BOP held its first universal Children's Day; more than 4,000 inmates across the country were able to spend time with their children and participate in activities such as "storytelling, face painting, parenting workshops, family worship services and holiday-themed arts and crafts."[91]

Children's Day is an example of the kinds of programs needed at the reconstructed Danbury, and it also prompts questions about what more the BOP can do to facilitate family closeness. Models abound, such as the Children's Center at Bedford Hills. That facility, funded by the New York Department of Correctional Services and administered by Catholic Charities, offers parenting classes and enables children to spend time with their mothers during the summers for five-day-long sessions, during which they can play and share lunch together. The Center also sponsors birthday celebrations so that children can celebrate their birthdays in a playroom in the prison. Further, the Children's Center organizes a holiday program for women to select presents from donated toys to give to their children during visits.[92] Volunteers were and are central to these programs, which depend on community involvement: volunteers provide transportation for visits and help to mentor children and women.

***Incorporate Insights From Gender-Responsive Programming*:** In recent decades, correctional officials and social scientists have developed the concept of gender responsiveness

in prison programming to reflect that women differ from men in the paths that bring them into prison, as participants in family structures, and in their behavior once incarcerated. These gender responsive approaches are based on a growing body of knowledge about women in detention: they are less likely than men to have committed violent crimes and are more likely to have committed property or drug offenses.[93] "Women's most common pathways to crime involve survival efforts that result from abuse, poverty, and substance abuse."[94] Thus, in 2003, the National Institute of Corrections (NIC) found that incarcerated women have disproportionately high rates of prior physical and sexual abuse; substance abuse; medical problems; and mental health disorders.[95] The NIC reported that "[w]omen offenders are disproportionately low-income women of color who are undereducated and unskilled, with sporadic employment histories."[96]

Many programs should be available to both women and men, but some programming should address the distinctive circumstances correlated with gender. The BOP can draw on models from other systems, as well as its own history of successful programs. For example, because women in prison have high rates of mental health disorders and substance abuse, often interrelated with experiences of trauma,[97] the availability of substance abuse treatment programs, particularly those that enable sentences to be shortened, should be a priority. The Residential Drug Abuse Program is one such program. Nonresidential drug treatment is also needed.

Further, as noted, three-quarters of incarcerated women have histories of severe physical and sexual abuse in their adulthood and/or childhood.[98] Danbury once offered a pilot program—the "Bridge Program"—that provided residential group therapy for inmates with post-traumatic stress disorder. We understand that the number of women involved was small, in part because of the limited availability of trained staff. Programs such as this one ought to be reinstated and expanded, and coupled with guidelines for psychologist-patient confidentiality and training for staff to help them understand the needs of inmates with histories of trauma and abuse.

In addition to programs for women, facilities need to attend to women's hygienic needs and offer sex-specific commissary items. Many women expressed frustration with failures to meet their basic hygienic needs, for example through the inadequate supply of toilet paper and sanitary products. In addition, women may require additional commissary items, such as hygienic products and other toiletries that differ from men's needs. Examples come from state programs; Washington State has recently developed a list of commissary items to meet women's specific needs.[99]

***Provide Employment and Skill-Building Opportunities*:** Women enter prison with more limited employment histories and fewer job skills than men. Additionally, "[w]omen are less likely than men to have engaged in vocational training before incarceration, and those who have received vocational training in the community have tended to focus on traditional women's jobs, such as cosmetology, clerical work, and food service."[100] Moreover, according to a 2003 National Institute of Corrections study, "[m]ale prisons typically provide a greater variety of educational and vocational programs and training for more skilled (and better compensated) occupations."[101]

As described above, UNICOR jobs were highly valued by the women we interviewed. We were also told that demand for apprenticeships exceeded the available places at Danbury. These programs should be more than just jobs that inmates do while in prison; they should offer certificates that could be recognized outside of prison, as the culinary program at Danbury once did. Moreover, the BOP should ensure that its apprenticeship offerings do not replicate gender stereotypes. For example, Washington State has recently expanded apprenticeship programs as part of its gender responsiveness initiative, offering an Electrician Apprentice Program and a program enabling inmates to become certified nursing assistants.[102] In addition, training should be offered in computer technology.

The Need for Renewed Attention and New Commitments

In sum, the decision to move women out of FCI Danbury has had negative effects on many women who were detained there and the lack of appropriate facilities for women in the Northeast poses a problem for those yet to be sentenced. The aims of this report are to facilitate the prompt return of women to FCI Danbury, to obtain appropriate settings and programs for them in the interim, and to use the plans to construct new bed-space as an opportunity to attend to the needs of women in the federal prison system. Given that so little progress has been made since November of 2013, the challenges faced by women federal prisoners once again requires the involvement of all branches of the federal government, as well as organizations and individuals devoted to ameliorating the difficulties faced by prisoners, their families, and the communities to which inmates return.

Endnotes

* This report is a joint product of students in the Liman Program at Yale Law School and of Megan Quattlebaum, Senior Liman Fellow in Residence, Hope Metcalf, the Liman Director, and Judith Resnik, Arthur Liman Professor of Law at Yale Law School. Our affiliations are provided for identification purposes only. Our thanks to incoming Liman Director, Professor Johanna Kalb, as well as Professors Brett Dignam and Dennis Curtis, and Bonnie Posick, Kathi Lawton, and Katarina Krasulova. The Liman Program was created to honor Arthur Liman, a 1957 Yale Law graduate, who aspired to help shape a more just and humane criminal justice system. In recent years, the Liman Program has published a fifty-state survey of policies on visiting prisoners, Chesa Boudin, Trevor Stutz, & Aaron Littman, *Prison Visitation: A Fifty State Survey*, 32 YALE L. & POL'Y REV. 149 (2013), and an analysis, based on a survey of administrative segregation policies, of the criteria and procedures for detention in segregation for thirty days or more. HOPE METCALF, JAMELIA MORGAN, SAMUEL OLIKER-FRIEDLAND, JUDITH RESNIK, JULIA SPIEGEL, HARAN TAE, ALYSSA WORK, & BRIAN HOLBROOK, LIMAN PUBLIC INTEREST PROGRAM, ADMINISTRATIVE SEGREGATION, DEGREES OF ISOLATION, AND INCARCERATION: A NATIONAL OVERVIEW OF STATE AND FEDERAL CORRECTIONAL POLICIES (July 2013), *available at* www.papers.ssrn.com/abstract=2286861.

[1] John Pirro, *FCI Danbury Converting Back to Men's Prison*, NEWS TIMES (July 3, 2013), *available at* http://www.newstimes.com/news/article/FCI-Danbury-converting-back-to-men-s-prison-4645323.php.

[2] *See, e.g.*, Letter from Allegra Glashausser, Chair, Corrections and Community Reentry Committee, Association of the Bar of the City of New York, to Charles E. Samuels, Jr., Director, Federal Bureau of Prisons (Sept. 24, 2013); Letter from Patti B. Saris, Chief District Judge, and Rya W. Zobel, Mark L. Wolfe, and Michael A. Ponsor, District Judges, U.S. District Court for the District of Massachusetts, to Charles E. Samuels, Jr., Director, Federal Bureau of Prisons (Sept. 23, 2013); Letter from Avraham C. Moskowitz, Partner, Moskowitz & Book, LLP, to Charles E. Samuels, Jr., Director, Federal Bureau of Prisons (Aug. 29, 2013); Letter from Alex Friedmann, Associate Director, Human Rights Defense Center, to Senator Patrick Leahy (Aug. 28, 2013); Letter from Elizabeth Graves, Executive Director, The Osborne Association, to Charles E. Samuels, Jr., Director, Federal Bureau of Prisons (Aug. 20, 2013); Letter from NY Initiative for Children of Incarcerated Parents, to Charles E. Samuels, Jr., Director, Federal Bureau of Prisons (Aug. 15, 2013); Letter from Thomas M. Susman, Director, Governmental Affairs Office, American Bar Association, to Charles E. Samuels, Jr., Director, Federal Bureau of Prisons (Aug. 6, 2013). The National Association of Women Judges issued a resolution on the topic. *See* National Association of Women Judges, Resolution Calling for Oversight Hearings to Examine the Treatment of Federal Female Inmates (Aug. 19, 2013). And the Ms. Foundation circulated a petition asking the BOP to "keep women prisoners close to home." *See* http://www.change.org/petitions/charles-samuels-jr-director-federal-bureau-of-prisons-keep-women-prisoners-close-to-home.

[3] *See* Judith Resnik, Op-ed, *Harder Time: Why Are the Federal Prison Beds for Women in the Northeast Going to Men—While the Women Get Shipped to Alabama?*, SLATE (July 25, 2013); Editorial, *Bad Prison Policy for Women*, N.Y. TIMES (Aug. 9, 2013); Piper Kerman, Op-ed, *For Women, A Second Sentence*, N.Y. TIMES (Aug. 13, 2013); Nancy Gertner & Judith Resnik, Op-ed, *Keep Female Prisoners Close to Family*, THE BOSTON GLOBE (Sept. 3, 2013).

[4] *See* Letter to Charles E. Samuels, Jr., Director, Federal Bureau of Prisons from Christopher Murphy, U.S. Senator Connecticut; Kristen E. Gillibrand, U.S. Senator New York; Richard Blumenthal, U.S. Senator, Connecticut, Patrick Leahy, U.S. Senator, Vermont; Charles E. Schumer, U.S. Senator, New York; Jeanne Shaheen, U.S. Senator, New Hampshire; Robert P. Casey, Jr., U.S. Senator, Pennsylvania; Bernard Sanders, U.S. Senator, Vermont; Angus S. King, Jr., U.S. Senator, Maine; Elizabeth Warren, U.S. Senator, Massachusetts; and Edward Markey, U.S. Senator, Massachusetts (Aug. 2, 2013).

[5] *See* Letter to Eric H. Holder, Jr., Attorney General of the United States, from Hon. Loretta A. Preska, Chief Judge, U.S. District Court for the Southern District of New York; Janet Hall, Chief Judge, U.S. District Court District of Connecticut; Gregory Sleet, Chief Judge, U.S. District Court for the District of Delaware; John Woodcock, Chief Judge, U.S. District Court for the District of Maine; Deborah Chasanow, Chief Judge, U.S. District Court for the District of Maryland; Patti B. Saris, Chief Judge, U.S. District Court for the District of Massachusetts; Joseph Laplante, Chief Judge, U.S. District Court for the District of New Hampshire; Jerome B.

Simandle, Chief Judge, U.S. District Court for the District of New Jersey; Carol B. Amon, Chief Judge, U.S. District Court for the Eastern District of New York; William M. Skretny, Chief Judge, U.S. District Court for the Western District of New York; Christopher C. Conner, Chief Judge, U.S. District Court for the Middle District of Pennsylvania; and Mary M. Lisi, Chief Judge, U.S. District Court for the District of Rhode Island (Oct. 2013).

[6] *Id.* at 1-2.

[7] Press Release, Senator Chris Murphy, *Senators Announce Changes to FCI Danbury Transfer* (Nov. 4, 2013).

[8] *Id.*

[9] *Id.*

[10] Second Chance Act of 2007, 42 U.S.C. § 17501(a)(1)-(5) (2010), enacted in 2007, signed into law in 2008, and codified in parts of Title 18 and Title 42.

[11] This portion of the Second Chance Act amended 18 U.S.C. § 3624(c)(1)-(2) (2010). The BOP was also required to submit annual reports to Congress regarding its "utilization of community corrections facilities." *Id.* at § (c)(5). The report was to:

> set forth the number and percentage of Federal prisoners placed in community corrections facilities during the preceding year, the average length of such placements, trends in such utilization, the reasons some prisoners are not placed in community corrections facilities, and any other information that may be useful to the committees in determining if the Bureau is utilizing community corrections facilities in an effective manner. *Id.*

[12] Deputy Attorney General James M. Cole, Remarks at the Children of Incarcerated Parents Initiative "Champions of Change" Event (June 12, 2013), *available at* http://www.justice.gov/iso/opa/dag/speeches/2013/dag-speech-130612.html. .

[13] DEP'T OF JUSTICE, SMART ON CRIME: REFORMING THE CRIMINAL JUSTICE SYSTEM FOR THE 21ST CENTURY (Aug. 2013).

[14] Press Release, U.S. Dep't of Justice, Announcing New Clemency Initiative, Deputy Attorney General James M. Cole Details Broad New Criteria for Applicants (Apr. 23, 2014), *available at* http://www.justice.gov/opa/pr/2014/April/14-dag-419.html.

[15] Deputy Attorney General James M. Cole, Remarks at the Press Conference Announcing the Clemency Initiative (Apr. 23, 2014). *available at* http://www.justice.gov/iso/opa/dag/speeches/2014/dag-speech-140423.html.

[16] Press Release, U.S. Sentencing Comm'n, U.S. Sentencing Commission Votes to Reduce Drug Trafficking Sentences (Apr. 10, 2014), *available at* http://www.ussc.gov/sites/default/files/pdf/news/press-releases-and-news-advisories/press-releases/20140410_Press_Release.pdf.

[17] Press Release, U.S. Sentencing Comm'n, U.S. Sentencing Commission Unanimously Votes to Allow Delayed Retroactive Reduction in Drug Trafficking Sentences (July 18, 2014), *available at* http://www.ussc.gov/sites/default/files/pdf/news/press-releases-and-news-advisories/press-releases/20140718_press_release.pdf.

[18] According to conversations with our interviewees, RDAP was offered at the main FCI at Danbury. Women from the camp who wished to participate were required to transfer to the main facility.

[19] *See* 18 U.S.C. § 3621(e)(2)(B) (2010) ("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."). In addition to a sentence reduction, an inmate could also receive other benefits for successfully completing RDAP; included were financial awards, consideration for the maximum period of time in a community-based treatment program, preferred living quarters, and special recognition. BOP Prog. Statement 5330.11, Psychology Treatment Programs, at 19-21 (Mar. 16, 2009). Further, those who decline to participate when eligible may become ineligible for furlough or a Federal Prison Industries work assignment, and their choice may also be taken into consideration when deciding how much time they will be able to spend in community confinement. *Id.* at 21-22.

[20] This discussion draws heavily on the testimony that the Liman Program submitted in November of 2013 to the Senate Judiciary Committee. *See* Liman Program Statement Submitted for the Record, Oversight of the Bureau of Prisons and Cost-Effective Strategies for Reducing Recidivism, Hearing before the Senate Comm. on Judiciary, 113th Congress (Nov. 12, 2013).

[21] LOIS M. DAVIS, ROBERT BOZICK, JENNIFER L. STEELE, JESSICA SAUNDERS & JEREMY N.V. MILES, EVALUATING THE EFFECTIVENESS OF CORRECTIONAL EDUCATION: A META-ANALYSIS OF PROGRAMS THAT PROVIDE EDUCATION TO INCARCERATED ADULTS xvi (RAND 2013). This meta-analysis of data on correctional education concludes that taking educational courses while incarcerated reduces an individual's risk of recidivism by 13 percent.

[22] *See, e.g.*, Karen Casey-Acevedo & Tim Bakken, *The Effects of Visitation on Women in Prison*, 25 INT'L J. COMP. & APPL. CRIM. JUST. 48 (2001); Nancy E. Schafer, *Exploring the Link Between Visits and Parole Success: A Survey of Prison Visitors*, 38 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 17 (1994); John D. Wooldredge, *Inmate Experiences and Psychological Well-Being*, 26 CRIM. J. & BEHAVIOR 235 (1999).

[23] *See, e.g.*, DAVIS, BOZICK, STEELE, SAUNDERS & MILES, *supra* note 21, at xvi; *see also* William D. Bales & Daniel P. Mears, *Inmate Ties and the Transition to Society*, 45 J. OF RESEARCH IN

CRIME AND DELINQUENCY 287 (2008); Mark T. Berg & Beth M. Huebner, *Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism*, 28 JUST. Q. 382 (2010).

[24] CHRISTY A VISHER, VERA KACHNOWSKI, NANCY LA VIGNE & JEREMY TRAVIS, URBAN INSTITUTE, BALTIMORE PRISONERS' EXPERIENCES RETURNING HOME 2 (Mar. 2004), *available at* http://www.urban.org/ UploadedPDF/310946_BaltimorePrisoners.pdf.

[25] LAUREN E. GLAZE & LAURA M. MARUSCHAK, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PARENTS IN PRISON AND THEIR MINOR CHILDREN 1 (Aug. 2008), *available at* http://www.bjs.gov/ content/pub/pdf/pptmc.pdf.

[26] *Id.*

[27] *Id.* at 2. In terms of the federal prison population, in a review from more than a decade ago, about half of the women who were mothers of small children had lived with those children prior to entering prison. LAWRENCE A. GREENFELD & TRACY L. SNELL, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, WOMEN OFFENDERS 8 (1999), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/wo.pdf.

[28] *See, e.g.*, Thomas E. Hanlon, Robert J. Blatchley, Terry Bennett-Sears, Kevin E. O'Grady, Marc Rose & Jason M. Callaman, *Vulnerability of Children of Incarcerated Addict Mothers: Implications for Preventive Intervention*, 27 CHILDREN & YOUTH SERVICES REV. 67 (2005); Heath C. Hoffmann, Amy L. Byrd & Alex M. Kightlinger, *Prison Programs and Services for Incarcerated Parents and Their Underage Children: Results from a National Survey of Correctional Facilities*, 90 PRISON J. 397 (2010); Beth M. Huebner & Regan Gustafson, *The Effect of Maternal Incarceration on Adult Offspring Involvement in the Criminal Justice System*, 35. J. CRIM. JUST. 283 (2007); Joseph Murray & David P. Farrington, *Parental Imprisonment: Effects on Boys' Antisocial Behavior and Delinquency Through the Life-Course*, 46 J. CHILD PSYCHOL. & PSYCHIATRY 1269 (2005). One study reports that children who have an incarcerated parent are six times more likely to be incarcerated. Patricia Gonzalez, Tony Romero & Christine B. Cerbana, *Parent Education Program for Incarcerated Mothers in Colorado*, 58 J. CORRECTIONAL EDUC. 357 (2007).

[29] The Honorable Jack C. Coughenour, *Separate and Unequal: Women in the Federal Criminal Justice System*, 8 FED. SENTENCING REP. 142 (1995); Judge Coughenour summarized materials collected by the Ninth Circuit Gender Bias Task Force, which he chaired. *See* John C. Coughenour, Proctor Hug, Jr., Marilyn H. Patel, Terry W. Bird, Deborah R. Hensler, M. Margaret McKeown, Judith Resnik & Henry Shields, Jr., *The Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force*, 67 S. CAL. L. REV. 745 (1994).

[30] NATIONAL WOMEN'S LAW CENTER & THE REBECCA PROJECT FOR HUMAN RIGHTS, MOTHERS BEHIND BARS: A STATE-BY-STATE REPORT CARD AND ANALYSIS OF FEDERAL POLICIES ON CONDITIONS OF CONFINEMENT FOR PREGNANT AND PARENTING WOMEN AND THE EFFECT ON

THEIR CHILDREN 33 (2010), *available at* http://www.nwlc.org/sites/default/files/pdfs/mothersbehindbars2010.pdf.

[31] Casey-Acevedo & Bakken, *supra* note 22 at 49.

[32] U.S. Dep't of Justice, *Giving a Boost to Kids of Incarcerated Parents*, THE JUSTICE BLOG (JUNE 12, 2013), *available at* http://blogs.justice.gov/main/archives/2950 (last visited Nov. 5, 2013).

[33] *Id.*

[34] *Id.*

[35] Memorandum from Charles E. Samuels, Jr., Director, Federal Bureau of Prisons to All Bureau Inmates (June 19, 2013), *available at* http://www.bop.gov/news/press/press_releases/Parenting_Message_ English.pdf (last visited Sept. 21, 2013).

[36] BOP Program Statement No. 5100.08, Inmate Security Designation & Custody Classification (Sept. 12, 2006).

[37] *Id.*

[38] *About Regional Offices*, FEDERAL BUREAU OF PRISONS, *available at* http://www.bop.gov/about/ro (last visited Nov. 5, 2013).

[39] *See Weekly Population Report*, FEDERAL BUREAU OF PRISONS, *available at* http://www.bop.gov/news/weekly_report.jsp (last visited Oct. 3, 2013).

[40] *See* U. S. SENTENCING COMMISSION, 2012 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, *available at* http://www.ussc.gov/Research_and_Statistics/Annual_Reports_and_Sourcebooks/2012/sbtoc12.htm (last visited Nov. 10, 2013). Because the Sentencing Commission data do not differentiate among sentence types and include individuals who received sentences that do not include incarceration in jails or prisons, as well as sentences that do, the analysis here likewise includes individuals receiving all types of sentences.

[41] To obtain information about the current population, we visited the BOP website. *See* Federal Bureau of Prisons, Statistics, *available at* http://www.bop.gov/news/weekly_report.jsp (last visited Aug. 25, 2014). Information on rated capacity—the amount of bed space in a given prison—is not made readily available to the public by the BOP. Accordingly, we used information obtained by an attorney, E.J. Hurst, who received data from the BOP in response to a Freedom of Information Act (FOIA) request in 2013. *See* Jay Hurst, Bureau of Prisons Inmate Capacities, http://jayhurst.net/capacities/ (last visited Aug. 27, 2014).

[42] Pirro, *supra* note 1.

[43] Richard Cendo, *The View From: The U.S. Prison At Danbury: Doing Federal Time And Making Cable*, N.Y. TIMES, Dec. 6, 1987.

[44] *The Female Offender: Hearing Before the H. Subcomm. on Courts, Civil Liberties, & the Administration of* Justice, 96th Cong. 1-2 (1979) (statement of Rep. Robert W. Kastenmeier, Chairman, H. Subcomm. on Courts, Civil Liberties and the Administration of Justice). *See also The Female Offender: Hearing Before the H. Subcomm. on Courts, Civil Liberties, & the Administration of* Justice, 96th Cong. 135-66 (1979) (statement of Judith Resnik, Acting Dir., The Daniel & Florence Guggenheim Program in Criminal Justice at Yale Law School).

[45] Cendo, *supra* note 43.

[46] Google Maps (2014). Amtrak stations exist in Bridgeport, CT, Croton-on-Hudson, NY, New Haven, CT, and Stamford, CT. *See* Amtrak Northeast Stations, *available at* http://www.amtrak.com/northeast-train-bus-stations.

[47] BOP INSTITUTION SUPPLEMENT DAN 5267.08G: FCI/FCP Visiting Regulations (2014).

[48] *See, e.g.*, SANDRA NORMAN-EADY & GEORGE COPPOLO, CONNECTICUT GENERAL ASSEMBLY OFFICE OF LEGISLATIVE RESEARCH, CROSS-GENDER BODY SEARCHES IN CORRECTIONAL INSTITUTIONS (Mar. 12, 2011), *available at* http://www.cga.ct.gov/2001/rpt/2001-R-0321.htm.

[49] *Forde v. Baird*, 720 F. Supp. 2d 170 (D. Conn. 2010). Under the Prison Rape Elimination Act (PREA), cross-gender searches such as the one at issue in *Forde* are to be eliminated. *See* 42 U.S.C. § 15601 et seq. According to PREA standard 115.15(b), as of August 20, 2015, staff in BOP facilities may no longer perform cross-gender pat down searches of female inmates, absent exigent circumstances.

[50] A vivid example has been provided to us by Professor Brett Dignam: she and her students at Columbia Law School represent a client who, after suffering from uterine bleeding for almost a decade at Danbury, had a scheduled hysterectomy canceled when she was told that her recently diagnosed breast cancer was a higher priority. Despite the fact that she had been recommended for release in June 2014, she was transferred to Carswell Medical Center (1,500 miles from her family in New York) where the limited window for effective chemotherapy was allowed to lapse. As of this writing, the woman remains on a "medical hold" at Carswell; although she had a double mastectomy and began breast reconstruction at Danbury, she has received neither chemotherapy nor reconstruction since her transfer.

[51] Pirro, supra note 1.

[52] Resnik, *Harder Time*, *supra* note 3.

[53] *See supra* note 4.

[54] *See* Editorial, *supra* note 3.

[55] Kerman, *supra* note 3.

[56] *See supra* note 5.

[57] *See* National Association of Women Judges, *supra* note 2.

[58] *See supra* note 2.

[59] *See* Press Release, *supra* note 7.

[60] *Id.*

[61] Letter to Chris Murphy, U.S. Senator for Connecticut from Charles E. Samuels, Jr., Director, Federal Bureau of Prisons (Sept. 27, 2013).

[62] From October through December 2013, the Liman Program interviewed 11 women housed at Danbury FCI and the camp. In March of 2014, the Liman Program spoke with four women at Danbury FCI and the camp; in March and April of 2014, we met with nine women, some housed at MCC Philadelphia and others at MDC Brooklyn; we met again with a woman at MDC Brooklyn in June 2014. Each woman provided informed consent to have her comments included in this report. For purposes of protecting women's privacy, names and identifying details are not included.

[63] 18 U.S.C. § 3624(c)(1)-(2) (2010).

[64] New concerns about how women gained access to the Second Chance Act emerged in March of 2014, when one of Danbury's corrections counselors was arrested and charged with aiding and abetting a bribery scheme in which she took cash from inmates and their families in exchange for recommending them for halfway house release. *See* http://www.fbi.gov/newhaven/press-releases/2014/fci-danbury-employee-charged-with-participating-in-inmate-early-release-bribery-scheme (last visited Aug. 27, 2014).

[65] *See* http://www.bop.gov/locations/institutions/bro/; http://www.bop.gov/locations/institutions/phl/ (last visited Aug. 27, 2014).

[66] BOP Prog. Statement 5100.08, Inmate Security Designation & Custody Classification (Sept. 12, 2006).

[67] METROPOLITAN DETENTION CENTER BROOKLYN, NEW YORK ADMISSION AND ORIENTATION MANUAL FOR PRE-TRIAL, AND HOLDOVER INMATES 14 (Nov. 2009), *available at* http://www.bop.gov/locations/institutions/bro/BRO_aohandbook.pdf.

[68] *See supra* note 19.

[69] *See* Jaclyn Harris, *Women, Prisons, and Labor: An Examination of the Work Opportunities Provided to Women Prisoners Through UNICOR* (2014) (student manuscript, summer 2014, on file with the authors).

[70] *Id.*

[71] *Id.*

[72] *See* http://www.bop.gov/inmates/custody_and_care/work_programs.jsp?.

[73] *See* Statement of Rep. Robert W. Kastenmeier, *supra* note 44.

[74] *Id.*

[75] Letter to Christopher Murphy, United States Senator from Charles E. Samuels, Jr., Director, Federal Bureau of Prisons, at 3 (Sept. 27, 2013). As of December 2011, federal prisons were operating at 139 percent capacity. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-12-743, BUREAU OF PRISONS: GROWING INMATE CROWDING NEGATIVELY AFFECTS INMATES, STAFF, AND INFRASTRUCTURE 12 (2012), *available at* http://www.gao.gov/assets/ 650/648123.pdf.

[76] *See Female Offender Programs*, FEDERAL BUREAU OF PRISONS, *available at* http://www.bop.gov/ inmate_programs/female.jsp (last visited Nov. 5, 2013).

[77] For additional discussion of back-end means to reduce overcrowding, *see* JULIE SAMUELS, NANCY LA VIGNE & SAMUEL TAXY, URBAN JUSTICE CENTER STEMMING THE TIDE: STRATEGIES TO REDUCE THE GROWTH AND CUT THE COST OF THE FEDERAL PRISON SYSTEM (Nov. 2013), *available at* http://www.urban.org/UploadedPDF/412932-stemming-the-tide.pdf.

[78] THOMAS W. HILLER, II, MICHAEL NACHMANOFF, & STEPHEN R. SADY, FEDERAL PUBLIC & COMMUNITY DEFENDERS, GAO REPORT REVEALS MULTIPLE WAYS TO END THE WASTE OF MILLIONS ON UNNECESSARY OVERINCARCERATION (Apr. 4, 2012), *available at* http://or.fd.org/Case%20Documents /Defender%20GAO%20with 20Attachment%204.4.12.pdf.

[79] *See Northeast Regional Office*, FEDERAL BUREAU OF PRISONS, *available at* http://www.bop.gov/locations/regional_offices/nero/. This number includes privately-run facilities and excludes hospitals and administrative facilities.

[80] *See* http://www.bop.gov/locations/institutions/ftd/.

[81] *See* http://www.bop.gov/locations/institutions/otv/.

[82] *See* http://www.bop.gov/locations/institutions/alf/.

[83] *See* Washington State Dep't of Corrections, *Gender Responsive Initiative: Our Accomplishments in 2013*; William Petroski, *New $68 Million Mitchellville Women's Prison to Offer "Softer, Gentler" Environment for Inmates*, DES MOINES REGISTER (Oct. 25, 2013); Vanessa Peng, *Students, Prison Inmates Building First-of-its-Kind Space*, KCCI NEWS 8 (Aug. 12, 2013).

[84] Press Release, Iowa State University, *ISU Landscape Architecture Students and Mitchellville Prison Inmates and Staff Collaborate on New Prison's Grounds* (May 16, 2011), *available at* http://www.news.iastate.edu/news/2011/may/LA-prison.

[85] BARBARA BLOOM, BARBARA OWEN, STEPHANIE COVINGTON, & MYRNA RAEDER, GENDER-RESPONSIVE STRATEGIES: RESEARCH, PRACTICE, AND GUIDING PRINCIPLES FOR WOMEN OFFENDERS, NATIONAL INSTITUTE OF CORRECTIONS, U.S. DEP'T OF JUSTICE 2 (2003).

[86] *Id.* at 2.

[87] *Id.*

[88] *Id.* at 7.

[89] Zoann K. Snyder, Teresa A. Carlo & Megan M. Coats Mullins, *Parenting from Prison: An Examination of a Children's Visitation Program at a Women's Correctional Facility*, 32 MARRIAGE & FAM. REV. 33 (2002).

[90] See *supra* note 28.

[91] The Dep't of Justice, *Bureau of Prison's Universal Children's Day*, THE JUSTICE BLOG (Dec. 13, 2013), *available at* http://blogs.justice.gov/main/archives/3480.

[92] Hour Children's Centers of Bedford Hills and Taconic Correctional Facilities, Hour Children (last visited May 1, 2014), *available at* http://hourchildren.org/?page_id=123.

[93] BLOOM, OWEN, COVINGTON, & RAEDER, *supra* note 85, at 56.

[94] *Id.* at 8.

[95] *Id.* at 5-7. "BJS reported that about half (48 percent) of women in jail (but only 13 percent of men) and half (48 percent) of women in state and federal prisons (but only 12 percent of men) had been physically or sexually abused before incarceration." *Id.* at 5. Studies conducted in state prisons found abuse rates as high as 80 percent. *Id.* at 5. On the issue of substance abuse, "[a]pproximately 80 percent of women in state prisons have substance abuse problems," and "[a]bout half of women offenders in state prisons had been using alcohol, drugs, or both at the time of their offense." *Id.* at 6. On the issue of medical problems, "It is estimated that 20 to 35 percent of women go to prison sick call daily compared with 7 to 10 percent of men," and women additionally have "more medical problems related to their reproductive systems than do

men," including high-risk pregnancies. *Id.* at 6. Women prisoners are also "50 percent more likely than male prisoners to be HIV positive." *Id.* at 7. On the issue of mental health disorders, "[o]ne-quarter of women in state prisons have been identified as having a mental illness. The major diagnoses of mental illness are depression, post-traumatic stress disorder (PTSD), and substance abused." *Id.* at 7. Among women who have "serious mental illness," "[a]pproximately 75 percent" have "co-occuring substance abuse disorders." *Id.* at 7.

[96] *Id.* at 2.

[97] BLOOM, OWEN, COVINGTON, & RAEDER, *supra* note 85, at 80.

[98] MERRY MORASH, TIMOTHY S. BYNUM, & BARBARA A. KOONS, WOMEN OFFENDERS: PROGRAMMING NEEDS AND PROMISING APPROACHES, NATIONAL INSTITUTE OF CORRECTIONS RESEARCH IN BRIEF 1 (1998); *see also* SURVIVORS OF ABUSE AND INCARCERATION, CORRECTIONAL ASSOCIATION OF NEW YORK, *available at* http://www.correctionalassociation.org/issue/domestic-violence.

[99] Jennifer Sullivan, *Female Inmates' Treatment is Evolving*, The Seattle Times (Nov. 7, 2013).

[100] BLOOM, OWEN, COVINGTON, & RAEDER, *supra* note 85, at 8.

[101] *Id.* at 23.

[102] Washington State Dep't of Corrections, *Gender Responsive Initiative: Our Accomplishments in 2013.*

National Association of Women Judges (NAWJ) Women in Prison Committee (WIP)
Visit to
BOP's Metropolitan Detention Center (MDC), Brooklyn, New York,
March 20, 2015

Since December 2013, when the federal women's prison at Danbury closed for renovation, BOP has "temporarily" placed women prisoners, who were previously assigned, and would have been assigned to the women's prison in Danbury, Connecticut (Danbury), at MDC in Brooklyn, New York. The MDC consists of two buildings, eight and nine stories high. The women are held in a housing unit on an upper floor.

On March 20, 2015, Judge Cheryl J. Gonzales, Chair of the New York Chapter of NAWJ's WIP, Judge Robin S. Garson, and NAWJ WIP Co-Chairs, Judge Brenda P. Murray and Judge Betty J. Williams, visited MDC. Judge Marcy L. Kahn was unable to attend because jury deliberations carried over from the day before.

We arrived at 3:00 p.m. and spent approximately forty-five minutes with Warden Kimberly Ask-Carlson and her staff:
Kenneth Bork, Staff Attorney,
Michael Dellamarco, Executive Assistant,
Kimo Elvaheb, Food Service Administrator,
Dr. Michelle Gantt, Education Supervisor,
DeWayne Hendrix, Associate Warden,
Dr. Stephen Maynard, Recreation Supervisor,
Patricia Rodman, Associate Warden,
Wanda Velez, Unit Manager, and Alix McLearen, BOP's Administrator, Female Offenders Branch

MDC's stated purpose is to provide women with quality service and it strives to continue to establish programs and activities for incarcerated women in areas such as health, education, parenting, employment, mental health, substance abuse, and trauma treatment. We were each given a five-page handout listing a number of Staff Led Programs (18), Education/Recreation Community Partnerships (6), Volunteer Based Programs (7), Leisure Time Activities (18), Employment Opportunities (6), Available Equipment (5), Special Events (10), Pre-trial Classes and Programs (5), Adult Continuing Education (ACE) Classes (29), Visitation, Special Housing Programs/Services (4), and Initiatives (3).

At the time of our visit, MDC held 117 women who should have been at Danbury, including two women serving life sentences, and 57 women held pre-trial. We were escorted to an upper floor and the two large, barrack style rooms where the women spend all their time. We were advised that the Danbury women (tan pants and tops) and the pre-trial women (chocolate brown tops and pants) had been confined separately, but recently the two groups were combined so that the two rooms held approximately the same number of women. There are computers on the hallway wall and we were told the women can email at almost any time to pre-approved email addresses.

In each of the two large rooms, there are several sections of rows of metal bunk beds facing each other with walking space between the rows. Each row appeared to be about six or so bunk beds deep. In the middle of each room, out a couple of feet from the bunk beds, are some permanently affixed picnic style tables and chairs where the women eat all their meals. Beyond that, on the opposite wall, is a single row of showers and toilets behind a partial wall. The women cannot move between the two rooms. We visited both rooms, and, with the Warden and staff present, were allowed to speak with the women. Some women did not move from their beds, but many came over and sat on or at the tables and wanted to speak with us. Most of the women were placid individuals who seemed to accept their fate. Almost every single woman, even those with families nearby, wants to be in a location where they can go outside and get fresh air and experience sunshine, wind, and rain.

Some of us talked with two women at length. One, a 53 year old woman serving two life sentences on drug-related charges, described compliments she has received regarding her behavior during her period of incarceration and her efforts to get relief for her situation. Her conviction occurred in 1994 and she has served 21 years. Sister Megan Rice (Sister Rice), an 84-year old Roman Catholic nun thought the visit was a farce. She said the place had been spruced up for our visit and that the conditions are inhumane. Her complaints were a mixture of criticisms of the criminal justice system and specifics. Sister Rice wondered whether there are any studies of the physical impact of depriving human beings of fresh air and sunshine for prolonged periods. She said there is a small, narrow window up high in one wall that she goes to if the sun is shining, just to see and experience it for a bit. Sister Rice deplores the demeaning way some of the officers speak to the women. She stated that the showers only produced scalding hot water for months, but two plumbers arrived to fix the problem a few days before our visit. No other woman complained about hot water. In Sister Rice's view, the authorities and staff lack creativity in dealing with issues.

In an email on January 29, 2015, BOP Director Samuels indicated that "outdoor recreation is provided." In fact, there is no outside space. There is a room that has three pieces of exercise equipment and approximately ten feet up near the ceiling on one wall there is about 18 inches of open space, and near the floor at the bottom of the same wall there is an approximately 6 inch open space.

A gynecologist visits once a week. Emergencies are treated at local hospitals. There are two pregnant inmates. One soon to deliver is Canadian. As a non-citizen, she is ineligible for MINT or the Washington State program because she is considered a flight risk. We were assured that neither woman will be shackled during childbirth.

The MDC website indicates that MDC has visiting hours seven days a week. But this time is apportioned among the various units. We believe Warden Ask-Carlson indicated that the MDC women are allowed visitors on Thursday evenings and maybe during a time period on one weekend day. We saw the visiting room and there were some books for children in the waiting area.

After spending about an hour talking with the women, we reconvened with the Warden Ask-Carlson and her staff and were allowed to ask questions.

Findings

1. BOP needs to establish a firm deadline for reopening Danbury and, in the interim, remedy the conditions that exist at MDC that clearly fall below the ABA Standards on Treatment of Prisoners and the UN Standard Minimum Rules for the Treatment of Prisoners.

ABA Standards on Treatment of Prisoners specify that:

> The physical plant of a correctional facility should:
> · (iii) include appropriate housing, laundry, health care, food service, visitation, recreation, education, and program space;
> · (v) not deprive prisoners or staff of natural light, of light sufficient to permit reading throughout prisoners' housing areas, or of reasonable darkness during the sleeping hours; [and]
> · (vii) allow unrestricted access for prisoners to potable drinking water and to adequate, clean, reasonably private, and functioning toilets and washbasins[.][1]

UN Standard Minimum Rules for the Treatment of Prisoners specify that:

> Accommodation
> 11. In all places where prisoners are required to live or work,
> (a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation[.]
>
> Exercise and sport
> 21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.[2]

2. Visiting hours should be expanded to encourage family visits.

3. The staff appeared to be dedicated professionals, but there is only so much they can do with the physical plant. Warden Ask-Carlson and her staff are trying to make something good happen with planned programs emphasizing family reunification. Many of the Special Events listed in the brochure are for March and April 2015.

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[1] ABA Standards on Treatment of Prisoners, Standard 23-3.1(a) (3d ed. 2011), *available at* www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html.

[2] UN Standard Minimum Rules for the Treatment of Prisoners, adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, *available at* www.ohchr.org/EN/ProfessionalInterest/ Pages/TreatmentOfPrisoners.aspx.

4. Reasonable responses were given to the women's complaints about food and medical care.

5. MDC will check on the possibility of allowing the women to use the roof to be able to spend some time outside.

6. Warden Ask-Carlson will not allow officers to treat women in a demeaning manner. She will hold a general meeting and explain to the women that pre-trial and the Danbury women are receiving the same treatment.

7. I think it is fair to say that the women appreciated our visit.

Thanks to Judge Gonzales for arranging the visit.

Report submitted by: Judge Cheryl J. Gonzales, Civil Court, Housing Part, New York, New York; Judge Brenda P. Murray, Federal Administrative Law Judge; and Judge Betty Williams, Supreme Court of the State of New York.

Statement of Jerome Dillard
"Oversight of the Bureau of Prisons: First-Hand Accounts of Challenges Facing the Federal Prison System"
August 4, 2015

In Opening: I would like to thank this committee and the Senators from my home state of Wisconsin, Ron Johnson and Tammy Baldwin, for the opportunity to come before you with my testimony.

I stand before you as a formerly incarcerated citizen, who has served time in both the federal and state prison systems. My crimes were non-violent offenses mainly driven by drug addiction. While doing time in prison I witnessed a system that was ballooning with predominantly young African-Americans who were serving very long prison sentences 10, 20, 30 years for drug crimes. This was troubling to me, seeing so many of us as young men losing the prime of their lives to the criminal justice system. It was while doing my time and making these observations that I decided to work hard to never return.

The barriers are tremendous for many who are returning to their communities. Accumulating debt while still incarcerated, owed to the child support system, results in restitution and supervision fees which can be overwhelming. Some of the other problems I have identified and have worked to change in my work with current or previously incarcerated individuals are:

Lack of a Peer support network:
For 13 years I have served as the director of Voices Beyond Bars (VBB), a volunteer organization, founded in 2002. VBB is one of a few organizations in my state that provides weekly coaching, support and mentoring to men and women returning to Dane County from Federal and Wisconsin's state prisons. This support group brings approximately 20-30 formerly incarcerated individuals together each week in a forum allowing for dialogue, support, mentoring, feedback and accountability for individuals at various phases of their reentry. The power of a peer led group provides so many of the essentials needed for successful re-entry. An in-house prison support network of this type would be helpful for the process of rehabilitation. Some of the barriers to creating this sense of community are opposition from prison staff which fosters an "us vs. them" mentality. Cultural competency training would be of value in prison institutions.

Lack of release planning and an employment network:
In my 5-years working at Madison Area Urban Ministry (MUM) as Re-Entry/Resource Specialist I coordinated a program called The Journey Home to address the barriers to successful reentry. I worked with individuals still incarcerated within a Wisconsin state prison to develop their re-entry plans using evidence-based practices, including reviewing behavioral responses for situations that could potentially lead to reoffending. I organized and implemented monthly service/information fairs to provide pre-release and newly released

individuals the opportunity to develop contacts within an established referral network. Among this network were housing, employment, DOT and child support services. These efforts included developing and maintaining relationships with various agencies to establish an ongoing network of offender friendly employers which are greatly lacking in our communities. Making ban the box a nationwide effort would help reduce obstacles to finding employment.

Reducing and incentivizing time served for individuals with drug conviction:
My experience in this field allows me to have working relationships with judges in the Dane County Court system to find alternatives to sentencing in low-risk and first-time offenders. Over the years as a professional I have served on many committees to assist in the recovery and the peer support of individuals returning to the community after incarceration. I was appointed by the Governor (Doyle) for the, Council on Offender Re-Entry Committee. I currently serve on the TAD (Treatment Alternative Diversion) Advisory Committee. This is a committee comprised of State, County, City and Community Leaders working towards offering additional treatment and diversion programs for individuals with substance abuse and mental health issues that have come in contact with the criminal justice system.

Addressing and treating mental health issues:
In my previous work at the Wisconsin Resource Center, a mental health AODA prison, I understand that even with the best programming and planning if underlying mental health issues and traumas are not addressed, successful re-entry may be harder for many of these individuals to realize. Within this institutional network, as Human Services Program Coordinator I played an integral part in bringing together a team of individuals including social workers, psychologists, facility directors, and family member to address the best individualized approach for overcoming the mental health issues that may circumvent successful re-entry. It is here that I rely on personal experience with incarceration, professional work and volunteer experiences, specialized training and a network of individuals committed to this issue. This facility is unique and invaluable because they provide mental health and trauma informed care on an individualized bases. Without these facilities individuals in correctional settings remain with untreated mental health issues.

Housing:
As previous Director of Re-entry and Advocacy Services with the Nehemiah Community Development Corporation, we realized housing to be a tremendous need for men and women returning to the community. Homelessness is rampant among the formerly incarcerated. I'm seeing more young people leaving our institutions homeless, which causes them to couch surf with antisocial peers and relatives. Individuals need a safe place to live to implement the new life plan they create for themselves during incarceration. We created and implemented a housing project for men returning to the community after incarceration, in collaboration with the WI DOC (Community Corrections). This work involved supervising staff in the day to day operations of the house and maintaining an orderly law abiding environment within the

house. While there are only a few of these models in Dane County, we are in great need of more.

Lack of skills training/basic education skills:
In my current position as the Re-Entry Coordinator for Dane County, I work with individuals who are serving sentences within our County facilities under the operations of the Sheriffs Department. In a typical work day I will meet individually with inmates who will be released back to the community within 60 to 90 days. Our meetings allow me to assess the needs of that inmate who is preparing to transition from jail to the community in areas of employment, housing, education, healthcare, transportation, child support, etc. Then based on their needs, a strategic plan is put in place to help address those areas. In addition to meeting individually with inmates, I conduct two weekly Re-Entry Readiness groups. These take place within the facilities. Once a week for 6-8 weeks, we work on re-entry planning and life skills. Being formerly incarcerated has given me credibility and the respect with my group participants. I ask the inmate to prepare for what day one will be like for them after they are released? What will their actions be if the plan doesn't go as expected? What will their plan B and C look like? We come up with what the best approach would be as we talk those things out. I ask them the tough questions, listen to them and work with them on what they will do in those worse case scenarios. We need more ability to access the mind and heart of inmates, to understand what caused them to end up in a jail or prison system, what their traumas are, are there deficiencies in skills and education? How can we work with academia, community and faith based organizations to meet these needs? A collaborative approach is needed across many disciplines to get to the heart of the many issues that result in incarceration.

Allow greater access for advocates working with individuals in prison:
I have had the opportunity to share my own journey of recovery at Correctional and Educational Institutions, Conferences and Community Events. I give a personal account of how peer support directly aided in the success of my recovery with regard to mental health and substance abuse. We often don't think of our formerly incarcerated citizens as assets in the work that's being done to address the issues of mass incarceration. Those who have been impacted are rarely asked to be at the table when we are looking for solutions to mass incarceration. We are sending a message, particularly to our young people – because we lock up so many, that America feels negatively about them. We may be sending a message that we are willing to throw them away, that we are a society that recycles everything except human beings. Many young people who have been tied to the criminal justice system believe that there is no place for them in the workforce/labor market. The truth is they may be right. Many young people in our communities want to work. After not being able to find work, they begin to believe that there is no chance for them. Hopelessness becomes their reality.

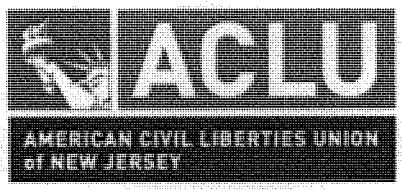
In Closing:
In working with our incarcerated/formerly incarcerated citizens for over a decade, I'm beginning to see a shift in how we are confronting mass incarceration. It's an issue that both political parties agree on; America's addiction to mass incarceration is not working. It's costly

and does not restore people. I feel the climate is right and the ground is fertile for real criminal justice reform. The modern War on Drugs – produced an overall prison population that remains unprecedented in world history. At the federal level, the growth in the incarceration rate has been even greater and more sustained than in the states. I am encouraged by some of the initiatives that are taking place at the local level in my county. We are working to address the racial disparities and reducing the numbers of those incarcerated at all levels of the criminal justice system. Addressing these problems will require far more than tinkering with sentencing policy for nonviolent drug offenders or revamping prison programming. To achieve a reasonable level of incarceration, we will need to substantially reduce both the number of people admitted to prison and the length of their sentences.

In making a few suggestions, I would like to say:

(1) The BOP should continue to solicit feedback from people who are serving time, so that they craft programming that's of relevancy to the prison population.
(2) The BOP programming should match labor market data about high growth industries, it also needs to be specific to regions
(3) The BOP needs to advocate to Congress for laws that allow for merit time early release, as an incentive for good behavior / programming.
(4) That community-based services become more 'Holistic'
(5) That there be greater continuity of services from pre-release to post-release

Thank you for your time



Testimony of Udi Ofer
Executive Director
American Civil Liberties Union of New Jersey

to the

Senate Homeland Security and Governmental Affairs Committee

Oversight of the Bureau of Prisons (BOP):
First Hand Accounts of Challenges Facing the Federal Prison System

Tuesday, August 4, 2015

For further information, please contact Udi Ofer, Executive Director of the ACLU of New Jersey, at (973) 854-1716 or at uofer@aclu-nj.org, or Jesselyn McCurdy, Senior Legislative Counsel, ACLU at (202) 544-1681 or at jmccurdy@aclu.org.

Introduction

The American Civil Liberties Union (ACLU) submits the following testimony to the Senate Homeland Security and Governmental Affairs Committee for its hearing on *Oversight of the Bureau of Prisons (BOP): First Hand Accounts of Challenges Facing the Federal Prison System.* For nearly 100 years, the ACLU has been the nation's leading organization dedicated to defending and advancing civil liberties and civil rights. With more than a million members, activists, and supporters across the nation, including tens of thousands living in New Jersey, the ACLU fights on a daily basis in the courts, in the legislatures, and in communities for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, disability, or national origin.

Today's hearing comes at an important juncture in our nation's history, as a growing number of Republicans and Democrats have begun to take a second look at the country's criminal justice system. Following decades of punitive policies that have sent millions to prison and devastated communities, particularly low income communities of color, Americans have become more pragmatic and less ideological in their approach to criminal justice, realizing that our nation's prisons and jails have grown too big and that all too often the people who end up imprisoned suffer from drug addiction or mental illness and should not be incarcerated in the first place.

This moment provides a unique opportunity to create a criminal justice system that is smarter, fairer, smaller, and more effective. Accordingly, we urge this Committee and the Bureau of Prisons to implement reforms that will eliminate the use of solitary confinement on vulnerable populations and prohibit its use beyond 15 days on all other prisoners; increase the use of compassionate release, good time behavior credits, and residential drug abuse programs to help reduce the incarcerated population; and look to states like New Jersey, where reforms have already yielded positive results in incarceration practices.

Currently, our nation's jails and prisons hold almost 2.3 million people on any given day,[1] and another five million are on probation or parole,[2] at an annual cost to taxpayers of more than $80 billion. The federal prison population has increased from approximately 25,000 prisoners in FY1980 to slightly more than 207,000 today.[3] The BOP's budget has also doubled in the past decade, reaching its current level of $7.2 billion in the President's FY16 budget request, approximately 25 percent of the Department of Justice's overall budget. Indeed, in 2014, the BOP's budget grew at almost twice the rate of the rest of the Department of Justice.[4] Despite this growing budget, current BOP Director Charles Samuels has acknowledged that, under current conditions, the system is over-capacity and jeopardizing the safety of staff and prisoners.[5]

It costs approximately $30,000 a year to house just one federal inmate, approximately three times the average yearly cost of tuition at a public university.[6] The costs have far more consequences

than simply the fiscal expenditures necessary to incarcerate 25 percent of the world's prisoners in a country with just five percent of the world's population. The true costs are human lives and particularly generations of young black and Latino men who serve long prison sentences and are lost to their families and communities.

The criminal justice system disproportionately impacts African-Americans and Latinos, perpetuating a harmful legacy of racism that stretches back to our nation's founding. In 2013, African Americans made up about 14 percent of the nation's population but comprised almost 36 percent of people incarcerated in state and federal prisons.[7] Latinos made up 17 percent of the general population and 22 percent of the state and federal incarcerated population (in contrast, Latinos currently comprise 34 percent of people incarcerated in federal prisons[8]).[9] Close to three percent of all black men in the United States were incarcerated (a rate of 2,805 inmates per 100,000 black men), compared to one percent of Latino men (a rate of 1,134 per 100,000) and 0.5 percent of white men (a rate of 466 per 100,000).[10] Black women were imprisoned at a rate more than twice that of white women.[11]

The current system often lacks fundamental due process protections, hands down unreasonably long sentences (more than 40,000 people are currently serving life without parole sentences),[12] and makes it all but impossible for a formerly incarcerated person to rebuild his or her life after doing time – all the while wasting trillions of taxpayer dollars on efforts that have no clear connection to increasing public safety.

While in 2013 the federal prison population began to decrease in size for the first time since 1980, and today there are more than 11,000 fewer prisoners, the Bureau is still at 125 percent of its rated capacity. The rates of crowding are even higher at its high- and medium-security facilities (151 percent and 135 percent, respectively).[13] These levels of crowding pose serious challenges to the operation of safe, secure, and humane prisons. Reducing prisoners' time in institutional custody can help ease this crowding, while incentivizing good behavior and educational and rehabilitative efforts for the prisoners themselves.

It is clearly time for a change. We are at a crossroads as Americans recognize the need to reform both our federal and state criminal justice systems. Former U.S. Attorney General Eric Holder acknowledged in a 2013 speech before the American Bar Association that "although incarceration has a significant role to play in our justice system – widespread incarceration at the federal, state, and local levels is both ineffective and unsustainable."[14] Organizations such as the ACLU, Americans for Tax Reform, Right on Crime, and the Leadership Conference on Civil and Human Rights have come together under the umbrella of the Coalition for Public Safety to work to make our criminal justice system smarter, fairer and more cost effective at the federal, state and local levels. This is a crucial and historic moment when both Democrats and Republicans

understand the need to reform our criminal justice system, and we hope that this hearing will serve as a catalyst for moving forward with reform on the federal level.

The following testimony offers concrete ways for the Bureau of Prisons to reform its practices and reduce its incarcerated population. It provides steps that the Bureau of Prisons can take today, some on its own and some with the support of Congress, to reform its practices, treat prisoners with dignity and respect, reduce recidivism, ensure that vulnerable populations do not unnecessarily sit in prison, and credit prisoners with the reduced sentences that they deserve. The testimony ends by providing an overview of recent successes in New Jersey to reduce the state's jail and prison populations.

I. Solitary Confinement

At the top of any reforms of BOP practices must be the issue of solitary confinement. The extreme suffering and profound damage caused by solitary confinement has long been well known. In 1890, the United States Supreme Court gave this description of solitary confinement as it was practiced in the early days of the Republic:

> A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others, still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.[15]

Half a century later, the Court referred to solitary confinement as one of the techniques of "physical and mental torture" that have been used by governments to coerce confessions.[16] And just this June, Justice Kennedy devoted a concurring opinion to solitary confinement, concluding that "research still confirms what this Court suggested over a century ago: Years on end of near-total isolation exact a terrible price."[17]

The Bureau holds approximately five percent of its prisoners in solitary confinement.[18] While this is a slight decline from previous years, it nevertheless represents more than *10,000 prisoners* on any given day. The vast majority of these prisoners are held in Special Housing Units (SHUs), while the rest are held in Special Management Units (SMUs) or the Administrative Maximum facility in Florence, Colorado (ADX). In all of these facilities, prisoners are confined to their cells approximately 23 hours per day.[19]

The average prisoner sent to solitary confinement spends a long time in continuous isolation from fellow prisoners and everyday prison life; sometimes as long as an average of close to *four*

years. Prisoners in ADX spend an average of 1,376 days in continuous solitary confinement.[20] Prisoners in the Special Management Units spend an average of 277 days in continuous solitary confinement, while prisoners in the Special Housing Units spend an average of 76 days in continuous solitary confinement.[21]

The SMU and ADX solitary confinement populations are exclusively male, while women make up two percent of SHU's population.[22] The SMU population is disproportionately black, with black prisoners comprising 48 percent of SMU's population, while the racial demographics of the rest of the solitary confinement populations are in line with the general prison population, which means they are disproportionately black when compared to the general population.[23]

In May 2013, the Government Accountability Office issued a highly critical report on the Bureau's use of solitary confinement.[24] In response, the Bureau agreed to an independent review of its use of solitary, the results of which were released on February 27, 2015.[25] The review acknowledged the Bureau's stated commitment to reducing its use of solitary, but also revealed significant problems in current practices, including the housing of seriously mentally ill individuals in solitary, inadequate mental health treatment and staffing and improper mental health diagnoses, the use of solitary for vulnerable individuals who should instead be held in protective custody, overly long stays in solitary, and the direct release of individuals from solitary without adequate re-entry preparation.

It is well established that persons with mental illness are particularly vulnerable to the harms of solitary confinement. Federal courts have repeatedly found the solitary confinement of the mentally ill to be unconstitutional,[26] and in 2012, the American Psychiatric Association enacted a policy opposing the "prolonged" segregation of prisoners with serious mental illness, which it defined as longer than 3-4 weeks.[27] For these reasons, the review's findings regarding the treatment of persons with mental illness in solitary confinement are particularly disturbing. They include:

Misdiagnosis and under-diagnosis of mental illness. The reviewers disagreed with the Bureau's diagnosis in nearly *two-thirds* of the cases, and concluded that the Bureau had erroneously assessed a number of prisoners as not having significant mental health problems.[28]

Inadequate mental health treatment. Even when mental health needs are identified, services are insufficient. The reviewers found that mental health treatment was insufficient or inappropriate in more than half of the cases reviewed.[29]

Lack of psychiatric staff. The reviewers found a clear shortage of psychiatrists throughout the facilities that were visited, which "leads to numerous problems in both diagnosis and treatment, particularly for the seriously mentally ill inmates."[30]

Inappropriate placement of severely mentally ill prisoners in solitary confinement. The reviewers concluded that about *30 percent* of the prisoners they reviewed required placement in a specialized mental health program or residential treatment unit, and should have been excluded from solitary confinement as a result of their serious mental illness.[31]

The review also found that more than 1,300 federal prisoners are held in solitary confinement solely for their own protection,[32] and not because they pose a threat to security.[33] Despite their vulnerability and need for protection, prisoners in protective custody are subjected to virtually the same harsh and restrictive conditions as prisoners who are in solitary for punishment, which the reviewers noted is contrary to nationally accepted practices.[34] The reviewers also found that 48 percent of prisoner in the SHU are awaiting the results of an investigation into misconduct,[35] and that 35 percent, or 3,216 of the prisoners in the SHU are in prison for a drug offense.[36]

Finally, research has shown that prisoners who are released directly from solitary confinement to the community have higher rates of recidivism than those who are transitioned to the general prison population prior to release.[37] One study in Washington State found that prisoners released from solitary confinement to communities had a felony commission rate 35 percent greater than similar prisoners released from the general population.[38] Despite this research, the review found that the Bureau releases prisoners directly from solitary confinement to the community, while not even accounting for how many prisoners are released in this way.[39] The reviewers concluded that such releases are "not in the interests of the communities where these inmates are being released," and should occur "only under extraordinary circumstances."[40]

Recommendations:

- As an important first step, the Bureau should promptly **implement the recommendations of the independent review**, which range from better tracking of placements and the monitoring of trends and patterns, to reducing the length of stay for SMU prisoners[41] and expanding housing alternatives for prisoners in protective custody.[42]

  But much more is needed. The extreme social and environmental deprivations of solitary confinement should have no place in American corrections. Physical separation may sometimes be necessary for safety and security; isolation is not.

- The Bureau should **abolish the use of solitary confinement for persons under the age of 18 and for persons with mental illness**. Solitary confinement has been widely decried as cruel and unusual punishment, but for juveniles in particular it presents a greater danger to their health and development, making rehabilitation less likely. Studies of

juvenile solitary confinement have found that more than 50 percent of juvenile detention facility suicides occur when a youth is in confinement. Similarly, solitary confinement presents unique dangers to individuals with mental illness.

Senators Cory Booker and Rand Paul have introduced legislation, the REDEEM Act (S. 675), which would prohibit the use of solitary confinement on juveniles for any reason other than to protect a juvenile or those around him or her. In those cases it may only be used as a temporary response to behavior that threatens immediate harm to a youth or others, and then a three-hour limit is imposed. We strongly support this legislation.

- For prisoners older than 18 and who do not suffer from mental illness, the Bureau should **prohibit periods of solitary confinement lasting longer than 15 days**, which would bring it into compliance with international human rights standards.[43] The Bureau should also prohibit more than 20 days of solitary confinement during any 60-day period. Moreover, even when used for a few days, solitary confinement must be limited to very exceptional circumstances, as a last resort, for as short a time as possible. Finally, procedural safeguards must be followed to prevent the arbitrary or excessive use of solitary confinement, and strict documentation and high level, internal oversight and approval of the use of any isolation must be put in place. Regular, independent review and auditing of solitary confinement practices for all facilities are necessary to ensure that reforms are implemented and managed appropriately.

- Short of the above prohibitions, the Bureau should dramatically reduce the duration of solitary confinement; provide enriched programming, improved mental health treatment, and increased social interaction for those held in segregated housing; expand specialized housing for prisoners with mental illness and cognitive or developmental disabilities; and ensure that prisoners are not released directly from solitary confinement to communities.

Implementing the above recommendations will lead to a decrease in the federal prison population by reducing recidivism rates.

II. Compassionate Release

Under the Sentencing Reform Act of 1984, Congress authorized the BOP to request that a federal judge reduce an inmate's sentence for "extraordinary and compelling" circumstances, also known as "compassionate release."[44] The request can be based on either medical or non-medical conditions that the judge could not reasonably have foreseen at the time of sentencing. In 2013, BOP expanded the medical criteria that can be considered for inmates seeking compassionate release. In addition, the Attorney General announced revised criteria for other categories of

inmates seeking reduced sentences, including older prisoners and certain inmates who are the only possible caregiver for their dependents.

Recommendation: The Bureau should fully implement its updated policy regarding compassionate release for prisoners in order to realize its full potential to reduce the federal prison population. Moreover, although BOP has released 156 people since August of 2013 in accordance with the updated compassionate release policy,[45] it is vital that the decision on whether to apply for compassionate release is not left solely to the discretion of the Bureau. Prisoners themselves should be able to request from a judge that they be released from custody early due to health or family circumstances. The ACLU recommends that Congress amend 18 U.S.C. § 3582(c)(1) to allow individual prisoners, rather than just the Bureau, to request that a court consider compassionate release. This will ensure that courts will be given more opportunities to decide whether individuals such as elderly prisoners who are at least 65 years old and who have served at least 10 years or 75 percent of their sentences, or prisoners who need to care for their children or spouses, are given opportunities for compassionate release.

III. Time Credits For Good Behavior

The Bureau provides good time credit for "good behavior" that the law describes as "exemplary compliance with institutional disciplinary regulation."[46] Such credits reduce a prisoner's time in BOP custody. Yet the BOP's method of calculating earned good time credit reduces a prisoner's sentence to a maximum credit of 47 days per year – below the 54 days the statute intended. This decision results in unnecessary increases in prison sentences at significant cost.

Recommendation: Congress should clarify the statutory language allowing an inmate to earn good time credit of up to 54 days per year.[47] By clarifying the statutory language, Congress could save an estimated $41 million in the first year alone,[48] or approximately $400 million over ten years according to the BOP.[49] Congress should also implement a proposal supported by BOP that would create a new good time credit earned for successful participation in recidivism-reduction programs.[50]

IV. BOP's Residential Drug Abuse Program (RDAP)

The Residential Drug Abuse Treatment Program (RDAP) is a voluntary, 500-hour, 9-to-12 month program of individual and group therapy for federal prisoners with substance abuse problems. It is authorized by 18 U.S.C. § 3621, which directs the Bureau of Prisons to provide "residential substance abuse treatment (and make arrangements for appropriate aftercare) . . . for all eligible prisoners." As an incentive to get prisoners to participate, federal law allows the BOP to reduce the sentences of RDAP graduates convicted of "nonviolent" offenses by up to one year. Currently, however, BOP is only reducing sentences by an average of 10.2 months.

Recommendation: We urge the BOP to prioritize RDAP slots for those prisoners who are eligible for a sentence reduction and to provide the full reduction. Moreover, Congress should appropriate $116 million dollars requested by the President in his FY16 budget for the BOP Drug Treatment efforts including the RDAP.

V. New Jersey Experience

In New Jersey, the prison population reached its peak in 1999 when more than 30,000 prisoners were incarcerated in state prisons.[51] In the decade-and-a-half since then, New Jersey has reduced its prison population by almost 30 percent.[52]

New Jersey's success in reducing its prison population can be attributed to several positive policy decisions. The most notable policy changes have been a reduction in the scope and magnitude of our harsh mandatory minimum sentences for narcotics offenses,[53] and a decrease in the number of parolees returned to prison for technical violations.[54] New Jersey also recently passed sweeping reform of its system of pretrial detention and release that promises to further reduce the incarcerated population in the state.[55]

a. Blunting Harsh Mandatory Minimum Drug Sentences

New Jersey, like many other states, issued a series of legislative enactments designed to wage a "War on Drugs."[56] In New Jersey, the Legislature focused on mandatory sentencing by creating a new crime that required a three-year mandatory period of incarceration before parole eligibility for distribution or possession with intent to distribute any type or amount of drugs within 1,000 feet of property owned or used by a school.[57] When the law was first enacted, the only exceptions to the three-year mandatory minimum sentence existed if the crime involved less than one ounce of marijuana (in which case a shorter mandatory minimum applied) or if the offense took place within a private residence without juveniles present and was not for profit (in which case an affirmative defense existed).[58] At the peak of these mandatory minimum sentences, when New Jersey's prison population exceeded 30,000, more than 10,000 of those prisoners had been sentenced for drug crimes.[59]

In 2011, the Legislature amended the statute such that a mandatory minimum sentence is required *only* where the offense actually occurred on school property or the defendant used or threatened violence or was in possession of a firearm.[60] The change has been remarkable. The number of prisoners incarcerated on drug crimes is down to 3,670.[61]

b. Reducing Re-incarceration for Technical Parole Violations

Parole entails supervision of a prisoner who has been released to the community after a period of incarceration. Ex-offenders on parole must remain crime-free and follow a series of conditions established by a parole board. When a parolee commits a new crime he is likely to be re-incarcerated. But, when a parolee does not comply with supervision conditions, such as being employed, meeting with a parole officer, avoiding drugs or alcohol, attending treatment sessions, paying fines or fulfilling community service requirements, a technical violation of parole occurs.[62] Parole boards can either return the technical violator to prison or impose alternate sanctions. Generally speaking, returning technical parole violators to prison bloats prison populations without promoting public safety.[63]

In 2000, New Jersey's prison population approached 29,000.[64] That year, more than 4,000 people were sent back to prison for technical parole violations.[65] The number of technical parole violations that resulted in people being re-incarcerated has been slowly reduced almost every year since then.[66] Last year, just 1,511 people went back to prison for technical violations.[67] While some states have codified absolute limits on re-incarcerating technical parole violators,[68] New Jersey's efforts have been more tailored to the individual parolee. As the Parole Board has explained:

> In response to the burden that re-incarcerating technical, non-criminal violators of parole places on the corrections system, the [Parole Board] has adopted a new policy of graduated responses to technical violations. The new graduated sanctions regime is designed to use the least restrictive response for the violation being addressed. This policy encourages Parole Officers and their supervisors to tailor sanctions to the offense, and focus on root causes rather than relying on re-incarceration as a one-size-fits-all response.[69]

By providing for sanctions other than re-incarceration and by seeking to address root causes, New Jersey has cut the number of technical parole violators returning to prison by more than 60 percent.[70]

c. Pretrial Detention Reform

In addition to the more than 21,000 people in New Jersey prisons, approximately 15,000 people are housed in our county jails – either serving short sentences or as pretrial detainees.[71] As a 2013 study made clear, many of the 10,000 people detained pretrial were not the most violent or the most dangerous;[72] they were the poorest.[73] The study also revealed that many pretrial detainees sat in jail for long periods of time (average of 314 days) awaiting adjudication of their case.[74]

In response to this unfair and inefficient system, stakeholders in New Jersey, under the leadership of the Chief Justice of the New Jersey Supreme Court formed the Joint Committee on Criminal Justice,[75] recommended a total overhaul of the bail system and the establishment of statutory speedy trial protections.[76]

In the summer of 2014, the Legislature passed, and Governor Chris Christie signed, legislation that will transform New Jersey's bail system from a money-based system to a risk-based system.[77] The legislation aims to ensure that each person who gets arrested will be evaluated to determine the likelihood of committing another offense, intimidating witnesses, or fleeing.[78] Low-risk, non-violent offenders will be released on their own recognizance, while many of those who pose higher risks will be released subject to conditions such as curfews, travel restrictions, or electronic monitoring.[79] We believe that the Legislation has the opportunity to dramatically reduce New Jersey's jail and prison populations.[80]

d. Solitary Confinement

This is not to suggest that New Jersey is doing everything right with respect to its prisons and jails. In our state prisons, county jails and juvenile detention centers, we house far too many people in solitary confinement for far too long. Vulnerable populations like children,[81] people with mental illness[82] and people with developmental disabilities[83] have been housed in total isolation, and suffered severe consequences as a result. We are pushing – through litigation,[84] rulemaking,[85] and legislation[86] – to end the practice of housing vulnerable populations in solitary confinement. The efforts are starting to bear fruit: the Middlesex County Jail – the defendant in a lawsuit we filed to prevent the housing of mentally-ill prisoners in solitary confinement – applied for and was awarded a grant from the Vera Institute of Justice to study Safe Alternatives to Isolation.[87] A bill that would ban the use of solitary confinement for vulnerable individuals has received increased statewide attention.[88]

But we also recognize that solitary confinement, particularly long-term solitary confinement is an extremely harmful practice for anyone.[89] New Jersey has a long-history of keeping people housed in solitary confinement for long periods.[90] This is a practice that needs to end. The bill currently being considered in New Jersey would limit the amount of time a person could be subjected to solitary confinement, except in emergency situations, to 15 consecutive days.[91] The Legislation in New Jersey has gotten stakeholders to discuss seriously whether, and how, New Jersey can safely reduce its reliance of a form of punishment that has been widely condemned as torture.[92]

Conclusion

Nationwide, the bipartisan commitment to criminal justice reform is strong. This Congress has a unique opportunity to transform this commitment into real change. The ACLU urges Congress to

adopt our recommendations, which would help to increase fairness and justice at every stage in the system.

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[1] This number includes almost 1.6 million individuals held in state and federal prisons, plus approximately 785,000 in county and city jails and 55,000 in U.S. Marshals custody. E. Ann Carson, Ph. D., Bureau of Justice Statistics, "Prisoners in 2013" (2014), available at http://www.bjs.gov/content/pub/pdf/p13.pdf (hereinafter "Prisoners in 2013"); Todd D. Minton & Daniela Golinelli, Ph.D, Bureau of Justice Statistics, "Jail Inmates at Midyear 2013 – Statistical Tables" (2014) (Revised Aug. 12, 2014), available at http://www.bjs.gov/content/pub/pdf/jim13st.pdf; U.S. Marshals Serv., Office of Pub. Affairs, "Fact Sheet: Facts and Figures 2015," available at http://www.usmarshals.gov/duties/factsheets/facts.pdf. Congress funds U.S. Immigration and Customs Enforcement (ICE) to hold an additional 34,000 people in detention facilities daily, though ICE does not publicly release its daily detention population. For more information, *see* National Immigrant Justice Center, "Eliminate the Detention Bed Quota," available at http://www.immigrantjustice.org/eliminate-detention-bed-quota#.VO-1yfldU1J (last visited July 14, 2015).

[2] Lauren E. Glaze & Thomas P. Bonczar, Bureau of Justice Statistics, "Probation and Parole in the United States 2010," at 1, 30 app. tbl. 2, 40 app. tbl. 12, *available at* http://bjs.gov/content/pub/pdf/ppus10.pdf

[3] *Compare* Federal Bureau of Prisons, "Statistics: Total Federal Inmates," (2015), *available at* http://www.bop.gov/about/statistics/population_statistics.jsp *with* Federal Bureau of Prisons, Statistics: Past Inmate Population Totals, *available at* http://www.bop.gov/about/statistics/population_statistics.jsp#old_pops

[4] Michael E. Horowitz (Inspector General, Bureau of Prisons), "Top Management and Performance Challenges Facing the Department of Justice 2014" (2014).

[5] Charles E. Samuels, Jr. (Director, Federal Bureau of Prisons), "Testimony on Oversight of the Federal Prison System before the Judiciary Committee of the U.S. House of Representatives Subcommittee on Crime" (2013).

[6] Charles E. Samuels, Jr., "Annual Determination of Average Cost of Incarceration," Federal Register (Mar. 18, 2013), https://www.federalregister.gov/articles/2013/03/18/2013-06139/annual-determination-of-average-cost-of-incarceration. See also "Average Published Undergraduate Charges by Sector, 2014-15," College Board, http://trends.collegeboard.org/college-pricing/figures-tables/average-published-undergraduate-charges-sector-2014-15

[7] *See* Prisoners in 2013, *supra*.

[8] Federal Bureau of Prisons, "Statistics: Inmate Ethnicity," (2015), *available at* http://www.bop.gov/about/statistics/statistics_inmate_ethnicity.jsp.

[9] *See* Prisoners in 2013, *supra*.

[10] *Id.*

[11] *Id.*

[12] *See* Ashley Nellis & Ryan S. King, Sentencing Project, "No Exit: The Expanding Use of Life Sentences in America" 9-10 (Figure 2) (July 2009), *available at* http://www.sentencingproject.org/doc/publications/publications/inc_noexitseptember2009.pdf.

[13] Kenneth McGinnis, et al., "Federal Bureau of Prisons: Special Housing Unit Review and Assessment," CNA Analysis and Solutions (December 2014), at 13 (hereinafter "CNA Audit").

[14] Eric Holder, Att'y Gen., "Remarks at the Annual Meeting of the American Bar Association's House of Delegates" (Aug. 12, 2013) (transcript available at http://www.justice.gov/opa/speech/attorney-general-eric-holder-delivers-remarks-annual-meeting-american-bar-associations)

[15] *In re Medley*, 134 U.S. 160, 168 (1890).

[16] *Chambers v. Florida*, 309 U.S. 227, 237-38 (1940).

[17] *Davis v. Ayala*, 135 S. Ct. 2187, 2210 (2015) (Kennedy, J., concurring).

[18] CNA Audit at iii-iv.

[19] Government Accountability Office, "Bureau of Prisons: Improvements Needed in Bureau of Prisons' Monitoring and Evaluation of Impact of Segregated Housing," GAO-13-429 (May 2013) (hereinafter, GAO Report). The Bureau has sometimes disputed the term "solitary confinement," pointing out that some prisoners in the SHUs and SMUs are double-celled. According to the Civil Rights Division of the Department of Justice, "the terms 'isolation'

or 'solitary confinement' mean the state of being confined to one's cell for approximately 22 hours per day or more, *alone or with other prisoners*[.]" Letter from Thomas E. Perez, Assistant Attorney General, Civil Rights Division, to Honorable Tom Corbett, Governor of Pennsylvania, May 31, 2013, at 5 (available at http://www.justice.gov/crt/about/spl/documents/cresson_findings_5-31-13.pdf) (emphasis added). Both courts and mental health experts have concluded that the presence of a cellmate does not significantly mitigate, and indeed may aggravate, the stresses of solitary confinement. *See Madrid v. Gomez*, 889 F. Supp. 1146, 1230 (N.D. Cal. 1995) (finding that prisoners in California's SHU "are severely deprived of normal human contact regardless of whether they are single or double celled"); Grassian, "Psychiatric Effects of Solitary Confinement," 22 Wash. U.J.L & Pol'y 325, 357-58 (2006) ("Confined groups comprising just two individuals may be the most pathogenic of all").

[20] CNA Audit at 58.

[21] *Id.*

[22] CNA Audit at 52.

[23] *Id.*

[24] GAO Report, supra.

[25] Kenneth McGinnis, et al., "Federal Bureau of Prisons: Special Housing Unit Review and Assessment" (December 2014).

[26] *See, e.g., Madrid*, 889 F. Supp. at 1265-66; *Ruiz v. Johnson*, 37 F.Supp.2d 855, 915 (S.D. Tex. 1999), *rev'd on other grounds*, 243 F.3d 941 (5th Cir. 2001), *adhered to on remand*, 154 F.Supp.2d 975 (S.D. Tex. 2001).

[27] American Psychiatric Association, "Position Statement on Segregation of Prisoners with Mental Illness" (December 2012), available at http://www.psychiatry.org/File%20Library/Learn/Archives/Position-2012-Prisoners-Segregation.pdf.

[28] CNA Audit at 115, 117.

[29] CNA Audit at 117.

[30] CNA Audit at 123.

[31] CNA Audit at 118, 128.

[32] CNA Audit at 14.

[33] CNA Audit at 29 ("It is not uncommon to find these inmates comingled with disciplinary and/or administrative segregation inmates")

[34] CNA Audit at 82-83.

[35] CNA Audit at 14.

[36] CNA Audit at 53.

[37] Commission on Safety and Abuse in America's Prisons, "Confronting Confinement" 55 (2006); Maureen L. O'Keefe, Colo. Dept. of Corrections, "Analysis of Colorado's Administrative Segregation" 25 (2005).

[38] CNA Audit at 37.

[39] CNA Audit at 141.

[40] CNA Audit at 142.

[41] To earn release from solitary confinement, prisoners in the SMUs, which institutes enhanced and more restrictive approaches and are meant for prisoners who have participated in gang-related activity and/or present unique security concerns, currently must progress through a four-level program, which takes a minimum of 18-24 months. The review found that backlogs of prisoners awaiting transfer to the next program level "negate the intent of the program design and decrease the [prisoners'] motivation to change behavior." CNA Audit at 100. Accordingly, the reviewers recommended compressing the program into three levels, which would take 12 months to complete. CNA Audit at v, 101.

[42] CNA Audit at 228-36.

[43] *See* Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, A/66/268 (5 August 2011), ¶ 88.

[44] 18 U.S.C. § 3582(c)(1)(A).

[45] Office of Inspector General, "The Impact of an Aging Inmate Population on the Federal Bureau of Prisons" U.S. Department of Justice (May 2015) available at https://oig.justice.gov/reports/2015/e1505.pdf)

[46] 18 U.S.C. § 3624(b).

[47] *Id.*

[48] U.S. Department of Justice, FY 2012 Budget Request, (2012), http://www.justice.gov/sites/default/files/jmd/legacy/2014/01/12/fy12-bud-summary-request-performance.pdf at p. 8.

[49] U.S. Gov't Accountability Office, "Bureau of Prisons: Information on Efforts and Potential Options to Save Costs" 46 (Sept. 2014) *available at* http://www.gao.gov/assets/670/666254.pdf.
[50] Statement of Charles E. Samuels, Jr., Director of the Federal Bureau of Prisons, Before the Charles Colson Task Force on Federal Corrections (Jan. 27, 2015), *available at* http://www.colsontaskforce.org/wp-content/uploads/2015/01/SamuelsStatement-1-27-15.pdf.
[51] New Jersey Department of Corrections, "Offenders in new Jersey Correctional Institutions on January 11, 1999 by Base Offense" (Total Population, 30,263).
[52] *Compare id. with* New Jersey Department of Corrections, "Offenders in new Jersey Correctional Institutions on January 2, 2015, by Base Offense" (30,263 in 1999, 21,486 in 2015, for a change of 29 percent).
[53] *See* N.J. Stat. Ann. § 2C:35-7 (West 2005), amended by N.J. Stat. Ann. § 2C:35-7b(1)(a)-(d) (West Supp. 2011) (granting judges broader sentencing discretion).
[54] Presentation by Lenny Ward, Director, Parole Supervision Division, Community Programs Division, New Jersey State Parole Board at Collateral Consequences of Criminal Convictions Conference, March 5, 2015, slide 13 (on file with Udi Ofer).
[55] *See* American Civil Liberties Union of New Jersey "ACLU-NJ hails passage of NJ bail reform as historic day for civil rights" August 4, 2014 (available at: https://www.aclu-nj.org/news/2014/08/04/aclu-nj-hails-passage-nj-bail-reform-historic-day-civil-righ).
[56] New Jersey Developments: New Jersey's Drug Courts: A Fundamental Shift From The War On Drugs To A Public Health Approach For Drug Addiction And Drug-Related Crime, 64 Rutgers L. Rev. 795, 796 ("In response to the societal perception in the 1970s and 1980s that there was a growing and overwhelming drug problem in this country, many states waged a 'war on drugs'").
[57] *Id.*
[58] *See* N.J. Stat. Ann. § 2C:35-7 (West 2005).
[59] New Jersey Department of Corrections, "Offenders in new Jersey Correctional Institutions on January 11, 1999 by Base Offense (10,385 drug offenders).
[60] N.J. Stat. Ann. § 2C:35-7b(2)(a)-(b) (West Supp. 2011).
[61] New Jersey Department of Corrections, "Offenders in new Jersey Correctional Institutions on January 2, 2015, by Base Offense" (available at: http://www.state.nj.us/corrections/pdf/offender_statistics/2015/By%20Base%20Offense%202015.pdf).
[62] *See generally*, National Conference of State Legislatures, "Probation and Parole Violations State Responses" (Nov. 2008) at 3-4, available at: http://www.ncsl.org/print/cj/violationsreport.pdf.
[63] *See* Justice Policy Institute, "How to safely reduce prison populations and support people returning to their communities" (June 2010) (available at: http://www.justicepolicy.org/images/upload/10-06_fac_forimmediaterelease_ps-ac.pdf).
[64] Presentation by Lenny Ward, *supra*.
[65] *Id.*
[66] *Id.* (The number of technical parole violations has reduced every year since 2000, with the exception of 2007 and 2011, in which years there were slight upticks).
[67] *Id.*
[68] See, e.g., National Conference of State Legislatures, *supra* (Louisiana law limits incarceration to 90 days for a first technical violation of parole. The Washington statute sets a maximum of 60 days' confinement for minor violations. Lawmakers in California created guidelines that define the length of time an offender can be revoked to prison. Incarceration is limited to 12 months, although it can be extended if the offender commits subsequent acts of misconduct while incarcerated. The Nevada State Board of Pardons Commissioners can order an offender to six months' incarceration or residential confinement for a parole violation, in lieu of revoking parole.)
[69] New Jersey State Parole Board Annual Report 2004, at 4-5 (available at: http://www.state.nj.us/parole/docs/reports/AnnualReport04.pdf)
[70] A reduction from 4,049 to 1,511 is a 61.7% change.
[71] Marie VanNostrand, *Drug Policy Alliance,* "New Jersey Jail Population Analysis" (March, 2013), at 1 (available at: http://www.drugpolicy.org/sites/default/files/New_Jersey_Jail_Population_Analysis_March_2013.pdf).
[72] *Id.* at 10 (noting that less than half of pretrial detainees are held on violent, weapon, or sex crimes).
[73] *Id.* at 13 (noting that more than 1,500 people are held on bails of $25,000 or less).
[74] *Id.* at 12 (noting that the average stay for a person awaiting trial was 314 days). Indeed, in several cases the delay was far longer. Take, for example, the case of Jahnell Weaver, who was incarcerated for more than four years

awaiting trial. *State v. Jahnell Weaver*, No. A-3274-08T3, 2011 WL 3516934, (App. Div. Aug. 12, 2011) (unpublished opinion), pages 14-15.

[75] New Jersey Judiciary [Press Release], "Chief Justice Forms Joint Committee to Examine Criminal Justice Process" June 19, 2013 (available at: http://www.judiciary.state.nj.us/pressrel/2013/pr130619a.htm).

[76] Kate Zernike, "Panel Proposes Changes to New Jersey Bail System," *The New York Times*, March 20, 2014, available at: http://www.nytimes.com/2014/03/21/nyregion/panel-recommends-significant-changes-to-new-jersey-bail-system.html.

[77] Matt Arco, "Christie signs bail reform measure, lauds lawmakers for bipartisanship." *The Star Ledger*, August 11, 2014 (available at: http://www.nj.com/politics/index.ssf/2014/08/christie_signs_bail_reform_measure_lauds_lawmakers_for_bipartisanship.html).

[78] American Civil Liberties Union of New Jersey, *supra*, "ACLU-NJ hails passage of NJ bail reform as historic day for civil rights"

[79] *Id.*

[80] Alexander Shalom, "Bail Reform as a Mass Incarceration Reduction Technique," 66 RUTGERS L. REV. 921, 928.

[81] *See, e.g.* Second Amended Complaint, *Troy D. and O'Neill S. v. Mickens*, Civil Action No.: 1:10-cv-02902-JEI-AMD (D. N.J., Dec. 14, 2011) (available at: http://www.jlc.org/legal-docket/td-and-os-v-mickens-et-al).

[82] American Civil Liberties Union of New Jersey, "ACLU-NJ Sues Middlesex County Jail to End Solitary Confinement of Pretrial Detainee with Mental Illness" (July 3, 2014) (available at: https://www.aclu-nj.org/news/2014/07/03/aclu-nj-sues-middlesex-county-jail-end-solitary-confinement)

[83] *Id.*

[84] *Id.*

[85] American Civil Liberties Union of New Jersey "Petition for Rulemaking for Juvenile Solitary Confinement" (July 2013) (available at: https://www.aclu-nj.org/download_file/view_inline/1421/999/)

[86] *See, Senate Bill* No. 2588, introduced December 8, 2014 (available at: http://www.njleg.state.nj.us/2014/Bills/S3000/2588_I1.PDF)

[87] Vera Institute of Justice, "Vera Selects Five Corrections Departments for Initiative Aimed at Reducing Solitary Confinement" (March 24, 2015) (available at: http://www.vera.org/news/vera-selects-five-corrections-departments-initiative-aimed-reducing-use-solitary-confinement).

[88] "Kean University Forum on solitary confinement brings together prison reform proponents from throughout New Jersey" *Suburban News*, July 24, 2015 (available at: http://www.nj.com/suburbannews/index.ssf/2015/07/kean_university_forum_on_solit.html).

[89] *See, e.g.* Stuart Grassian, *Psychiatric Effects of Solitary Confinement* 22 WASH. U. J. OF L. & POL'Y, 325-383 (2006)

[90] *See, e.g.* American Friends Service Committee "The art of surviving in solitary confinement" (May 27, 2014) (available at: https://www.afsc.org/story/art-surviving-solitary-confinement).

[91] *Senate Bill* No. 2588, *supra*.

[92] United Nations Special Rapporteur on Torture Warns About Abuse of Solitary Confinement in the Americas, 3/13/2013) (available at: http://www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/5B5F637424BFED7AC1257B2D0060155F?OpenDocument).

Statement of
Charles E. Samuels, Jr.
Director, Federal Bureau of Prisons
U.S. Department of Justice
Committee on Homeland Security and Governmental Affairs
United States Senate
August 4, 2015

Good morning, Chairman Johnson, Ranking Member Carper, and Members of the Committee. I am pleased to appear before you today to discuss the mission and operation of the Federal Bureau of Prisons (Bureau), as well as to share with you the successes we have achieved and the challenges we face. I am also honored to speak on behalf of the nearly 39,000 Bureau staff – professionals who are "correctional workers first" and support the agency's mission and core values of respect, integrity, and correctional excellence.

OUR MISSION – A HISTORY OF PUBLIC SAFETY AND REENTRY

As our nation's largest correctional agency, the Bureau currently houses approximately 207,500 federal offenders in 122 federal prisons, 13 private prisons, and 178 community-based facilities nationwide. The mission of the Bureau is two-fold: to protect society by confining offenders in prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure and to ensure that offenders are actively participating in programs that will assist them in becoming law-abiding citizens when they return to our communities. This mission is not new, in fact it dates back to the Bureau's establishment in 1930, and we remain deeply committed to it.

The Bureau has had great success with respect to both parts of our mission as measured by key indicators such as low rates of escapes, disturbances, assaults, and homicide. Additionally, the Bureau continues to work to reduce rates of recidivism. Forty percent of offenders who are released from federal prison are re-arrested or have their supervision revoked within three years (only twenty percent return to federal prison within three years), as compared to almost 68% of offenders released from state prisons.[1] Those numbers are a testament to the hard work of our staff who provide positive reentry programming in an environment that promotes respect and self-improvement, and to the hard work of those offenders who apply the skills they learned in federal prison once they return to the community. But we can do better. The Bureau continues to enhance our inmate programs while seeking new and innovative ways to support offenders so they have the best possible chance for a successful transition to the community.

The Bureau has faced some significant challenges, most notably the decades of significant growth in the inmate population. At many points, this growth in population has mounted to crisis levels, the magnitude of which is largely out of our control because, as you

[1] *Bureau of Justice Statistics,* "Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010," by Alexia Cooper, Matthew Durose, and Howard Synder, April 22, 2014.

know, the Bureau does not control the number of offenders entering our system or the length of their incarceration. While we have recently seen the federal prison population start to decrease for the first time in decades, it remains unsustainably high.

OUR POPULATION - PAST AND PRESENT

Population Growth

Just as our nearly century-long dedication to offender reentry and rehabilitation is unique in corrections, so is our population. For the first five decades of the Bureau's existence, the number and type of offenders we housed remained fairly stable. Beginning in the 1980s, federal law enforcement efforts and new legislation dramatically altered sentencing in the federal criminal justice system, bringing about a significant increase in the number of persons incarcerated for federal offenses. The Sentencing Reform Act of 1984 established determinate sentencing, abolished parole, and reduced good time. Mandatory minimum sentencing provisions were enacted in 1986, 1988, and 1990. Largely as a result of these changes, from 1980 to 1989 the inmate population more than doubled from about 24,000 to almost 58,000. During the 1990s, the population more than doubled again, reaching approximately 136,000 at the end of 1999 as efforts to combat illegal drugs and illegal immigration contributed to significantly increased incarceration rates. The aftermath of September 11th brought offenders who presented their own very unique security concerns, as the nation's law enforcement efforts were targeted toward international terrorism. By 2013, the Bureau's population climbed to almost 220,000, its highest level ever.

With the tightening federal budgets in the 2000s it became impossible to fund all of the capacity that was needed to house the increasing population and was increasingly challenging to provide the programming and supervision that contribute to successful reentry. The Bureau was required to provide care for more and more offenders – many who arrived with substantial and costly programming and health care needs. In response to these challenges, in 2005 the Bureau undertook a series of cost-savings initiatives to streamline operations without compromising public safety. We underwent re-engineering system-wide, which reduced management layers and eliminated positions. Re-engineering also resulted in the centralization and automation of several key service areas: inmate designations and sentence computation, human resource services, and the national pharmacy. We restructured our Health Services Division to create a medical classification system that significantly improved our health care delivery costs and efficiencies. We expanded the case loads of institution case managers to manage inmate population without adding additional staff, and we created a new staffing pattern strategy for our Correctional Officers to enhance staffing flexibilities. Additionally, we closed three intensive confinement centers – facilities that held very small numbers of offenders and were quite costly to operate. Finally, we closed four stand-alone camps: Federal Prison Camp (FPC) Allenwood, FPC Eglin, FPC Nellis, and FPC Seymour Johnson.

In the past decade, federal prisons housed as many as 40% more inmates than the prisons were designed to house system-wide.[2] Mass incarceration has resulted in crowding being a very real danger in prisons, causing frustration and anger for offenders whose access to basic necessities like toilets and showers becomes very limited and who face hours of idleness resulting from a limited availability of productive work and program opportunities. Crowding also strains facilities' infrastructure like water, sewage, and power systems, sometimes to the breaking point. Inmate frustration and anger, in turn, are catalysts for violence which poses real risks to the lives of staff and offenders. Of particular challenge was managing the over 40% of the population housed at higher security levels, where the more violence-prone offenders reside.

We continued to manage this high level of crowding by double and triple bunking offenders throughout the system, and housing them in space not originally designed for inmate housing, such as television rooms, open bays, and program space. We also improved the architectural design of our new facilities coming on line, took advantage of improved technologies in security measures such as perimeter security systems, surveillance cameras, and equipment to monitor communications. We enhanced population management and inmate supervision strategies such as improved classification and designation and the use of controlled movement.

We also began to rely upon private corrections to provide additional capacity to help maintain safety and security due to crowding concerns. In 1997, Congress required the Bureau to privatize one of our newly-built facilities; Taft Correctional Institution. As a result, we began being funded for additional private prison capacity, which we used primarily to house low-security criminal aliens. Following the mandate that the Bureau house the District of Columbia (DC) Superior Court offenders, we used private prison bedspace for many of these offenders, allowing them to remain close to the many reentry and social services available in DC. While we would prefer to house all federal offenders in Bureau-operated facilities, we have appreciated the support of the private prison industry to provide low-security capacity in the wake of our population growth.

These population increases also outpaced staffing resources. As the population and crowding increased, the inmate-to-staff ratio increased. To highlight this change, in fiscal year 2009, the five states with the highest prison populations had an average inmate-to-staff ratio of 3-to-1. The Bureau's ratio for that year was 59% higher, at almost 5-to-1. It remains high at 4.4-to-1 today. These high ratios negatively impact our ability to effectively supervise prisoners and provide inmate programs. The Bureau has long espoused a philosophy that every institution staff member, irrespective of his or her specific position and duties, is a "Correctional Worker" first. This means that every institution staff member, irrespective of their professional duties, is expected to assist with security. Institution staff are visible on the compound, assist with inmate cell and pat searches, and respond to emergencies. This strategy is good correctional management, but it has become critical in the face of rising inmate to staff ratios. When insufficient Correctional Officers are available to cover an institution's security posts on any given day, we must use non-custody institution staff to make up the difference. As a result, these

[2] When the number of inmates in an institution exceeds the number of inmates the institution was designed to house, the Bureau typically refer to this as a 40% rate of crowding or 40% overcrowded (as an example here). The term "system-wide" refers to all of the Bureau's institutions collectively.

staff – teachers, psychologists, case managers, reentry coordinators, chaplains, etc., – are pulled away periodically from their duties of providing offenders with programs and services. Despite this and other challenges for program staff and inmate waiting lists for admission to programs, our reentry efforts continued and we provided necessary and appropriate treatment with all available resources.

These challenges also affect institution safety. The Bureau performed a rigorous analysis of the effects of crowding and staffing on inmate rates of violence, and this sound empirical research underscored the direct relationship between crowding, staffing, and institution safety. Specifically, the study found that the rate of serious inmate assaults was associated with increases in both the rate of crowding at an institution (the number of offenders relative to the institution's rated capacity) and inmate-to-staff ratios.[3]

These population pressures have abated slightly, of late. In fiscal year 2014 after then Attorney General Eric Holder announced the Smart on Crime Initiative in August 2013, we saw the first decline in the inmate population in more than 34 years. We ended the year with 5,149 fewer offenders than when we started. And the decline has continued this fiscal year; we now have over 6,300 fewer offenders than we did on September 30, 2014. We project declines to continue for the next couple of years, particularly as a result of the retroactive sentencing guidelines change. But in the near term, crowding levels are at 26% above rated capacity, and crowding remains a problem. Crowding at high security institutions is 51%, while crowding at medium and low security facilities is 35% and 25% respectively.

Population Characteristics

The sentencing changes in the 1980s and 1990s not only dramatically affected the number of offenders we housed, but also the type of offenders who began coming into our system. For nearly five decades, the federal offenders the Bureau housed were largely bank robbers and white collar offenders. But with changes in interdiction and sentencing came changes in our population. Currently, almost half of our population is serving sentences for drug offenses. The remainder includes offenders convicted of weapons offenses, immigration offenses, and sex offenses.

Offenders at our higher security level present additional challenges. For example, at the medium security level, approximately 75 percent of the offenders have a history of violence, 41 percent have been sanctioned for violating prison rules, and half of the offenders in this population have sentences in excess of 8 years. At the high security level, more than 42 percent of the offenders are weapons offenders, or robbers, almost 10 percent have been convicted of murder, aggravated assault, or kidnapping, and half of the offenders in this population have sentences in excess of 10 years. Moreover, 71 percent of high security offenders have been sanctioned for violating prison rules, and more than 90 percent of high security offenders have a history of violence. One out of every four offenders at high security institutions is gang affiliated.

[3] A study was undertaken at the request of the Office of Management and Budget to assess the impact of crowding on safety in Bureau institutions. This report found that an increase of one inmate in an institution's inmate-to-custody staff ratio increases the prison's annual serious assault rate by approximately 4.5 per 5,000 offenders.

OUR PROGRAMS – REENTRY BEGINS ON DAY ONE

We have a saying in the Bureau that reentry begins on the first day of incarceration. We are committed to this philosophy. Simply said, we understand that reentry is a critical component of public safety. To further enhance the Bureau's focus and efforts on reentry, we recently created a Reentry Services Division within headquarters. This new division provides national oversight of our institution programs and will also work closely with other federal agencies and stakeholders to develop partnerships and leverage resources to aid in offender reentry.

The Bureau assesses offenders' risk by thoroughly reviewing the underlying causes of criminal behavior including substance use, education, and mental health. The Bureau screens all inmates to determine their mental health needs, and then assigns them a "care level." Mental health care levels range from 1-4. The majority of inmates are assigned "Care Level 1," meaning they have no significant mental health needs. The remaining inmates in Care Levels 2 (moderate mental illness), 3 (serious mental illness), and 4 (acute mental illness requiring inpatient hospitalization), make up less than 5% of our population. Understanding the underlying causes of criminal behavior has allowed us to make great strides in enhancing our treatment efforts, and to ensure we are providing offenders the best opportunities for success once back in the community.

Each year, over 45,000 federal offenders return to our communities. Most need job skills, vocational training, education, counseling, health care, and other assistance such as treatment for substance use disorders, anger management, parenting skills, and linkage to community resources for continuity of care if they are to successfully reenter society.

As such, federal prisons offer a variety of inmate programs to assist offenders in returning to our communities as law-abiding citizens, including work, education and literacy, vocational training, treatment for substance use disorders, observance of faith and religion, psychological services and counseling, release preparation, and other programs that impart essential life skills. We also provide other structured activities designed to teach offenders productive ways to use their time. The Bureau also works closely with the Department of Veterans Affairs to establish benefits eligibility and assist with the activation of benefits upon release for the veterans within our system. The Reentry Affairs Coordinators in each of our institutions also work to identify resources available to these offenders upon release to assist them in their reintegration to the community. Federal Prison Industries (FPI) also gives priority consideration to hiring veteran offenders for its program. We look forward to enhancing opportunities for inmates to pursue educational programs through the recently created Pell grant program extending federal student aid to state and federal inmates.

Many of our programs have been proven through research to reduce recidivism. Specifically, empirical research has shown that offenders who participate in FPI are 24 percent less likely to recidivate than similar non-participating offenders. Offenders who participate in vocational or occupational training are 33 percent less likely to recidivate, while offenders who participate in education programs are 16 percent less likely to recidivate. Those who complete the Residential Drug Abuse Treatment Program (RDAP) are 16 percent less likely to recidivate,

and 15 percent less likely to have a relapse in their substance use disorder use within 3 years after release. Also, research indicates offenders who participate in work programs and vocational training are less likely to engage in institutional misconduct, thereby enhancing the safety of staff and other offenders.

Based on these proven-effective programs, the Bureau has implemented additional programs for the inmate population. The Life Connections Program is a multi-faith residential program that allows offenders to deepen their spiritual life and integrate their faith into their lives. The Challenge Program treats high security offenders with a history of substance abuse and/or mental illness. The Resolve Program, originally designed for females but now expanded to include males as well, treats offenders with trauma-related mental illnesses. At FPC Bryan, we are piloting a new ten-week program called Foundation. This program is a cognitive behavioral, psychoeducational ten-week course that is designed to meet the unique reentry needs of female offenders and is offered within the first six months of their designation. Foundation helps facilitate women's self-examination across a variety of domains, including physical and mental health, employment, and interpersonal relationships. Upon completion of the program, women develop their own personal improvement plan to enhance their ability to engage the reentry process (we are continuing to review the needs of female offenders, including considering changes to our classification system as it pertains to women). The BRAVE Program addresses anti-social attitudes and behavior of younger, newly-designated offenders. The Skills Program targets issues with adapting to prison and the community for cognitively-impaired offenders. Mental Health Step Down Units provide treatment for offenders with serious mental illnesses. The Sex Offender Treatment Program is for offenders with a sex offense history. The STAGES Program treats offenders with severe personality disorders who have a history of behavioral problems and/or self-harm. As resources have allowed, the Bureau has expanded these programs to address the significant demand for these services.

The Bureau has experienced programming challenges as well. FPI, a proven recidivism-reducing program, provides offenders the opportunity to gain marketable work skills and a general work ethic – both of which can lead to viable, sustained employment upon release. This is particularly noteworthy for reentry given the barriers to post-release employment many offenders face. It also keeps offenders productively occupied while they are incarcerated; offenders who participate in FPI are substantially less likely to engage in misconduct.

FPI is a wholly-owned government corporation that operates without direct annual Congressional appropriations. The Bureau does not provide funding for FPI appropriations. However, presently FPI reaches only 7 percent of the inmate population housed in Bureau facilities; down from 33 percent in 1988. This is due both to the increased federal inmate population as well as a decrease in prison industries work opportunities. Congress responded to this challenge by providing FPI with additional authorities in the fiscal year 2012 appropriation to provide opportunities to expand FPI programming, and we have moved expeditiously to secure new business opportunities that are currently or would have otherwise involved the manufacture of goods outside of the United States. These new authorities alone, while both helpful and promising, have not been sufficient to offset the erosion of FPI work opportunities given the downturn in Federal spending levels following sequestration. As a result, FPI has had to continue to reduce its factory capacity by consolidating and mothballing several of its

factories. We hope to work with Congress and others to increase the availability of this proven program.

OUR GOAL – EFFECTIVE TRANSITION TO THE COMMUNITY

As offenders near the final portion of their term of imprisonment, it is important to provide them opportunities to gradually re-adapt to their community environment. As such, the Bureau places the vast majority of offenders in Residential Reentry Centers (RRCs; also known as halfway houses), and home confinement for the final portion of their sentence. RRCs provide a structured, supervised environment that supports the offender in finding suitable employment and housing, completing necessary programming (e.g., transitional substance use disorder treatment), participating in counseling, and strengthening ties to family and friends.

RRC placement decisions are individualized and based on each inmate's need for reentry services. For example, offenders serving long sentences and having limited employment skills, little family support, no established home to which they can return, and limited financial resources have a much greater need for RRC placement than do offenders serving short sentences, and having positive family support, a home, and job skills.

RRC bed space is limited, so we must be judicious with our use of this resource. It is critical to balance the available capacity with the RRC needs of releasing offenders so that each inmate in need of this transitional service has the opportunity to participate in the program. Maximizing the length of RRC placement, as some have recommended, is not only costly, but also would quickly absorb RRC capacity, thereby preventing subsequent releasing offenders from having access to some period of pre-release transition through this program. Despite our continued efforts to seek additional RRC capacity in new and existing locations, there remains strong community resistance to RRCs and very few vendors compete for such solicitations. RRC bed space can also be costly, exceeding the costs for prison bed space in some locations. The nationwide annualized average cost is $26,612.

For lower-risk offenders with lesser reentry needs, the Bureau has been increasing the use of direct placement in home confinement during the final months of a term of incarceration. Offenders who transfer to RRC programs are also expected to transition into the home confinement component as soon as adequately prepared and statutorily eligible. These offenders reside in their homes but are subject to strict schedules, curfews, in-person check-ins, telephonic monitoring, and sometimes electronic monitoring. The Bureau shares information with authorities responsible for supervising offenders in the community. The majority of federal offenders' sentences include a term of supervised release. The Bureau provides information to the United States Probation Office to assist with their supervision efforts. For District of Columbia Code offenders, information is provided to Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) that has oversight over that population.

NEW INITIATIVES - MOVING FORWARD

The Bureau is continuing to work closely with the Department of Justice and United States Probation to implement Amendment 782, the United States Sentencing Commission's

decision to make the drugs guideline reduction retroactive. We expect approximately 6,800 offenders may be released on October 30, 2015, based on this amendment. A lot of planning and work has been done in preparation to release these individuals to their communities. Also, we are working with our federal partners to ensure affected offenders will have opportunities to complete needed reentry programs, including placement in community-based programs as appropriate, to assist with their transition to the community.

In 2013, Attorney General Holder announced DOJ's "Smart on Crime" initiative which has yielded a number of reforms. Attorney General Holder directed prosecutors, in appropriate circumstances involving non-violent offenses, to consider alternatives to incarceration, such as drug courts, other specialty courts, or other diversion programs. The Department also modified its charging policies so that certain low-level, non-violent drug offenders who have no ties to large-scale organizations, gangs, or cartels would be charged with offenses for which the accompanying sentences are appropriate to their individual conduct rather than excessive prison terms more appropriate for violent criminals or drug kingpins. These initiatives have already helped stem the tide of offenders entering the Bureau and have lowered average sentences, where appropriate.

With respect to older inmates, the evidence is clear that likelihood of recidivism decreases with age. "Smart on Crime" also included changes to our Compassionate Release Program. These changes continue to positively impact the number of compassionate releases, or reduction in sentences, approved by the Bureau and recommended to the sentencing judge for consideration. There were 101 Reduction in Sentence approvals in calendar year 2014, and we continue our commitment to take these requests seriously.

OPPORTUNITIES AND CHALLENGES

The number of offenders in the Bureau's population is largely out of our control. We have no role in determining which offenders are prosecuted, which offenders are convicted, which offenders are sentenced to prison. Moreover, the Bureau has no role in assigning penalties associated with federal crimes, or the length of sentence imposed in a particular case. Our role is limited to ensure that the term of imprisonment is served in facilities that are safe, secure, and humane, and that offenders are provided ample opportunities for self-improvement and reentry programming.

Enhanced reentry programs, if properly designed and implemented, enhance the prospects that federal prisoners will successfully return to their communities. We were honored to have the President of the United States visit the Federal Correctional Institution (FCI) in El Reno, Oklahoma, last month to see and learn about the work of our dedicated employees helping offenders prepare to reenter society. This marked the first time a sitting President visited a federal prison in our Nation's history.

The Department has supported several legislative initiatives that would have a direct impact on the Bureau's crowding, including those that do so through incentivizing positive institution behavior and effective reentry programming. One such proposal involves expanding inmate Good Conduct Time (GCT) to provide offenders up to 54 days per year of sentence credit

provided they comply with institutional rules for each year of the sentence imposed. Currently, the statute allows for credit based on time served rather than the sentence imposed. The difference in any one inmate's sentence would not be large (for example, someone serving a 10-year sentence would earn up to an additional 60 days of sentence credit). However, such a change would lead to the immediate release of approximately 4,000 offenders and save the Department approximately $400 million over ten years. The additional available GCT would also provide incentives for inmates to comply with institutional rules.

A second legislative initiative would provide offenders with an incentive to earn sentence credits annually for successfully participating in programs that are effective at reducing recidivism. This initiative is modeled in part on the sentence reduction incentive already in the statute for RDAP, and caps the total amount of sentence credits earned from all sources at one-third of an inmate's total sentence. We look forward to working with the Committee on reforms and proposals such as these.

CONCLUSION

Chairman Johnson, Ranking Member Carper, and Members of the Committee, this concludes my formal statement. I appreciate the opportunity to provide the Committee with my formal statement. As I have indicated, the Bureau faces a number of challenges. For many years now, we have stretched resources, streamlined operations, and constrained costs to operate as efficiently and effectively as possible. I look forward to working with the Committee on meaningful reform to enhance offender reentry while reducing our overburdened prisons, and would be happy to answer any questions.

Office of the Inspector General
United States Department of Justice

Statement of
Michael E. Horowitz
Inspector General, U.S. Department of
Justice

before
the

U.S. Senate
Committee on Homeland Security and
Governmental Affairs

concerning

"Oversight of the Bureau of Prisons: First-Hand Accounts of Challenges Facing the Federal Prison System"

August 4, 2015

Mr. Chairman, Senator Carper, and Members of the Committee:

Thank you for inviting me to testify today about the persisting crises in the federal prison system. The Department of Justice (Department) continues to face two interrelated challenges in managing the federal prison system. Despite a slight decrease in the total number of federal inmates in fiscal year (FY) 2014, the Department projects that the costs of the federal prison system will further increase in the years ahead, continuing to consume a large share of the Department's budget. In addition, federal prisons remain significantly overcrowded and therefore face a number of important safety and security issues.

Since 2004, the Office of the Inspector General (OIG) has consistently included both the rising costs of the federal prison system and the safety and security of staff and inmates in federal facilities in its annual report of the Top Management and Performance Challenges facing the Department of Justice. The OIG is committed to continuing to conduct effective oversight of the Department's Federal Bureau of Prisons (BOP) in order to improve BOP operations while deterring waste, fraud, abuse, mismanagement, and misconduct. However, one of the most significant challenges we face to accomplishing our oversight mission in certain instances is the absence of reliable data maintained by the BOP. Without such data, the Department and BOP cannot adequately evaluate the effectiveness of its programs, nor can it make the necessary improvements.

Rising Costs for Federal Prisons

In FY 2015, the budget for the BOP was $6.9 billion, and in FY 2016, the Administration has requested a 6.1 percent increase in funding for BOP. The Department projects that the costs of the federal prison system will continue to increase in the years ahead, even as the total number of federal inmates has fallen slightly. Although the size of the federal prison population decreased from 219,298 inmates at the end of FY 2013 to 207,504 inmates at the end of last month, the downward trend has yet to result in a decrease in federal prison system costs.

For example, in FY 2000, the BOP's budget totaled $3.8 billion and accounted for about 18 percent of the Department's discretionary budget. In comparison, in FY 2015, the BOP's enacted budget accounted for over 25 percent of the Department's discretionary budget. The BOP currently has the second largest budget of any Department component, trailing only the Federal Bureau of Investigation (FBI). The BOP also has more employees than any other Department component, including the FBI. The substantial

and growing costs continue to impact the Department's ability to make other public safety investments.

This challenge concerns the entire Department, because as the costs to operate and maintain the federal prison system continue to grow, less funding will be available for the Department's other critical law enforcement missions. The OIG has identified several areas where BOP programs and expenditures could be better managed.

Increased Health Care Costs and the Aging Inmate Population

A primary driver in the total costs associated with our federal prisons is health care: according to BOP data, providing health care services to inmates cost over $1 billion in FY 2014, representing a 61 percent increase from FY 2006 figures. This sum, spent on inmate health care services alone, nearly equaled the entire budget of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), during the same period. The OIG is currently conducting a review of the BOP's spending on outside medical care.

The rapid increase in inmate health care costs can partly be attributed to the growth of the aging inmate population. In May 2015, the OIG released its report examining the impact of the federal inmate population age 50 and older on the BOP's inmate management. The OIG found that the number of aging inmates increased by 25 percent – from 24,857 in FY 2009 to 30,962 in FY 2013. By contrast, during the same period, the population of inmates 49 and younger decreased approximately 1 percent, including an even larger decrease of 29 percent in the youngest inmates (age 29 and younger).

This shift is notable because we found that aging inmates on average cost 8 percent more per inmate to incarcerate. BOP institutions with the highest percentages of aging inmates in their population spent five times more per inmate on medical care ($10,114) than institutions with the lowest percentage of aging inmates ($1,916). Similarly, BOP institutions with the highest percentages of aging inmates also spent 14 times more per inmate on medication ($684) than institutions with the lowest percentage ($49). Based on BOP cost data, we estimate that the BOP spent approximately $881 million, or 19 percent of its total budget, to incarcerate aging inmates in FY 2013.

Our report also found that BOP institutions lack appropriate staffing levels and training to address the needs of an aging inmate population. Aging inmates often require assistance with activities of daily living, such as dressing and moving around within the institution. However, BOP institution

staff is not responsible for ensuring inmates can accomplish these activities. We further found that the increasing population of aging inmates has resulted in a need for increased trips outside of institutions to address their medical needs but that institutions lack Correctional Officers to staff these trips and have limited medical staff within institutions. As a result, aging inmates experience delays receiving medical care. For example, using BOP data from one institution, we found that the average wait time for inmates, including aging inmates, to be seen by an outside medical specialist for cardiology, neurosurgery, pulmonology, and urology to be 114 days. In addition, we found that while Social Workers are uniquely qualified to address the release preparation needs of aging inmates, such as aftercare planning and ensuring continuity of medical care, the BOP, which employs over 39,000 people, has only 36 Social Workers nationwide for all of its institutions. Institution staff told us they themselves did not receive enough training to identify the signs of aging.

We further found that the physical infrastructure of BOP institutions cannot adequately house aging inmates. Aging inmates often require lower bunks or handicapped-accessible cells, but overcrowding throughout the BOP system limits these types of living spaces. Additionally, aging inmates with limited mobility encounter difficulties navigating institutions without elevators and with narrow sidewalks or uneven terrain. Yet, the BOP has not conducted a nationwide review of the accessibility of its institutions since 1996.

Additionally, we found that the BOP does not provide programming opportunities specifically addressing the needs of aging inmates. BOP programs, which often focus on education and job skills, do not address the needs of aging inmates, many of whom have already obtained an education or do not plan to seek further employment after release. Though BOP institutions can and do design programs, including release preparation programs, to meet the needs of their individual populations, even institutions with high percentages of aging inmates rarely have programs specifically for aging inmates.

Compassionate Release Policies

We found that aging inmates commit less misconduct while incarcerated and have a lower rate of re-arrest once released. Studies have concluded that post-release arrests decrease as an individual ages, although BOP does not maintain such data. A sampling of data conducted by the OIG found that 15 percent of aging inmates were re-arrested for a new crime within 3 years of release. Based on our analysis, the rate of recidivism of aging inmates is significantly lower than the 41 percent re-arrest rate that

the BOP's research has found for all federal inmates. We further found that most of the aging inmates who were re-arrested already had a documented history of recidivism.

As a result of this analysis, we found that aging inmates could be viable candidates for early release, a program that Congress has authorized, resulting in significant cost savings but that BOP policy strictly limits those who can be considered for release. In 2013, the Department concluded that aging inmates are generally less of a public safety threat and announced an expanded compassionate release policy to include them as part of the Attorney General's Smart on Crime initiative. However, the Department significantly limited the number of inmates eligible for this expanded release policy by imposing several eligibility requirements, including that inmates be at least age 65, and we found that in just over a year after the program was announced, only two inmates had been released.

These findings about the Department's aging compassionate release policy is similar to what we reported in our 2013 review of the BOP's Compassionate Release Program for all inmates. In that review, we found that an effectively managed program could assist the BOP with its prison capacity issues, which would result in cost savings for the BOP. However, at the time of that report, we found that the program had been poorly managed and was implemented inconsistently, likely resulting in eligible inmates not being considered for release and in terminally ill inmates dying before their requests were decided. We also considered the impact of the compassionate release program on public safety and found a recidivism rate of 3.5 percent for inmates released through the program. By comparison, the general recidivism rate for federal prisoners has been estimated to be as high as 41 percent. Following our review, the BOP expanded its Compassionate Release Program. In the 13 months since the most recent provisions went into effect in August 2013, we found that 2,621 inmates applied for compassionate release, that institutions approved 320 of those 2,621 requests, that the BOP Director approved 111 of the 320 requests, and that 85 inmates (including the two aging inmates identified above) were released.

Use of Treaty Transfer Authority

Nearly 25 percent of the federal prison population is comprised of non-U.S. nationals. In our 2011 review of the Department's International Prisoner Transfer Program, which permits certain foreign national inmates from treaty nations to serve the remainder of their sentences in their home countries, the OIG found that of the over 40,000 inmates from treaty transfer nations in BOP custody in FY 2010, less than 1 percent of these

inmates were ultimately transferred back to their home countries, and the Department rejected 97 percent of transfer requests by foreign national inmates. We concluded that the BOP had to improve its ability to effectively communicate with foreign national inmates, continue to make inmates aware of the program, and ensure it accurately determined whether inmates are eligible for the program.

We are currently completing a follow up review of the treaty transfer program. In this follow up review, we have found that, while the number of foreign inmates requesting transfer has increased significantly, the number of foreign inmates ultimately transferred to their home countries has remained largely stagnant. While we have also found that some progress has been made in addressing the issues identified in our 2011 report, and that there are some factors largely outside the control of the Department, we intend to outline in the upcoming report the areas where we believe the Department can do more to improve the effectiveness of the treaty transfer program.

BOP Contract Prisons

The growth of BOP costs for private contract prisons has also increased substantially. The BOP's FY 2015 enacted budget for contract confinement was over $1.05 billion – a 68 percent increase since FY 2005. Moreover, the proportion of federal inmates housed in BOP contract facilities has increased substantially, from 2 percent of the federal prison population in 1980 to 19.5 percent in 2013.

In April 2015, the OIG issued an audit of a BOP contract to house federal inmates in two Reeves County, Texas detention facilities. The contract was valued at an estimated $493 million and it is the second largest contract at the Department since 2014. Reeves County subcontracted with the GEO Group to manage the two detention center compounds, and subcontracted with Correct Care Solutions to provide healthcare services to the inmates at these compounds. We identified several significant concerns relating to compliance with the contract's requirements, including the provision of health care services, the BOP's approach to minimum staffing requirements, and the policies and procedures governing the operations of a "modified monitoring unit" at the facility used to isolate inmates from the rest of the compound's population. For example, we found that, from December 2010 through December 2013, a period spanning 37 months, the facility failed to meet the 85 percent staffing threshold for its health services unit, as provided for in the contract, in 34 of the 37 months. Our audit also identified almost $3 million that we either questioned as unallowable or unsupported, or that we believe should have been put to better use. The

OIG has related ongoing work examining how the BOP monitors its private contract prisons; whether contractor performance meets certain inmate safety and security requirements; and how contract prisons and similar BOP institutions compare in an analysis of certain inmate safety and security data. The OIG is currently auditing a BOP contract with the Corrections Corporation of America to operate the Adams County, Mississippi Correctional Center, which houses about 2,300 criminal aliens. We are assessing compliance with the terms, conditions, laws, and regulations applicable to the contract as well as contract performance. Further, the OIG is reviewing the United States Marshals Service's (USMS) and contractor's administration and compliance with a contract awarded to operate the Leavenworth Detention Center located in Leavenworth, Kansas. Assuming all options are exercised, this contract has a potential value of over $800 million.

In sum, while there are many factors contributing to the financial burden of the federal prison system, the OIG has found that more effective implementation of existing programs cannot only reduce operating costs but also ease some of the challenges posed by the magnitude of the inmate population.

Safety and Security in Federal Prisons

The Department must also continue its efforts to ensure the safety and security of staff and inmates in federal prison and detention facilities.

Prison overcrowding presents the most significant threat to the safety and security of BOP staff and inmates. As of October 2014, federal prisons operated at 30 percent over capacity, 52 percent overcrowding at high security institutions, and 39 percent at medium security institutions. In its FY 2014 Agency Financial Report, the Department identified prison overcrowding as a programmatic material weakness, as it has done in every such report since FY 2006. Overcrowding in the federal prison system has meant the BOP cannot reduce its inmate-to-Correctional Officer ratio, which has remained at approximately 10-to-1 for more than a decade, according to the Congressional Research Service. Moreover, safety and security concerns regarding the incarceration of federal inmates apply not only to BOP-managed facilities, but also to privately-managed BOP contract facilities. This has been demonstrated by a February 2015 riot at the contractor-run Willacy County Correction Center and riots in two privately-managed BOP contract facilities, one in Texas in 2009 and the other in Mississippi in 2012. The incidents in 2009 and 2012 resulted in the death of a Correctional Officer, severe injuries to prisoners and employees, and over $60 million in property damage.

In addition, the introduction of contraband – such as weapons, drugs, cell phones, and tobacco – into correctional facilities also presents a considerable threat to safety and security. The unauthorized use of cell phones in prisons and detention facilities has proven to be a significant danger, and presents an increasing threat to the safety of the public as well as BOP staff and inmates. According to a 2011 Government Accountability Office report, the 3,684 cell phones BOP confiscated at federal prisons in 2010 more than doubled in comparison to 2008. BOP officials reported that contraband cell phone use can threaten the security of prisons and expand criminal activity both inside and outside of prisons. The OIG is currently reviewing current and planned security procedures employed by the BOP to detect and prevent contraband from entering BOP-operated institutions, to include searching staff, visitors, and inmates; cell phone detection and signal interruption technologies; and physical security measures.

The use of segregated housing in BOP institutions and private contract facilities also raises inmate safety and security concerns. Recently, the BOP received an independent assessment conducted on its use of segregated housing. The OIG is currently examining the BOP's use of restrictive housing for inmates with mental illness. The review is examining trends in the use of restrictive housing and the screening, treatment, and monitoring of inmates with mental illness who are housed in restrictive housing units.

Sexual abuse in prison also remains a serious safety and security issue for the Department. In May 2014, the Department cited research that estimated that 4 percent of federal and state prison inmates reported experiencing one or more incidents of sexual victimization by a staff member or another inmate within the previous 12 months. In October 2014, the OIG completed a review of the Department's efforts to implement and comply with the Prison Rape Elimination Act of 2003 (PREA). The OIG found that while the Department has made progress complying with these standards during the early period of implementation, significant work remains. The OIG will continue its longstanding efforts to investigate allegations of sexual abuse by institution staff at federal prisons and detention facilities – work that has resulted in numerous criminal convictions and administrative actions by the BOP and the U.S. Marshals Service.

Complementing the OIG's expansive oversight of the BOP through our audits and reviews are the OIG's investigations of criminal and administrative allegations involving BOP staff and contractors. From FY 2010 to FY 2014, the OIG's Investigations Division opened more than 1,000 cases involving BOP staff or contractors, made more than 250 arrests, had more than 240 convictions and pre-trial diversions, and investigated

allegations that resulted in nearly 700 administrative actions. Through these efforts, the OIG enhances the safety and security of the over 30,000 BOP staff who perform their jobs with great skill and who help keep their institutions and the community safe.

Need for Reliable Data on Federal Prisons and BOP Programs

In addition, a significant management challenge for the Department is ensuring, through performance-based management, that its programs are achieving their intended purposes. An essential building block to achieving performance-based management is having reliable data, an issue that has proven to be a challenge for the Department and the BOP. Multiple OIG audits and reviews have identified problems with inaccurate or unreliable performance data regarding Department programs.

Department leadership has acknowledged that the Department needs to embrace data in its evaluation of program performance, such as through advanced data analytics. Adopting a data-driven, analytical approach will be especially important for assessing the implementation of the Attorney General's Smart on Crime initiative. Much of the Smart on Crime initiative promotes the increased use of prevention and reentry programs, such as the expanded use of pre-trial diversion and drug court programs as alternatives to incarceration. A comprehensive approach to the collection and analysis of data on how well these programs are reducing incarceration costs, deterring crime, and improving public safety will help the Department to focus its resources and make strategic investments.

The OIG is currently reviewing pre-trial diversion and drug court programs as alternatives to incarceration that enable prosecutors, judges, and correctional officials to divert certain offenders from traditional criminal justice proceedings into programs designed to address the underlying cause for criminal behavior. This OIG audit will evaluate the design and implementation of the programs, variances in the usage of the programs among the U.S. Attorneys' Offices, and costs savings associated with successful program participation.

Further, analyzing recidivism rates in federal facilities may assist in evaluating the BOP's programs, such as inmate training programs, pre-release programs, residential reentry centers (halfway houses), and contract prisons. During the course of several of our reviews, however, we were not able to obtain recidivism data from the BOP for federal inmates. Despite this obstacle, the OIG developed its own methodologies to undertake its own recidivism analysis during the course of our reviews of the Department's International Prisoner Transfer Program, the BOP's Compassionate Release

Program, and review of the impact of an aging inmate population on the BOP's inmate management. While we were eventually able to identify and analyze recidivism rates during these reviews, we believe the Department should continue to improve its methods to collect and retain reliable data to provide crucial information for assessing the effectiveness of BOP programs.

Thank you again for the Committee's continued support for our mission, which allows the OIG to conduct aggressive and thorough oversight. I look forward to working closely with the Committee on these issues.

U.S. Department of Justice

Office of the Inspector General

February 16, 2016

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and
Governmental Affairs
United States Senate
344 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Committee on Homeland Security and
Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

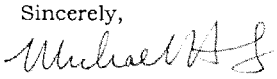
Dear Mr. Chairman and Senator Carper:

Thank you for holding the important hearing on August 4, 2015, regarding the oversight of the Department of Justice's Federal Bureau of Prisons (BOP). I have long held that the Department faces significant challenges in managing the BOP and the high rates of overcrowding in the federal prison system, and my Office has conducted extensive oversight of cost-savings issues at BOP as well as safety and security concerns.

In conjunction with this August hearing, it has come to our attention that there was an error in my written statement, and I wanted to advise the Committee for the record. In my written statement, there was a reference at page 2 to the inmate population younger than 29 years old, which indicated that this population had decreased by "29 percent" between fiscal year (FY) 2009 and FY 2013. This statistic was also included in the report posted on the OIG's public website and distributed to Members of Congress. In reviewing the data from this report, we determined that the population described above actually decreased by 16 percent during the relevant timeframe. We have corrected this error and posted a corrected version of the report to the OIG's website at the following link: https://oig.justice.gov/reports/2015/e1505.pdf. We regret this inadvertent error, but wanted to be sure that the Committee was advised.

I appreciate your attention and support of the OIG's oversight efforts. If you have any questions, please feel free to contact me or my Chief of Staff, Jay Lerner, at (202) 514-3435.

Sincerely,



Michael E. Horowitz
Inspector General

Federal Bureau of Prisons: Special Housing Unit Review and Assessment

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December 2014

CNA
ANALYSIS & SOLUTIONS

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Acknowledgements

The project team acknowledges and thanks Director Charles E. Samuels, Jr. and the executive staff of the Bureau of Prisons for their assistance and support in conducting an independent assessment of the restrictive housing programs within the agency. This review could not have been successfully completed without Director Samuels' strong personal support of the scope of the review and the goals and objectives of this project. His personal involvement and interest in the independent review of the operations and programs of this aspect of the Bureau was critical to completing the assessment. In addition, the project team thanks the wardens and staff of the institutions visited by the team for their outstanding support and willingness to fully open their operation to outside scrutiny.

Finally, this project could not have been possible without the support and deep involvement of the National Institute of Corrections and Acting Director Robert M. Brown, Jr. and his staff. In particular, the CNA project team is grateful to Shaina Vanek for her commitment to and coordination of the project and for facilitating communication and the exchange of information between the project team and the Bureau staff. Without her personal involvement and the initiative she took to find resolution to literally every challenge that arose during the project, this report could not have been completed.

Distribution

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This document represents the best opinion of CNA at the time of issue.

Approved by: **December 2014**

Monica Giovachino
Managing Director, Safety and Security
CNA, Institute for Public Research

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Abstract

This report provides an independent, comprehensive review of the Federal Bureau of Prisons' operation of restrictive housing and identifies potential operational and policy improvements. Specifically, it provides a comprehensive, detailed evaluation of the Bureau's use of restrictive housing, including the following key areas: national trends and best practices in the management of restrictive housing units; profile of the Bureau's segregation population; Bureau policies and procedures governing the management of restrictive housing; unit operations and conditions of confinement; mental health assessment and treatment within restrictive housing units; application of inmate due-process rights; reentry programming; and the impact of the use of restrictive housing on system safety and security. The report also evaluates the impact of the restrictive housing program on the federal prison system and places the Bureau's use of segregation in context with professional standards and best practices found in other correctional systems.

The findings and recommendations contained in this report are based on the information and data collected while conducting site visits to the Bureau's restrictive housing units and facilities from November 2013 through May 2014. Any operational changes or new written policies implemented by the Bureau after completion of the site visits regarding their use of restrictive housing are not reflected in this report. Some such changes were in process or were scheduled for implementation after the completion of the site visits.

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Executive Summary

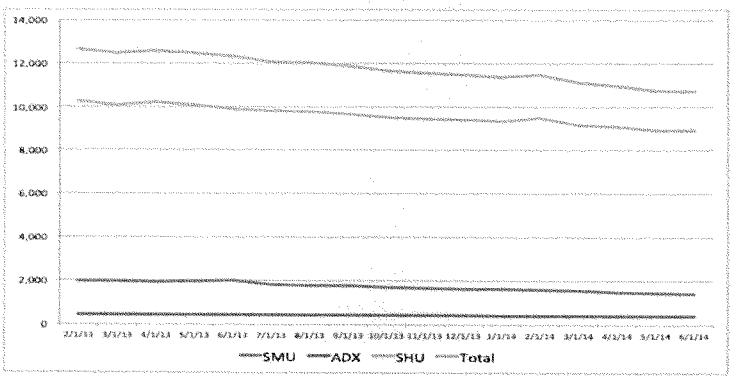
The Federal Bureau of Prisons (Bureau) uses restrictive housing for serious infractions of institutional and system-wide rules governing inmate conduct, such as engaging in violent, aggressive behavior against other inmates and staff. Restrictive housing is also used for inmates who cannot be safely managed in a general population setting, or who have been otherwise determined to be a security threat. There are three categories of restrictive housing used by the Bureau: Special Housing Units (SHU), Special Management Units (SMU), and the United States Penitentiary, Administrative Maximum (ADX) in Florence, Colorado.

The Bureau's Program Statements governing the three types of segregated housing units indicate that all three types of housing have a similar function and purpose which is to "separate inmates from the general inmate population to protect the safety, security, and orderly operation of Bureau facilities, and to protect the public." The specific placement criteria and conditions of confinement vary for each type of segregated housing unit as does the type of inmate housed in each of the respective units.

As of November 2013, approximately 5 percent of the entire Bureau's prisoner population was being housed in one of these restrictive housing populations with the vast majority in the SHU status (see Figure 1). Shortly thereafter the number of inmates held in SHU housing began to decline. Similarly the SMU population began to decline in the summer of 2013. The Bureau population as a whole has also been slightly reduced from a peak of 217,815 to its current population of 212,283 as of December 12, 2014. This level of use of restrictive housing is consistent with that experienced by most state correctional systems.

Much of the decline is attributable to a reduction in the SHU population and, in particular, inmates who have been assigned to protective custody or are serving disciplinary segregation sanctions. The Bureau was able to provide detailed SHU population statistics beginning in February 2013. At that time, the count was 10,262 in over 100 facilities and has steadily declined since then reaching 8,939 by June 2014. This is a reduction of 31 percent from the 13,000 reported count of the SHU population in 2011. There have been no reductions in the ADX populations.

Figure 1. Number of ADX, SMU and SHU Inmates February 2013 – June 2014



Below we summarize key findings from our review:

- The general conditions of confinement in restricted housing units are consistent with national regulations and standards.
- Management of the SHU's is complicated by the high percentage of inmates that have requested protection from other inmates, often due to gang related issues.
- The Bureau does not have adequate non-punitive protective custody housing units that have equivalent levels of programs and privileges as general population inmates.
- Backlogs in inmates awaiting transfer to the next program level negate the intent of the program design and decrease the motivation to change behavior.
- Mental health services in restrictive housing require improvement in three specific areas: 1) proper mental health diagnoses; 2) more effective treatment; and 3) providing sufficient psychiatric staffing.
- The lack of time parameters for completion of disciplinary hearings results in substantial variation among facilities in the amount of time served in segregation for similar offenses, and can result in disproportionately long sanctions.
- There is no formal Bureau-wide reentry preparedness program specific to restrictive housing and inmates in these settings have very limited access to reentry programming.

- Bureau information systems do not effectively track the number and movement of inmates within the restrictive housing units.

There are additional opportunities available to the Bureau to further lower the SHU and SMU populations by adopting the recommendations outlined in this report. Primary approaches to further reduce the restrictive housing population include:

- Establish a time limit on the amount of time that an inmate can be held in investigative status;
- Allow credit for time served in SHU upon determination of disciplinary sanction;
- Establish a housing option separate from SHU for inmates in protection status (protective custody);
- Continue rigorous review of referrals to restrictive housing;
- Reduce the time period for completion of the SMU program from the present 18-24 months to 12 months and compress the four levels to three levels by combining Level 3 and Level 4 and allowing more differentiation between the conditions of confinement between the levels; and
- To ensure appropriate treatment for seriously mentally ill inmates, a complete review of all inmates assigned to ADX, SMU and SHU should be completed by the Bureau to identify all inmates who should be transferred to a secure mental health program similar to the ones being developed at USP Atlanta and USP Allenwood.

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Glossary

ACA	American Correctional Association
ADX	Administrative Maximum Security Institution
ART	Annual Refresher Training
ASCA	Association of State Correctional Administrators
BOP	Federal Bureau of Prisons
CHS	Criminal History Score
CFR	Code of Federal Regulations
DHO	Disciplinary Hearing Officer
DR	Disciplinary Report
DSCC	Designation and Sentence Computation Center
ESL	English as a Second Language
FCI	Federal Correctional Institution
GAO	Government Accountability Office
GED	General Educational Development
LCP	Life Connections Program
MDOC	Mississippi Department of Corrections
NIC	National Institute of Corrections
OC	oleoresin capsicum
ORE	Office of Research and Evaluation
PRD	Program Review Division, Federal Bureau of Prisons
PREA	Prison Rape Elimination Act
RAC	reentry affairs coordinator
RHU	reintegration housing unit
RPP	Release Preparedness Program
RRC	residential reentry center
SAM	special administrative measure
SHU	special housing unit
SIS	Special Investigative Service
SMI	Serious Mental Illness
SMU	special management unit
SRO	segregation review official
SSU	special security unit
UDC	unit disciplinary committee
USP	United States penitentiary
VADOC	Virginia Department of Corrections

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Chapter 1: Introduction

Project background

The use of high-security, restrictive housing units, also known as segregation units, by prison systems to manage dangerous or problematic offenders has received increased scrutiny in recent years. Virtually all state correctional systems, as well as most large local jail systems, use these units as a disciplinary tool and as a means to manage offenders who may need to be kept separate from general institutional populations. These units are typically characterized by very limited out-of-cell time and reduced access to privileges such as phone calls, visits, and personal property.

The Federal Bureau of Prisons (Bureau) uses restrictive housing for serious infractions of institutional and system-wide rules governing inmate conduct, such as engaging in violent, aggressive behavior against other inmates and staff. Restrictive housing is also utilized for inmates who cannot be safely managed in a general population setting, or who have been otherwise determined to be a security threat. There are three categories of restrictive housing used by the Bureau:

- Special housing units (SHU)
- Special management units (SMU)
- The administrative maximum (ADX) facility in Florence, Colorado

The Bureau has developed a comprehensive set of policies and procedures that govern the operation of these restrictive housing units. In order to assess the effectiveness of these policies and the consistency of restrictive housing operations with accepted national standards and best practices, the Bureau sought an independent, outside review of the restrictive housing program. Accordingly, on January 29, 2013, the Bureau issued *RFQ AS0139-2013, Special Housing Unit Review and Assessment.* The stated objective of the RFQ was to select a contractor to conduct an independent, comprehensive review of the Bureau's operation of restrictive housing and identify potential operational and policy improvements. After an extensive evaluation process including a technical review of qualifications by the National Institute of Corrections (NIC), CNA was selected to conduct this assessment. Upon completion of background checks of project team members, CNA received

notice to commence work on the project on September 19, 2013. Interviews and fieldwork at Bureau facilities began in November 2013 and continued through May 2014. Data analysis and follow-up reviews were completed by November 2014.

The CNA project team was composed of eight former state correctional system directors, four former deputy correctional system directors, two psychiatrists, and two PhD-level criminal justice system researchers. All team members had substantial experience in the management and evaluation of restrictive housing units.

The following report provides a comprehensive, detailed evaluation of the Bureau's use of restrictive housing, including the following key areas:

- National trends and best practices in the management of restrictive housing units
- Profile of the Bureau's segregation population
- Bureau policies and procedures governing the management of restrictive housing
- Unit operations and conditions of confinement
- Mental health assessment and treatment within restrictive housing units
- Application of inmate due process rights
- Reentry programming
- Impact of the use of restrictive housing on system safety and security

The report evaluates the impact of the restrictive housing program on the federal prison system and places the Bureau's use of segregation in context with professional standards and best practices found in other correctional systems.

Methodology

The overall research approach consisted of a wide variety of qualitative operational assessments as well as quantitative methods that provided a comprehensive review of the Bureau's current restrictive housing practices. In this section of the report, these methods are described.

Facility selection

The first step in structuring the analysis was selection of the facilities to be included in the review. The three Bureau facilities that house inmates in SMU and ADX status—Florence, Lewisburg, and Allenwood—were designated for comprehensive site visits. At the time the study commenced, there were approximately 2,100 inmates in the SMU and ADX units at these facilities. Table 1 shows the population breakdowns at these facilities at the beginning of the project. Inmates under special administrative measures (SAMs) located at the ADX were excluded from this study under the terms of the contract.

Table 1. SMU and ADX facilities and populations selected for site visits, November 2013

Facility	SMU	ADX	Control	Totals
USP Florence	645	0	97	742
ADX Florence	0	322	0	322
USP Lewisburg	786	0	0	786
USP Allenwood	249	0	0	249
Totals	**1,680**	**322**	**97**	**2,099**

Source: Bureau/NIC.

The next step was the selection of facilities that house the much larger SHU populations. A list of these facilities was provided by the Bureau/NIC, outlining each facility's SHU population and geographic location. The 14 private facilities that hold nearly 1,700 SHU inmates on any given day and the various metropolitan correctional centers were excluded from the study.[1] Table 2 lists the facilities selected for comprehensive, on-site SHU reviews. The USP Hazelton facility, which houses female SHU inmates, was included in the study in order to assess conditions in female restrictive housing. Currently, there are no female inmates in SMU or ADX status, largely because there is not a sufficient number to create specialized SMU or ADX female units.

The sites selected were the more secure USP facilities with the exception of the federal correctional institution (FCI) Butner Medium II. Concentrating on higher security facilities that contained significant SHU populations offered the most value to the project, given the project budget and the time constraints. However, the geographical mix of the facilities combined with the size of the sample they provide

[1] Bureau Secure Housing and Inmate Discipline Quarterly Report, June 30, 2013, p. 13.

ensures sufficient numbers to make this review valid and representative of the Bureau as a whole.

Table 2. SHU facilities and populations selected for site visits, December 2013

Facility	Region	Total SHU population	Disciplinary	Administrative
FCI Butner Medium II	Mid-Atlantic	72	58	14
USP Coleman I	Southeast	184	36	148
USP Hazelton (females)	Mid-Atlantic	24	NA	NA
USP Terre Haute	North Central	206	19	187
USP Tucson	West	143	39	104
USP Victorville	West	256	46	210
USP Florence	North Central	13	13	0
Total		**898**	**211**	**663**

Source: Bureau/NIC.

Operational assessment—facility site visit protocol

The project team conducted an assessment of segregated housing unit operations at each facility. The teams assessed operational performance and compared policy compliance with applicable statutes; the Code of Federal Regulations (CFR); Bureau of Prisons program statements, policies, and operational memoranda; and American Correctional Association (ACA) standards. Each project team member has experience and expertise in the areas they were assigned to evaluate. The team included former directors of corrections, former prison wardens, program supervisors, psychiatrists with experience in mental health treatment and correctional medicine, an attorney, and project researchers.

Initially, the reviews addressed the facility mission, goals, and objectives of the restrictive housing unit. In advance of the site visits, a document review was conducted to determine the availability of data required for the assessment process. Each facility that was assessed is accredited by the Commission on Accreditation of the ACA, and the latest Visiting Committee report that led to the accreditation was assessed as part of preliminary data gathering. The team also reviewed any pending litigation and court orders that affected operational performance, policies, and/or operating procedures.

Each site visit included two to three days on site with observations of facility operations on all three shifts. CNA team members were able to access all areas housing segregated inmates and interview any staff member at the facility to gather information for the facility assessment. At the end of each site visit, the warden and

associated executive staff received a preliminary briefing on major findings and possible recommendations.

During the site visits, inmates from pre-selected representative samples were interviewed in conjunction with a review of their case files. A detailed description of the sampling process follows in the next section of this report. File reviews were conducted to determine if Bureau policies regarding due process issues were followed. The inmates' disciplinary records were also examined to better understand the basis for placement in restrictive housing.

Specific areas of review by the consultants included, but were not limited to, the following:

- Physical plant—assessment of unit design and the availability of services within the context of the design. Cell size and adequacy of cell furnishings were examined as well as the present cell occupancy versus the intended cell design.

- Conditions of confinement—adequacy of recreation space, amount of out-of-cell time, quality and quantity of meals, clothing, access to hygiene products, correspondence privileges, access to legal services, visitation, access to commissary, and access to showers and sanitary facilities. As part of this process, facility records on out-of-cell time, recreation, meals, showers, haircuts, telephone use, and visitation were reviewed.

- Staffing levels—unit staffing plans were assessed to determine the adequacy of staffing to meet unit demands and workload. As part of the analysis, records of actual deployment on posts in the staffing plan were reviewed to ensure that staffing levels were consistent with the post plan. The consultants reviewed up to three months of records, known as staffing rosters, to make their judgments. The staffing assessment included a review of the manner in which the Bureau supervises staff and assigns staff to work in the units and the staff rotation schedule.

- Staff training—evaluations of Bureau training programs that prepare staff to work in the correctional environment, as well as training specific to the management of restrictive housing units. Special attention was paid to training in the use of force, use of chemical agents, self-defense, and unit operations, as related to restrictive housing operations. Staff training attendance records were reviewed to determine if the staff in need of such training was receiving it.

- Use of force—analysis of federal regulations and policies relating to the authorized use of force, including a review of six months of data on use-of-force incidents and a close examination of a random selection of use-of-force incidents, including review of video footage of the incidents.

- Disciplinary procedures and due process—compliance with federal regulations and the program statements concerning inmate discipline, including an examination of disciplinary records documenting compliance with due process requirements.
- Operational requirements—review included job descriptions, post orders, policies and procedures, supervision and patrol requirements, the application of restraints, documentation of unit activity such as logs, inmate movement procedures, and visits by institutional staff including managers, supervisors, healthcare professionals, and program staff. The frequency of critical incidents and use-of-force incidents was also a part of this assessment.
- Classification procedures and compliance—review included periodic progress reviews, interviews with unit team members, and a review of inmate case files. Compliance with segregation reviews was also reviewed.
- Programming/reentry—institutional practice relating to the availability of and inmate participation in programming. A review of practices providing inmates with a program release preparation prior to their release was also conducted.
- Access to medical services—examination of records documenting medical staff presence in the restrictive housing units and access to care inmates receive. The operational assessment did not include a review of the quality of medical care.
- Mental health care—review of the management of inmates with mental health issues, particularly those classified as seriously mentally ill. The project reviewed medical and mental health records and conducted interviews with inmates and clinical staff.

Inmate samples and interviews

As noted above, representative samples of inmates at selected facilities served as the focus of the data collection and analysis. By closely examining these inmates through case file review, observations, and interviews, the project team obtained a better understanding of the nature and effects of restrictive housing within the Bureau. A considerable amount of time was also spent interviewing staff at each facility and at the Bureau executive level to gain their perspectives. Restrictive housing operations were also assessed through a review of a wide range of Bureau documents and reports.

The design of the study called for sampling of inmates currently housed at the selected facilities. Once selected, all data on the inmate was collected and evaluated on each of the factors listed above. The Bureau created an electronic spreadsheet for

each facility approximately one week prior to the site visit. Based on that spreadsheet, a random number was assigned to each listed inmate and samples of approximately 25 or more were selected. The goal was to ensure that at least 20 inmates would receive an in-depth assessment, including interviews and case file reviews.

A central part of the assessment was a private interview with each inmate outside of his/her cell. Security procedures typically required that all inmates were escorted by two officers to the interview room in restraints. With the exception of USP Lewisburg, the interviews were conducted with just the inmate and interviewer.[2] All inmates were required to sign a standardized informed consent form that was developed by the NIC, the Bureau, and CNA.

The interviews were based on a structured format that sought responses from the inmates on the following topics:

- Extent of Bureau incarceration
- Extent of placement in SHU/SMU/ADX confinement
- Basis for placement and due process issues
- Conditions of confinement in restrictive housing, including time out of cell, access to programs, and privileges
- Medical and mental health status and care
- Staff and/or inmate abuse
- Recommendations

Table 3 summarizes the number of inmates who were selected and those who were actually interviewed. In order to attempt to meet the minimum number of 20 inmates per site, it was necessary to supplement the random selected sample with inmates who were not on the list but were willing to be interviewed. These "supplemental" sampled inmates may have biased the effort to generate representative samples in unknown ways. Limited analysis is provided in the report to determine how the inmates chosen for the random sample and inmates actually interviewed differed from the total SHU/SMU/ADX populations. Due to significant problems with the data requests, which are detailed later in this report, it was not possible to directly

[2] For some interviews, facility leadership required that a facility staff person sit in on the interview for security reasons.

identify the interviewed inmates and compare them with the total population in restrictive housing at each facility and across the Bureau.

Overall, there was a 70 percent interview completion rate, which, given the security requirements associated with the interviews, was better than expected. The lowest rates were at the Lewisburg and Tucson facilities, where less than 50 percent of the sampled inmates expressed a willingness to be interviewed. The average number of interviews across the 12 facilities or units was 22, which met the overall goal of having at least 20 interviews and cases analyzed.

Table 3. SHU and SMU prisoner interviews attempted and completed by facility

	Completed			
Facility	**No**	**Yes**	**Total**	**Completion rate**
SMU				
Allenwood	9	26	35	74%
Florence	3	21	24	88%
Florence ADX	11	23	34	68%
Lewisburg	22	21	43	49%
SMU subtotal	45	91	136	67%
SHU				
ADX	3	13	16	81%
Butner	11	18	29	62%
Coleman	8	29	37	78%
Florence	10	12	22	55%
Hazelton	1	30	31	97%
Terre Haute	6	24	30	80%
Tucson	28	25	53	47%
Victorville	5	27	32	84%
SHU subtotal	70	178	250	71%
Grand total	**115**	**269**	**386**	**70%**

Source: CNA/JFA Institute.

Mental health interviews

In addition to the inmate interviews listed above, separate lists were generated for inmates to be privately interviewed by the project team psychiatrists. Prior to their site visit, the roster generated by the Bureau was provided to the research team. This allowed the researchers to identify inmates by level of mental health condition. (Four levels exist, with Level 1 reflecting no significant mental health illness.) A sample was

then produced a few days in advance of the site visit. There was some very limited duplication of the inmate and mental health evaluations that were completed. The overall response rate for the mental health reviews was slightly higher than for the inmate reviews (81 percent). The interviews were designed to allow CNA consulting psychiatrists to offer their professional assessment.

Table 4 summarizes the completion rate for the mental health interviews by facility.

Table 4. Inmates interviewed and evaluated regarding mental health status by facility

Facility	Not completed	Completed	Completion rate
Allenwood	0	20	100%
Atlanta	0	7	100%
Butner	1	9	89%
Coleman	11	14	56%
Florence	6	47	89%
Hazelton	4	11	73%
Lewisburg	2	25	93%
Terre Haute	9	16	64%
Tucson	8	13	62%
Victorville	0	18	100%
Total	**41**	**180**	**81%**

Source: CNA/JFA Institute.

Quantitative data analysis—individual level

The study also sought to conduct a more comprehensive assessment of the SMU and SHU population using the Bureau data systems. Like most if not all state correctional data systems, the Bureau's data systems are not designed to directly measure the status of restrictive housing in terms of admissions to SHU and SMU, release from these same statuses, and the current restrictive housing populations. For this and other reasons, securing the necessary data and readying them for statistical analysis took much longer than originally projected.[3]

[3] Another reason for this delay was the decision by the Bureau to not allow the CNA researchers to have regular and informal contacts with the Bureau's Office of Research and Evaluation (ORE) staff. Instead formal meetings had to be convened and emails transmitted through the Contracting Officer Representative (COR) at NIC. This process resulted in lengthy

Beginning in November 2013, the Bureau first attempted to provide such information for the SMU and ADX populations. This was done by creating multiple large data files that captured all movements in and out of SMU and ADX status since 2009. These files were then merged and analyzed to create a snapshot of the SMU and ADX populations based on the absence of a release movement from that status. This was achieved in May 2014.

A similar effort was made to create cohorts of SMU and ADX releases. These cohorts were needed to calculate the length of stay in SMU and ADX status. Our goal was also to conduct a recidivism study to determine what percentage of SMU and ADX releases were returning to restrictive housing and for what reasons. After many efforts to create such release cohorts, Bureau researchers opted to create the cohorts for CNA using their considerable and intimate knowledge of the Bureau SENTRY data system. These cohorts were finally established in July 2014, leaving little time to conduct the analysis within the project schedule.

Until very recently, there have been no data system capabilities within the Bureau to evaluate the much larger SHU population. The new special housing unit application system is a stand-alone data system that has not been used by the Office of Research and Evaluation (ORE) staff for evaluation purposes. The ORE team made several attempts, without success, to create files from this system that could then be used to create SHU release and snapshot data files. It was decided in June 2014 that the Bureau would only be able to create a current SHU population listing with which more complete data could be merged. It was also mutually agreed that a SHU release cohort could not be produced for this study. The SHU snapshot file was produced in July 2014, which did not permit sufficient time to conduct a comprehensive analysis of that population as originally intended.

Quantitative data analysis—aggregate level

The study design also proposed to review trends in the number of Bureau inmates in restrictive housing over time. The shift in Bureau policies that has led to a significant increase in the SMU population, large transfers of the SMU population from Florence to Lewisburg, and a significant decline in the SHU population have all significantly affected the Bureau's restrictive housing population over time. We also requested that the Bureau provide the numbers of assaults on staff and inmates over time as well as the number of lockdowns occurring each month.

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delays in receiving answers to data questions and data files. The typical time frame for receiving such data files for similar studies in Ohio, Mississippi, Oklahoma, Kentucky, Colorado and Georgia has been 30-60 days.

Data on the SMU and ADX populations going back to 2004 were provided in a timely manner. Data on staff and inmate assaults were provided in May 2014. The number of lockdowns per month was not being collected on a systemic basis until 2008, and those data were provided in June 2014.

Similar data on the number of inmates in SHU status per month were available in a "dashboard" report that was available only in a portable document format (PDF). These data were not retrieved in a spreadsheet format until July 2014, when ORE was able to manually transfer the information for the CNA team.

Composition of the Bureau of Prisons special housing

As described earlier, the Bureau operates three types of segregated housing units: special housing units (SHUs), special management units (SMUs), and the administrative maximum security (ADX) institution in Florence, Colorado. The Bureau also operates communications management units. The conditions of confinement in these units are similar to general population in that inmates are allowed to participate in out-of-cell activities for up to 16 hours per day. The communications management units were excluded from the scope of work of this study.

The Bureau's program statements governing the three types of segregated housing units indicate that all three have similar functions and purpose: to "separate inmates from the general inmate population to protect the safety, security, and orderly operation of Bureau facilities, and to protect the public."[4] The specific placement criteria and conditions of confinement vary for each type of segregated housing unit, as does the type of inmate housed in each.

Special housing units

As outlined in *Program Statement 5270.10, Special Housing Units*, the purpose of the SHU is as follows:

> Special Housing Units (SHUs) are housing units in Bureau institutions where inmates are securely separated from the general inmate population, and may be housed either alone or with other inmates.

[4] Program Statement 5270.10, Special Housing Units, 28 C.F.R. 541.21.

> Special housing units help ensure the safety, security, and orderly operation of correctional facilities, and protect the public, by providing alternative housing assignments for inmates removed from the general population.

The policy further indicates that inmates placed in SHU are in either administrative detention status or disciplinary segregation status.

Section 541.22 of the program statement describes administrative detention as follows:

> Administrative detention status is an administrative status, which removes you from the general population when necessary to ensure the safety, security, and orderly operation of correctional facilities, or protect the public. Administrative detention status is nonpunitive, and can occur for a variety of reasons.

The program statement permits placement in administrative detention status for the following reasons:[5]

- The inmate is awaiting classification or reclassification.
- The inmate has been placed in holdover status and is awaiting or in transit to a designated institution or other destination.
- It is determined that the inmate's removal from general population is necessary because continued placement in general population poses a threat to life, property, self, staff, other inmates, the public, or to the security or orderly running of the institution and one or more of the following—
    - The inmate is under investigation or awaiting a hearing for possibly violating a Bureau regulation or criminal law.
    - The inmate is awaiting transfer to another institution or location.
    - It has been determined that the inmate requires protective custody based on the inmate's request or staff determination that administrative detention status is required for the inmate's own protection.
    - The inmate has been determined to require postdisciplinary detention and is ending confinement in disciplinary segregation status, and a return to

[5] Program Statement 5270.10, Special Housing Units, 28 C.F.R. 541.23.

the general population would threaten the safety, security, and orderly operation of a correctional facility, or public safety.

As noted in the above eligibility standards for placement in the SHU, inmates may be placed in administrative detention status for protection. The program statement outlines the following circumstances in which this can occur:[6]

- Inmate has been determined to be a victim of inmate assault or threats.
- Inmate has been confirmed to be an informant and his/her safety is at risk because of providing, or being perceived as having provided, information to staff or law enforcement authorities regarding other inmates or people in the community.
- Inmate has refused to enter general population because of alleged pressures or threats from unidentified inmates, or for no specific expressed reason.
- Based on evidence, staff believes that the inmate's safety may be seriously jeopardized by placement in the general population.

The statistical analysis of the SHU population was severely hampered by the inability of the Bureau to provide an accurate data file of the inmates assigned to and released from SHU status as well as an accurate snapshot of the current SHU population. At that time, the count was 10,262 in over 100 Bureau facilities, with the population steadily declining since then, reaching 8,939 by June 2014. This is a significant reduction from the self-reported count of the SHU population of over 13,000 in 2011.

As with the SMU and ADX population, a very large percentage (66 percent) of the SHU population has "separatee orders," which means they have enemies and/or there are safety and security concerns that prohibit specific inmates from being housed with one another. This issue greatly restricts the Bureau's ability to return SHU (as well as SMU and ADX) inmates to the general population—even when considering transfers to other Bureau facilities.

A further complication is the level of crowding that exists within the Bureau. As of 2013, the Bureau stated it was at 137 percent of its rated capacity. The rates of crowding are even higher at their high- and medium-security facilities (154 percent and 144 percent, respectively). Since many of the SMU inmates upon their release will require placement in the high- and medium-security facilities, this level of crowding

[6] Program Statement 5270.10, Special Housing Units, 28 C.F.R. 541.27.

further exacerbates the difficulty of transferring these inmates out of SHU in a timely manner.

Table 5. SHU populations by status, February 2013 – June 2014

Date	Total	Disciplinary segregation	Investigation	Protective custody	Pending actions	Other
2/2013	10,262	1,722	4,581	1,882	2,002	75
3/2013	10,070	1,700	4,516	1,868	1,868	118
4/2013	10,235	1,802	4,634	1,906	1,769	124
5/2013	10,086	2,041	4,355	1,854	1,714	122
6/2013	9,915	1,860	4,369	1,825	1,719	142
7/2013	9,821	1,542	4,707	1,787	1,675	110
8/2013	9,808	1,716	4,635	1,687	1,598	172
9/2013	9,696	1,803	4,458	1,709	1,515	211
10/2013	9,530	1,771	4,483	1,613	1,516	147
11/2013	9,483	1,768	4,451	1,718	1,405	141
12/2013	9,434	1,506	4,567	1,562	1,726	73
1/2014	9,357	1,570	4,283	1,593	1,825	86
2/2014	9,484	1,424	4,750	1,532	1,718	60
3/2014	9,177	1,585	4,388	1,432	1,704	68
4/2014	9,096	1,533	4,336	1,380	1,766	81
5/2014	8,926	1,508	4,260	1,340	1,716	102
6/2014	8,939	1,376	4,252	1,361	1,802	148

Source: Bureau/ORE.

Special management units

As specified in *Program Statement 5217.01, Special Management Units*, inmates who have participated in or had a leadership role in geographical group/gang-related activity, and/or present unique security and management concerns may be designated to an SMU, where enhanced and more restrictive management approaches have been determined to be necessary to ensure the safety, security, or orderly operation of Bureau facilities, or protection of the public.

The program statement defines the SMU as a nonpunitive program status that may be appropriate for any inmate meeting the referral criteria as outlined in Section 2 of P5217.01. The objective of the SMU status as outlined in that document is to enhance a safe and orderly environment at all Bureau institutions.

Bureau policy permits placement in a SMU for any sentenced inmate whose history, behavior, or situation requires enhanced management approaches that would ensure the safety, security, or orderly operation of Bureau facilities, or for protection of the public. The policy states that one or more of the following criteria must exist to support consideration for placement in an SMU:

- Participated in disruptive geographical group/gang-related activity.
- Had a leadership role in disruptive geographical group/gang-related activity.
- Has a history of serious and/or disruptive disciplinary infractions.
- Committed any 100-level prohibited act.[7]
- Participated in, organized, or facilitated any group misconduct that adversely affected the orderly operation of a correctional facility.
- Participated in or was associated with activity such that greater management of the inmate's interaction with other people is necessary to ensure the safety, security, or orderly operation of the Bureau facilities, or protection of the public.[8]

The SMU program has four levels or phases, differentiated by the conditions of confinement and expected time frames for completion. Completion of all levels is expected to occur within 18-24 months in the absence of any further behavioral issues. Level 1 completion is expected within four months. Levels 2 and 3 are expected to take from six to eight months each, and Level 4 is expected to take two to four months.

Level 1—minimum stay four months. At this level, interaction between inmates is minimal (for example, showers and recreation). All inmates are double bunked. The associate warden is responsible for determining which inmates may be housed or can participate in activities together, as necessary, to protect the safety, security, and good order of the institution. Inmates are ordinarily restricted to their assigned cells.

Inmates participate in an institution and unit admission and orientation program as outlined in the policy on admission and orientation. The goal of the SMU admission and orientation program is to provide inmates with information regarding the institution's operations, program availability, and the requirements for successful

[7] P.S. 5270.09, Inmate Discipline Program.

[8] Program Statement 5217.01, Special Management Unit, Section 2, Referral Process.

progression through each of the four levels of the program, based upon specific goals established for each inmate. Institution staff will interact with each inmate on an individual basis to assess the inmate's program and counseling needs, discuss the SMU program objectives and expectations, establish a set of program goals based on the inmate's individual needs and the programming available within the unit, and communicate the requirements of the SMU program. Progression through Level 1 is based upon the inmate's compliance with behavioral expectations as established by institution and SMU staff. A multidisciplinary special management review is conducted by the unit manager, captain, and associate warden (chairperson) or the person acting in that capacity. This review includes input from the SMU unit team, correctional staff, psychology staff, education staff, and other appropriate staff to determine the inmate's readiness to progress to the next level. After the initial programming assessment, Level 1 inmates are reviewed at least every 90 days. Inmates are expected to progress to Level 2 after four months.

Level 2—minimum stay six to eight months. At this level, interaction between inmates remains minimal. The associate warden is responsible for determining which inmates may be housed or participate in activities together, as necessary to protect the safety, security, and good order of the institution. Inmates are ordinarily restricted to their assigned cells; however, out-of-cell activities and programming may be increased on a case-by-case basis depending on behavioral performance. Inmates continue their involvement in General Educational Development (GED) (or high school equivalency) or ESL (English as a second language) education, either individually or in a classroom setting. Initially at this level, inmates may be involved in programs on a self-study basis; then, individual and small group counseling sessions dealing specifically with treatment readiness and fundamental communication skills will be required.

The associate warden is responsible for determining which inmates will participate in group activities. All program activities are intended to reinforce the goal of coexisting and acting responsibly. Curriculum at this level targets "treatment readiness skills" (such as basic empathy, attentiveness responding, respect, and genuineness) to enhance inmate receptivity to the new concepts which they will be exposed to in Level 3. Small-group counseling sessions, in particular, focus on treatment readiness and fundamental communication skills. Progression through this level is based upon the inmate demonstrating the potential for positive community interaction.

During Level 2, inmates generally program and function separately. Progression to Level 3, however, requires the inmate to demonstrate the ability to coexist with other individuals, groups, or gangs. Level 2 inmates are reviewed at least every 90 days and are expected to progress to Level 3 after six to eight months. Inmates who fail to make satisfactory progress may be returned to a previous level.

Level 3—minimum stay six to eight months. Inmates at this level begin to interact in an open but supervised setting with individuals from various groups, including open movement in the unit with their demonstrated ability to effectively coexist with other inmates. The associate warden is responsible for determining which inmates may be housed or participate in activities together, as necessary to protect the safety, security, and good order of the institution. There are also increased privileges (for example, commissary and property) at this level for those who accomplish unit goals and maintain appropriate conduct. Progression through this level is based upon the inmate's ability to demonstrate positive community interaction skills. Inmates are formally reviewed by the unit team every 90 days and are expected to progress to Level 4 after six to eight months. Inmates who fail to make satisfactory progress may be returned to a previous level.

Level 4—minimum stay two to four months. At this level, inmates must be able to demonstrate their sustained ability to coexist and interact appropriately with other individuals and groups in the unit. The associate warden is responsible for determining which inmates will participate in group activities. This level encompasses the inmate's last two-to-four months in the SMU program. Level 4 inmate reviews are conducted every 30 days and documented in the same manner as previous reviews.

SMU inmates are reviewed by the unit team in conjunction with regularly scheduled program reviews as provided in the policy on inmate classification and program review. The unit team specifically reviews inmates for progression through the levels of the program. An inmate's institutional adjustment, program participation, personal hygiene, and cell sanitation are considered during review for progression to subsequent levels.

Progression through the program levels is dependent upon time in the specific level, demonstration of appropriate behavior, and participation in programming goals. A panel review is conducted at the end of each level to make recommendations regarding progression. By policy, progression from Level 3 to Level 4 is based on the "ability of the inmate to demonstrate positive 'community' interaction. It must also be determined the inmate will likely meet the re-designation criteria." Progression from Level 4 to a general population facility is "based upon the inmate's ability to function in a general population setting with inmates of various group affiliations." Staff indicated that most team meetings for SMU inmates are done at the cell door. There are only slight programming and operational differences between inmates in Level 3 and Level 4. According to both policy and practice, Level 3 and Level 4 inmates may be housed in the same cell.

At the time that this review was initiated, there were SMU programs operating at USP Allenwood, USP Lewisburg, and USP Florence. As of November 2013, the SMU census issued by the Bureau showed a total of 1,680 inmates assigned to SMU status across

these three facilities (table 6). Since then, the Bureau has been transferring SMU inmates to USP Lewisburg with the intention of eliminating the SMU program at USP Florence.

Table 6. SMU populations by facility, December 2013

Facility	SMU population
USP Florence	645
USP Lewisburg	786
USP Allenwood	249
Totals	**1,680**

Source: Bureau/NIC/ORE.

The Bureau was not able to provide a count of the SMU population broken down by the four levels described above. USP Allenwood is supposed to contain only Level 3 and Level 4 SMU inmates, while USP Lewisburg and USP Florence house only Level 1 and Level 2 inmates. As discussed later in this report, we encountered inmates at USP Lewisburg who had graduated from Level 2 but were being retained at that facility, reportedly due to a lack of capacity at USP Allenwood. Assuming that USP Allenwood does represent the Level 3 and 4 SMU populations, it is clear from table 6 that 85 percent of inmates in SMU are in Levels 1 and 2. Given the minimum length of time required to complete Levels 1 and 2 (10–12 months), it may take an extended period for many of these inmates to be returned to the general population.

Administrative maximum facility program

The ADX facility is located at the Federal Correctional Complex in Florence, Colorado. The ADX is a high security facility housing maximum-custody-sentenced inmates in single-occupancy cells. Maximum custody is the highest custody level that can be assigned to an inmate.

This is the only facility of its type in the Bureau. The stated missions of the ADX are to (1) assist the Bureau in maintaining the safety of both staff and inmates, while eliminating the need to increase the security of other open population penitentiaries; and (2) confine inmates under close controls while providing them opportunities to demonstrate progressively responsible behavior; participate in programs in a safe, secure, and humane environment, and establish readiness for transfer to a less secure institution. The ADX houses inmates who require an uncommon level of security due to their records of serious institutional misconduct, involvement in violent or escape-related behavior, and/or who have unusual security needs based on the nature of their offense. Placement of these inmates at another facility would pose a risk to the safety and security of the institution, staff, and inmates and the public.

The institution operates three distinct programs throughout its numerous housing units, which includes the general population and step-down program, control unit program, and special security unit program. The ADX also has an SHU.

Referrals of inmates for placement at the ADX must be approved by the regional director, the chief of the Bureau's Designation and Sentence Computation Center (DSCC), and the assistant director of the Correctional Programs Division in the central office. All inmates referred for placement receive a hearing prior to placement. Inmates may attend the hearing, make a statement, and present evidence to the hearing administrator conducting the hearing. A mental health evaluation is a required component of all referrals for placement at the ADX.

The facility census at the time of our review on March 31, 2014, was 410 inmates. Of those, 75 were assigned to the control unit; 23 to the SHU control overflow; nine to the SHU segregation unit; 19 to the J unit step-down program; 28 to the H unit (housing inmates with SAMs); and 256 in general population. The H unit, which houses the Special Security Unit Program, was excluded from this review under the terms of the contract.

A snapshot of the census was taken on the first of the month for a 12-month period from April 1, 2013, to April 1, 2014. During that time, the high census was 447 on April 1, 2013, and the low census was 411 inmates on March 1, 2014, and on April 1, 2014. For the 12-month period, the average census for the facility was 428.

The three main components of the ADX that were reviewed in this assessment were the general population step-down units, the special security unit (SSU), and the control unit. Each of these is summarized below.

General population: Inmates in this portion of the facility meet the basic ADX placement criteria. The purpose of the program is to monitor the inmate's adjustment to general population while providing an increasing level of privileges and recreation access. The general population and step-down units have a four-phase, 36-month minimum program length. Inmates are gradually placed in less restrictive housing and program conditions based on their adjustment to their conditions of confinement.

Special security unit: The SSU houses inmates who have the need for more restricted conditions or have a SAM authorized by the attorney general. SAMs may be deemed reasonably necessary to prevent disclosure of classified information that would pose a threat to national security if disclosed. SAMs include, but are not limited to, placing an inmate in administrative detention and restricting social visits, mail privileges, phone calls, and access to other inmates and to the media. While in the unit, each inmate participates in a three-phase program, with each phase being less restrictive.

Inmates housed in the SSU are reviewed annually to determine if the SAM status should be renewed or modified.

Control unit: The control unit program, established by *Program Statement 5212.07*, provides housing for inmates who are unable to function in a less restrictive environment without posing a threat to others or the institution. Referral to the unit is outlined in PS 5212.07 and is reviewed by the regional director in the region which the inmate is housed. If the regional director concurs with the placement, the referral is submitted to the regional director of the North Central region, where ADX Florence is located. The regional director then designates a hearing administrator to conduct a hearing to review the placement referral. A mental health evaluation is a required component of the referrals to the control unit, and medical, psychological, and psychiatric concerns are considered during the review.

The hearing administrator conducts the hearing, which the inmate may attend and present evidence, call witnesses, and receive the assistance of staff if necessary. The decision of the hearing administrator is then submitted to the Executive Panel (warden of ADX Florence, North Central regional director, and assistant director of the Correctional Programs Division) for final review and placement.

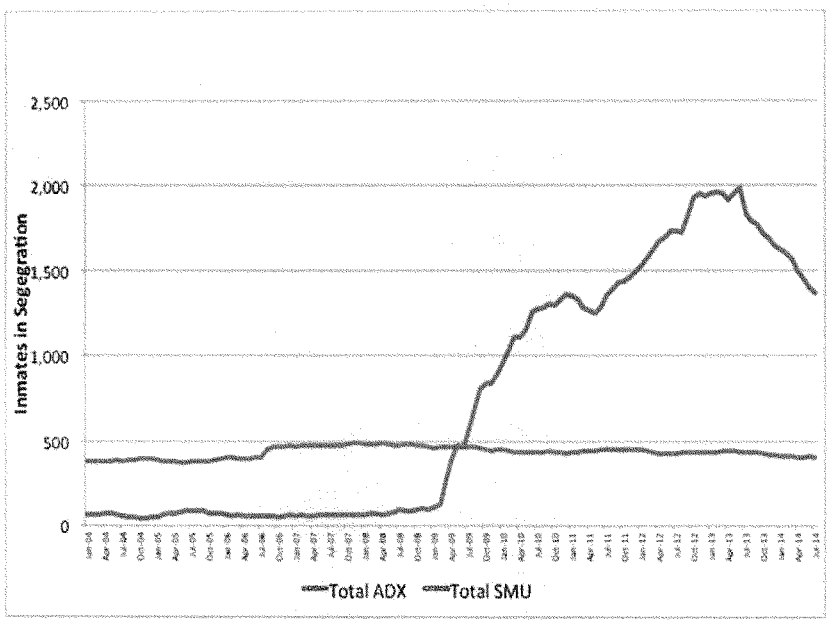
Inmates placed in the control unit are reviewed within four weeks of initial placement. Subsequent reviews are conducted on a monthly basis by the unit team, while the Executive Panel is to review each inmate's status and placement on a quarterly basis.

The Psychology Services Branch reviews all ADX referrals, a process that has been in place since 2012. Psychology Services reviews all cases prior to designation to the ADX. Bureau staff reported that cases have been rejected for ADX placement based upon this review, but no data were available on the number of cases in this category.

ADX and SMU population trends

The historical trends for both the ADX and SMU populations are shown in figure 2. A dramatic increase in the SMU population began in 2009 and plateaued at about 2,000; the population recently declined through July 2014. The ADX population has remained fairly stable at 425 since 2004.

Figure 2. SMU and ADX populations, January 2004 – July 2014



After a dramatic increase in the SMU program that began in 2009, there have been recent and significant reductions in the SHU and SMU populations (table 7). Similarly, the Bureau population has also been slightly reduced, from a peak of 217,815 to 210,961 as of December 25, 2014. However, even with the decline in the Bureau population, the proportion of inmates in some form of segregation is at 5 percent—down from an estimated 6.9 percent in 2011. Much of the total decline is attributed to a reduction in the SHU population and, in particular, inmates who have been assigned to protective custody or are serving disciplinary segregation sanctions. There have been no reductions in the number of SHU inmates being investigated or the ADX populations over this time frame.

Table 7. Bureau segregation populations by segregation type, 2004–2014

Year	Total	SMU	ADX	SHU	Total segregation	% of total Bureau population
2004	180,328	46	393	NA	439	NA
2005	187,618	71	398	NA	469	NA
2006	193,046	60	472	NA	532	NA
2007	199,618	61	487	NA	548	NA
2008	201,280	98	466	NA	564	NA
2009	208,118	894	449	NA	1,343	NA
2010	209,771	1,357	427	NA	1,784	NA
2011	216,632	1,491	451	13,000	14,942	6.9%
2012	217,815	1,942	434	10,262	12,638	5.8%
2013	216,570	1,680	419	9,434	11,533	5.3%
2014	215,324	1,399	409	8,939	10,747	5.0 %

Source: Bureau/ORE.

Note: 2011 SHU population is a self-reported estimate by the BOP. The 2014 populations are as of June 2014.

Summary of the Bureau's recent initiatives and segregation capacity

As the populations have been reduced, there have also been reductions in the capacity of the program since its formation. Bureau Director Charles E. Samuels, Jr. reported that an SMU had been closed at FCI Talladega, Alabama, where there was an 80-bed unit for Level 1 and 2 inmates. This SMU was deactivated in February 2013. The director also reported that there had been plans to open an additional SMU program at Oakdale, Louisiana, but that plan was withdrawn, again due to the steady reduction in counts at the existing SMU programs and the absence of growth in previous years.

The capacity of other units within existing SMU facilities has also been modified based on the reduced SMU population—for example, the deactivated units at USP Lewisburg that were observed during the site visit to that facility in January 2014. G unit, which had a potential capacity of 162 SMU inmates, was closed at the time of the site visit.

Also during the site visit to Florence, Colorado, the complex warden reported that the SMU there was being phased out and the SMU inmates transferred to USP Lewisburg. At the time of our site visit (April 2, 2014), the SMU at USP Florence had a

capacity of 750 and a population of 474. The capacity was split, with 374 beds for Levels 1 and 2 and 376 beds for Levels 3 and 4. The available capacity was, in practice, lower than 750, as D unit was being used as a general population unit and other beds were housing the ADX step-down program. The warden indicated that those in Levels 3 and 4 would remain at USP Florence until completion of the program, while those in Levels 1 and 2 would gradually be transferred to USP Lewisburg.

Development of the reintegration housing unit

The Bureau has also initiated a housing and program option for the protective custody population, which makes up a significant portion of the overall SHU population. It was reported that in November 2013 there were 1,437 protection cases in special housing, with an additional 172 in special housing awaiting placement back into the general population. In October 2013, the Bureau issued a memorandum that provided field staff with procedures and criteria for placement of inmates in the reintegration housing unit (RHU) located at the Federal Correctional Complex at Oakdale, Louisiana.[9]

The target population for the RHU consists of male inmates who "consistently refuse to enter general population at multiple locations" and those who have been designated through the classification process as protective custody. The stated purpose of the RHU is as follows:[10]

- Remove inmates from SHUs and provide a less restrictive housing environment.
- Address factors that cause inmates to refuse placement in general population.
- Develop skills to increase amenability to entering general population.
- Reduce continued transfers and SHU placement.

The preferred candidates and outcomes for the RHU include the following:

- Target inmates who consistently refuse to enter general population at multiple institutions and who have a general fear of placement in general population.

[9] Memorandum to All Regional Directors, October 18, 2013, from Acting Assistant Director, Correctional Programs Division titled *FCC Oakdale - RHU Activation Procedures.*

[10] Reintegration Housing Unit PowerPoint.

- Remove inmates from SHUs and provide a less restrictive housing environment.
- Address factors that cause inmates to refuse general population.
- Develop skills to increase amenability to entering general population.
- Reduce continued transfers and SHU placement.

The initial capacity of the RHU was established as 160 beds with a potential for future expansion to 320 beds. The RHU provides alternative housing outside the SHU for protective custody inmates who are not security threat group members and who could transition to general population housing.

USP Atlanta mental health unit

Finally, the Bureau has established a specialized unit for Mental Health Care Level 3 mentally ill inmates as an alternative to housing in the SMU, SHU, or ADX. This program, the USP Atlanta Secure Mental Health Step-Down Program, has an initial capacity of 24–30 and is primarily intended to remove some but not all Level 3 inmates with serious mental illness (SMI) from the ADX and other high-security USPs. Inmates classified by the Bureau as Mental Health Care Level 4 are housed in the Bureau's medical referral centers.

Chapter 2: National trends and use of segregated housing

Removal of disruptive and violent inmates from the general population and their placement in separate housing units has been a common practice in prison systems since their inception.[11] In the United States, placement of inmates in solitary confinement—the most extreme form of segregated housing—has been documented as early as the 1800s, when administrators believed that silent contemplation led to reform.[12]

Although the use and management of segregated housing have changed, the practice of separating and isolating inmates using special cells or facilities has continued.[13] The modern use of segregation and solitary confinement within specialized units and facilities began to emerge in the 1970s, as prison populations began to rise, spurring a series of highly publicized riots, prison violence, and increased prison crowding.[14] It was hoped that segregating the most disruptive inmates for extensive periods of time under extreme forms of security would serve both to deter and to incapacitate highly disruptive behavior.

By incapacitating disruptive inmates, centralized and specialized segregation units would allow the vast majority of inmates who were conforming to the prison systems rules and regulations to carry out their daily routines of work, recreation, and program participation without the fear of violence or intimidation by more aggressive inmates. It also allowed the other prisons to avoid lengthy lockdowns and major disturbances.

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[11] C. Riveland. *Supermax Prisons: Overview and General Considerations.* National Institute of Corrections Technical Assistance Number 98P4002. Jan. 1999.

[12] D.P. Mears and J. Watson. "Towards a Fair and Balanced Assessment of Supermax Prisons." *Justice Quarterly* 23, no. 2, Jun. 2006: 232-270.

[13] J.M. Pizarro, V.M. Stenius and T.C. Pratt. "Supermax Prisons Myths, Realities, and the Politics of Punishment in American Society." *Criminal Justice Policy Review* 17, no. 1, Mar. 2006: 6-21.

[14] J. Wooldrege. "Research Note: A State Level Analysis of Sentencing Policies and Inmate Crowding in State Prison." *Journal of Crime and Delinquency* 42, no. 3, Jul. 1996: 456-466.

Three factors that influenced the rise of segregated housing deserve further attention: (1) the significant increases in the nation's state and federal prison populations, (2) the attending increased crowding, and (3) the increased presence of organized street and prison gangs.

After many decades of relative stability in the rate of incarceration, state and federal prison populations began to accelerate in the 1970s, which served to disrupt prison subcultures. In 1972 alone, 90 prison riots were reported by state and federal officials.[15] As noted by many criminologists, prison administrators depend heavily upon a cooperative and conforming inmate population.[16] Correctional officers are greatly outnumbered by the inmate population at any given time and are armed with few, if any, lethal weapons. Control is maintained by their daily interactions with inmates and by offering differing levels of freedom of movement, privileges, and activities (work, programs, and recreation) to mitigate the monotony of "doing time." However, as the prison populations grew, greater numbers of less experienced people were needed to work in the expanding field of corrections.

Prison crowding also worsened as policy-makers passed legislation designed to sentence more people to prison for longer periods of time. It simply was not possible to build a sufficient number of prisons to accommodate the rising tide of inmates. Crowding further exacerbated the level of violence in prisons and the need to better control highly disruptive inmates.

Finally, the presence of modern organized street gangs within the prison population increased, which served to further disrupt stability.[17] Although prison gangs have long been a prison management issue, the 1970s saw a new development in which street gangs that were organized outside the prison system began to enter it in much larger numbers.

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[15] Useem, B. & Piehl, A.M. (2008). *Prison state: The challenge of mass incarceration*. New York: Cambridge University Press.

[16] Starting with Donald Clemmer's *The Prison Community* (New York: Holt, Rinehart, 1958), social scientists produced an extensive literature on prisoner society as it existed from the 1930s through the 1960s. A few of the studies are Graham Sykes, *The Society of Captives* (Princeton, NJ: Princeton University Press, 1958); Rose Giallombardo, *The Society of Women* (New York: Wiley, 1966); David Ward and Gene Kassebaum, *Women's Prison* (Chicago: Aldine, 1965); John Irwin, *The Felon* (Upper Saddle River, NJ: Prentice-Hall, 1970); James Jacobs, *Stateville* (Chicago: University of Chicago Press, 1977), and; and James Austin and John Irwin, *It's About Time: America's Imprisonment Binge, 4th Edition* (Palo Alto, CA:

[17] Irwin, John. *Prisons in Turmoil* (Boston: Little, Brown, 1980). Jacobs, James, B. *Stateville: The Penitentiary in Mass Society* (Chicago: University of Chicago Press, 1977).

There was also shift from what Ward and Carlson described as the *dispersion* approach to the *concentration* approach to segregation housing.[18] The dispersion approach involved dispersing disruptive inmates and repeatedly transferring them to different high-security prisons in the hopes of breaking up potential cliques or gangs and preventing them from recruiting other inmates. It also provided some relief to staff who had to manage these inmates on a daily basis. However, as prison populations and the number of disruptive inmates grew, the efficacy of this approach waned. It has now been replaced by the concentration approach, in which specially designed facilities are constructed or older facilities renovated to permit the long-term confinement of disruptive inmates in a highly controlled setting. These facilities have relatively small housing units with cells that are difficult to damage, enable staff to turn off water and electricity, and facilitate the use of force when needed to conduct searches and cell extractions. Specially designed "cages" are constructed to permit limited access to recreation, case managers, and medical and mental health staff. The security staff are expected to be specially trained in working in these prisons or units, which sometimes were known as "supermax" prisons.

The first forms of supermax and high segregation units can be traced to the Bureau's opening of Alcatraz in 1934 as a high-security penitentiary for "habitual" and "intractable" federal inmates. After its closure in 1963, the Bureau experimented with the dispersion model. With a rising population and increased levels of disruption, the agency decided to once again concentrate its disruptive inmates at a special high-control unit at the Marion Penitentiary, which opened in 1978. In 1983, the deaths of two officers and an inmate resulted in this prison's conversion to indefinite administrative segregation, or lockdown. Marion continued to house this population until it opened a modern high-security, secure segregation unit called the administrative maximum penitentiary in Florence, Colorado, in 1994. This unit is now referred to as the ADX. Following the Bureau's lead, supermax prisons and housing units began to spring up in most state prisons systems as well as many of the largest jail systems.

It must be emphasized that, in most jurisdictions, the proportion of segregated inmates is relatively small. The last national survey, conducted in 2002, found that, on average, 5 percent of the state prison population was assigned to some form of

[18] Ward, David A. and N. A. Carlson. "Super-Maximum Custody Prisons in the United States." *Prison Service Journal*, Issue No. 97. April 1994.

administrative or disciplinary segregation.[19] That same survey found significant variation among the states with a range of 1 percent to 16 percent.

Definitions of segregation and types of inmates in segregation

Segregated housing is known by a variety of names, including (but not limited to) restrictive housing, segregation, administrative segregation, punitive segregation, disciplinary segregation, isolation, control unit, special housing unit (SHU), special management unit (SMU), intensive management unit, security control unit, and supermax. For purposes of this report and based on several prior studies, the following definitions of segregation from the prison general population are used:

- *Protective custody*—The purpose is to protect an inmate from threats of violence and extortion from other inmates. The inmate remains in this status until the threats have been removed or the inmate is released from prison.
- *Acute/serious mental health needs*—The purpose is to provide intense mental health treatment to inmates with SMIs. The placement of an inmate and the treatment plan are determined by the mental health team.
- *Acute medical needs*—The purpose is to provide intense medical care to inmates with life-threatening medical conditions and/or physical disabilities. The placement of an inmate and the treatment plan are determined by medical health professionals, including a psychiatrist or a physician.
- *Investigation segregation*—The purpose is to temporally segregate an inmate until serious allegations of misconduct or the need for protective custody is determined. Once the investigative process is completed, the inmate can be assigned to a segregation status or returned to the general population.
- *Disciplinary segregation*—The purpose is to punish an inmate for a violation of a major disciplinary rule. The inmate is to be released back to the general population once the period of disciplinary segregation has been served.

[19] Austin, James and McGinnis, Kenneth. *Classification of High-Risk and Special Management : A National Assessment of Current Practices*. National Institute of Corrections. NIC Accession Number 01946. June 2004.

- *Administrative segregation*—The purpose is to incapacitate an inmate whose presence in the general population would pose an ongoing threat to inmates and staff. The placement of an inmate in this status is solely determined by a limited set of criteria established by correctional administrators.[20]

In general, an inmate who is suspected of serious misconduct can be assigned to a segregation unit until an investigation is completed. If convicted of the charges, the inmate can then be sentenced to a specific period of time in segregation—often referred to as disciplinary segregation. While most states limit the amount of time one can serve in segregation, it is possible to accrue more time in disciplinary segregation based on misconduct committed in the unit. Once the disciplinary segregation time has been served, the inmate can then be placed in administrative segregation for an indefinite period of time.

Some inmates do not pose a threat to the security of the prison system, but require protection from other inmates. They are referred to as protective custody inmates. It is not uncommon to find these inmates comingled with disciplinary and/or administrative segregation inmates.[21]

Placement in these various forms of segregation is wholly determined by correctional administrators. Segregation is allowed for a variety of reasons; consideration of the offense committed, the number of infractions, and pending investigations all factor into placement decisions. Some correctional systems further constrain placement decisions to include only those instances in which evidence of specific harm or an escape attempt is present.

Despite their overall low prevalence, highly disruptive offenders have historically presented significant challenges for prison administrators and staff. Segregation units by their very nature require higher levels of staffing on all levels (security, medical, mental health, facility maintenance, programs and recreation, and legal services). In response to this dynamic, corrections administrators have increasingly developed and implemented a myriad of population segregation measures designed to mitigate the impact of highly disruptive offenders within the correctional system.

A key issue is the nature and extent of isolation and solitary confinement. The most recent and comprehensive survey of current practices by the state and the Bureau

[20] H. Metcalf, J. Morgan, S. Oliker-Friedland, J. Resnik, J. Spiegel, H. Tae, A. Work, and B. Holbrook. *Administrative Segregation, Degrees of Isolation, and Incarceration: A National Overview of State and Federal Correctional Policies.* Yale Law School, Public Law Working Paper No. 301. Jun. 1, 2013. Austin and McGinnis, 2004.

[21] Metcalf, et al., 2013.

was completed by Metcalf et al. in 2013. They found that there was general agreement that the practice of segregation involves removing inmates from the general population and restricting their participation in recreation, group meals, and programmatic offerings.[22] The same report found that the degree of isolation varied across systems, although the national standard is confinement to a cell at least 23 hours per day with very limited access to recreation, visits, and program services.

Recent reviews of segregation in Oklahoma, Kentucky, Illinois, Ohio, New York, California, and the Bureau of Prisons have found that large numbers of the segregated population are double celled rather than placed in a single cell, thus negating the claims of solitary confinement.

In a study examining inmates' experiences in administrative segregation, O'Keefe noted a general lack of interpersonal contact, meaningful activity, access to reading materials, and windows.[23] According to Kupers et al., some of the particulars associated with segregation practices include near 24-hour-per-day cell confinement alone or with a cellmate, meals eaten in cells, limited trips to a recreation area, and relatively infrequent noncontact interactions with family and friends.[24]

A somewhat contrasting view of segregation was presented by Berger et al., who described cells that generally house two inmates and the ability to communicate with inmates on either side of single-occupancy cells.[25] They also noted that inmates may talk with one another during recreation and with staff members during rounds. Furthermore, segregation cells are similar in size to (or larger than) those in general population, and meals served are similar to those received by general population inmates. With respect to activities, inmates in segregation can receive mail, make phone calls, participate in out-of-cell recreation and institutional programing (including educational and religious services), and possess reading material, but on a very restricted basis.

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[22] Metcalf, et al., 2013.

[23] M.L. O'Keefe. "Administrative Segregation From Within: A Corrections Perspective." *The Prison Journal* 88, no. 1, Mar 2008: 123-143.

[24] Kupers, T.A., T. Dronet, M. Winter, J. Austin, L. Kelly, W. Cartier, T. J. Morris, S. F. Hanlon, E. L. Sparkman, P. Kumar, L. C. Vincent, J. Norris, K. Nagel, and J.McBride. "Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs." *Criminal Justice and Behavior* 36, no. 10, Oct. 2009: 1037-1050.

[25] R.H. Berger, M. P. Chaplin, and R. L. Trestman. "Commentary: Toward an Improved Understanding of Administrative Segregation." *The Journal of the American Academy of Psychiatry and the Law* 41, no. 1, Mar. 2013: 61-64.

As will be shown below, inmates in segregation often have more frequent contact with medical, dental, and mental health service providers, all of whom are often mandated to make daily rounds of segregated housing units. It can also be argued that inmates in segregation may also enjoy greater privacy, the ability to eat meals without interruption, a reduced likelihood of victimization and injury, and possibly a lower probability of committing infractions that would serve to increase their prison terms. These so-called benefits of segregation manifest themselves in inmates who refuse to be released to the general population, instead preferring to complete their prison sentence in segregation status.

Key litigation issues

There are key legal issues that correctional agencies must address in the operation of their segregation units. A growing number of cases being filed against correctional agencies are challenging the constitutionality of segregation. Our intent is not to provide a comprehensive legal analysis of these issues but to summarize key issues and court decisions.

Virtually all of the pending and past litigation on the use of segregation focuses on the placement process, conditions of segregation, and duration of segregation. These three issues are linked to constitutional requirements of due process and the imposition of cruel and unusual punishment. The 5th and 14th Amendments to the US Constitution provide due process protections. The 8th Amendment bans cruel and unusual punishment.

Fred Cohen's recent comprehensive review of case law and Supreme Court decisions showed that the use of solitary confinement and segregation for extended periods of time is constitutional and does not necessarily violate the 8th Amendment.[26] He noted that there are many cases where the courts have ruled that excessive deprivation of basic services and conditions of confinement (for example, objectionable food, insufficient clothing, insufficient heat, lack of lighting, or lack of mental health services) does constitute cruel and unusual punishment. Further, in several cases the courts have ruled that correctional officials must provide some level of due process in determining initial and continued placement in certain segregation housing conditions.

[26] Cohen, Fred. "Penal Isolation: Beyond the Seriously Mentally Ill," *Criminal Justice and Behavior* Vol. 35, No. 8, August 2008, 1017-1047.

Although many cases have direct bearing on these issues, three major cases that are narrowly related to segregation are frequently referenced by the courts:

- *Sandin v. Conner*, 515 U.S. 472, 484 (1995)
- *Wilkinson v. Austin*, 545 U.S. 209 (2005)
- *Estate of DiMarco v. Wyoming Department of Corrections.*, 473 F.3d 1334, 1342 (10th Cir. 2007)

The *Sandin* case was decided by the U.S. Supreme Court. It involved an inmate in the Hawaii prison system who received a 30-day sentence to segregation. He was not allowed to call witnesses on his behalf. The Court ruled that the prisoner was not able to show that 30 days in segregation within the Hawaii prison system constituted "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Consequently, there was not a protected liberty interest that would entitle him to due process procedures.

In the *Wilkinson* case, which was brought against the Ohio Department of Rehabilitation and Correction and its recently created supermax facility, the U.S. Supreme Court unanimously held that recently adopted policies were sufficient to address the due process issues. The issue of cruel and unusual punishment was not addressed by the Court, as it had been previously settled by the parties.

The *DiMarco* decision was based on the use of segregation within the Wyoming Department of Corrections. The case involved an anatomical male living as a female, who sued the Department of Corrections for being placed in solitary confinement for her own protection. The Tenth Circuit identified four factors that need to be assessed to determine if a liberty interest existed relative to the proper use of segregation:

1. Segregation relates to and furthers a legitimate penological interest, such as safety or rehabilitation.
2. Segregation conditions of confinement are extreme.
3. Placement in segregation increases the duration of confinement.
4. Placement is indeterminate.

In its ruling, the Tenth Circuit found all four factors justified the placement of Ms. DiMarco in isolation.

The *Austin* decision was focused on the Ohio State Penitentiary, which is the state's supermax facility. The state had already settled with the plaintiff on conditions-of-confinement claims, which significantly and positively changed the range of services

and privileges afforded inmates. In particular, a step-down level system was created, which permitted the vast majority of inmates to work their way out of segregation and back to the general population.

These reforms left the U.S. Supreme Court to focus on due process issues. When the Ohio State Penitentiary first opened, the Court observed the following:

> There is no official policy governing placement that was in effect, and the procedures used to assign inmates to the facility were inconsistent and undefined, resulting in haphazard and erroneous placements.

In response to the initial litigation, Ohio officials significantly narrowed the criteria by which a prisoner could be assigned to the Ohio State Penitentiary. Further, the authority to transfer prisoners to or release them from the Ohio State Penitentiary could only be approved and authorized by the central classification office. The Supreme Court held that the new criteria and review procedures did provide sufficient due process protection. It is worth noting that, with the new policies in place, the Ohio State Penitentiary segregation population dropped significantly.

Standards regarding segregation

Despite the widespread use of segregation, there is a lack of accepted guidelines or standards governing its use. In particular, criteria and process for placement in segregation, conditions of segregation, and criteria and process for release from segregation vary substantially by state.[27] For example, Nebraska reports a total of 19 reasons that would justify segregation placement, including "any other information regarding the inmate that the classification authority deems appropriate."[28] Conversely, Mississippi allows only five such rationales for segregation placement.

There are differences among the states in due process/notification procedures. Most states require a formal hearing and some form of written notice to the prisoner prior to reaching a decision on whether to place him/her in segregation. Such hearings usually must be held within 14 days of the notice. Very few states allow inmates to have a legal representative or advocate present at the hearing. Standards for periodic reviews are even less defined in agency policies. These reviews can occur as often as every six months, with most states requiring 30- or 60-day reviews. Only a few states

[27] Metcalf, et al., 2013.
[28] Metcalf, et al., 2013:6.

report a requirement for a face-to-face interview with the inmate as part of the review.[29] When a face-to-face interview is not mandated, these reviews may simply be case file paper reviews with a notice sent to the prisoner after the decision has been reached.

It was not until 2013 that the Association of State Correctional Administrators (ASCA) Administrative Segregation Sub-Committee examined the issues surrounding segregation and provided recommendations regarding the use of restrictive housing.[30] The subcommittee's final recommendations to correctional systems and administrators on the use of *administrative segregation only* were published as follows:

1. Provide a process, a separate review for decisions to place an offender in restrictive status housing.
2. Provide periodic classification reviews of offenders in restrictive status housing every 180 days or less.
3. Provide in-person mental health assessments, by trained personnel, within 72 hours of an offender being placed in restrictive status housing, and periodic mental health assessments thereafter including an appropriate mental health treatment plan.
4. Provide structured and progressive levels that include increased privileges as an incentive for positive behavior and/or program participation.
5. Determine an offender's length of stay in restrictive status housing on the nature and level of threat to the safe and orderly operation of general population as well as program participation, rule compliance and the recommendation of the person(s) assigned to conduct the classification review as opposed to strictly held time periods.
6. Provide appropriate access to medical and mental health staff and services.
7. Provide access to visiting opportunities.
8. Provide appropriate exercise opportunities.
9. Provide the ability to maintain proper hygiene.

[29] Metcalf et al., 2013: pp 11-13.

[30] Association of State Correctional Administrators, Administrative Segregation Sub-Committee. *Final Restricted Status Housing Policy Guidelines.* Aug. 9, 2013.

10. Provide program opportunities appropriate to support transition back to a general population setting or to the community.
11. Collect sufficient data to assess the effectiveness of implementation of these guiding principles.
12. Conduct an objective review of all offenders in restrictive status housing by persons independent of the placement authority to determine the offenders' need for continued placement in restrictive status housing.
13. Require all staff assigned to work in restrictive status housing units to receive appropriate training in managing offenders on restrictive status housing status.

Although the ASCA guidelines provide the first effort to standardize the use and conditions of segregation, they offer little in terms of specifics. For example, guidelines 7 and 8 state that visits and recreation are to be provided, but fail to state the number of visits or recreation periods per month and their minimum duration. The recommendations are also silent on whether inmates requiring protective custody should be placed in administrative segregation and under what conditions of confinement.

Segregation sentencing structures

There are two basic models for committing a person to segregation status that mimic the indeterminate and determinate criminal sentencing structures. Most states use relatively short sentences for placing an inmate in disciplinary segregation, which often can range from five to thirty days. However, if an agency wishes to continue the segregation status beyond that time frame, they have developed two models.

One model is comparable to an indeterminate sentencing structure, where release from administrative segregation is not specified and occurs only at the discretion of the agency. Under this structure, the inmate is committed to segregation with no specified release date. States including Ohio, Mississippi, and Colorado have used this model, often in tandem with a step-down, incentive-based program that is discussed in the next section.

The determinate structure is essentially a segregation sentence that can range from 30 or more days to many years. Under this model, serious disciplinary offenses can produce long, fixed segregation terms. The only way to mitigate these terms is for the agency to reduce them at review hearings based on good conduct. States including Kentucky, New York, and California use this model.

Impact of segregation systems on institutional safety

The overriding objective of administrative segregation is to protect inmates and staff by incapacitating high-risk inmates. But it may also serve to deter other inmates from becoming involved in serious rule infractions or in acts of violence out of fear of being segregated for long periods of time. With the recent advent of progressive step-down programs, one can also argue that disruptive inmates are being successfully treated or rehabilitated while segregated.

It has also been alternately argued that supermax prisons and/or increased use of administrative segregation units are either excessively expensive or cost-effective. There is consensus among correctional professionals that segregation units require higher staff-to-inmate ratios and increased presence of medical and mental health staff. Some have also argued that segregation increases the likelihood of mental illness and suicide. However, it may be that segregation units reduce the danger of violence in the general population, which allows the vast majority of the prison system to operate with greater efficiency and effectiveness.

Although there have been several descriptive studies of administrative segregation, Mears[31] and Berger et al.[32] both suggest that there have been few, if any, credible studies on its outcomes. The primary methodological issue is establishing a control or "counterfactual" research design that would answer the basic question of what would have happened had the use of segregation not increased.

A study of three state prison systems found that the increased use of segregation had no effect on inmate-on-inmate assaults, but did reduce the incidence of inmate-on-staff assaults.[33] A subsequent study in Illinois found the same results and offered evidence that the number of lockdowns in the other facilities was reduced.[34]

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[31] Mears, Daniel P. 2013. "Supermax Prisons: The Policy and the Evidence." *Criminology & Public Policy* V. 12, (4): 681-720.

[32] Berger, et al., 2013.

[33] Briggs, Chad S., Jody L. Sundt, and Thomas C. Castellano. 2003. "The effect of supermaximum security prisons on aggregate levels of institutional violence," *Criminology* 41:1341–76.

[34] Sundt, Jody L., Thomas C. Castellano, and Chad S. Briggs. 2008. "The sociopolitical context of prison violence and its control: A case study of supermax and its effect in Illinois." *The Prison Journal* 88:94–122.

In Washington state, research found no difference in recidivism rates between inmates who had experienced its supermax system and a matched group that had not. However, the same study found that inmates released directly from supermax to the community had a significantly higher recidivism rate than the matched group (69 percent rearrested for a felony versus 51 percent for the control group).[35]

Mears and Bales completed what is arguably the most sophisticated quasi-experimental study of supermax confinement in the state of Florida.[36] Using complex matching procedures, they found little if any difference in recidivism rates for inmates who experienced supermax confinement and those who did not. More significantly, there were no differences in recidivism rates based on how long a person was in supermax. In other words, it made little to no difference if an inmate was confined for 4, 8, 12, or 24 months—the recidivism rates were the same. The study also tried to replicate the Washington state finding that inmates released directly from segregation had higher recidivism rates. The authors concluded that it did not, but they used a measure of "recency" and not direct segregation releases.[37]

The United States Government Accountability Office (GAO) reported in 2013 that there are five states (Colorado, Kansas, Maine, Mississippi, and Ohio) where the use of administrative segregation has been reduced and that there has been no adverse impact on institutional safety.[38] However, there may have been no association between reducing the size of the segregation population and assault rates, homicides, or other serious incidents; this does not by itself indicate a causal relationship.

Conversely, the New York state prison system found a sharp decline in its rates of assaults as it rapidly expanded the size of its SHU population.[39] These data led the agency to conclude that increasing the size of its SHU population caused the rate of assaults to decline. The Bureau made a similar claim to the GAO, saying that the rise in the SMU population was the reason assault rates and the number of lockdowns

[35] Lovell, David, L. Clark Johnson, and Kevin C. Cain. 2007. "Recidivism of supermax inmates in Washington State." *Crime & Delinquency* 53:633–56.

[36] Mears, Daniel and William Bakes. 2009. "Supermax Incarceration and Recidivism." *Criminology* 47.4:801-836.

[37] Recency referred to inmates who were relatively close (within a few months) to their prison release dates.

[38] U.S. Government Accountability Office. May 2013. *Bureau of Prisons: Improvements Needed in Bureau of Prisons' Monitoring and Evaluation of the Impact of Segregated Housing*. Washington, DC: GAO.

[39] Goord, G.S. 2006. *Prison safety in New York*. Albany: NYDOCS. Available online at http://www.docs.state.ny.us/PressRel/06CommissionerRpt/06PrisonSafety Rpt.pdf

had declined.[40] Despite these positive associations, it is not clear if there is a causal relationship between segregation policies and institutional safety.

Mental health issues in segregated housing

Mental illness has become increasingly prevalent in corrections systems. According to the Bureau of Justice Statistics (BJS), as of mid-2005, 56 percent (705,600) of state and 45 percent (78,800) of federal inmates had some type of mental health problem over the past 12 months.[41] It should be recognized that the definition of "mental health problem" was broad and included symptoms such as insomnia, sadness, loss of appetite, and persistent irritability. The BJS survey also showed proportional increases in the number of inmates who said they had used prescribed medication for a mental health problem since admission to prison, used prescribed medication for a mental or emotional problem, or received mental health treatment.

This is not to say that all or even a majority of these inmates require placement in specialized treatment programs or housing units. The majority of them suffered from some form of depression or mania, which is treatable by medication and counseling. The number of inmates who require special housing due to a severe mental illness (SMI) is much lower. According to Lovell, Allen, Johnson, and Jemelka, reviews of clinical studies indicate agreement that 10 to 15 percent of inmates in state prisons suffer from SMI.[42] A 1999 BJS report on the same topic estimated that 16 percent of state and jail inmates and probationers were "mentally ill," while only 7 percent of Bureau inmates were classified the same way.[43]

These figures are likely unsurprising to mental health clinicians and correctional officers who have witnessed the relationship between deinstitutionalization and the increasing number of mentally ill inmates in the correctional system.[44]

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[40] GAO, 2013, pp. 33-34.

[41] D.J. James and L.E. Glaze, L. E. *Mental Health Problems of Prison and Jail Inmates*. Bureau of Justice Statistics Special Report NCJ 213600. Sep. 2006 (revised Dec. 2006).

[42] D. Lovell, D. Allen, C. Johnson and R. Jemelka, Ron. "Evaluating the Effectiveness of Residential Treatment for with Mental Illness." *Criminal Justice and Behavior* 28, no. 1, Feb. 2011: 83-104.

[43] Ditton, Paula M. *Mental Health and Treatment of and Probationers*. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics. July 1999.

[44] A.L.S Brandt. "Treatment of Persons with Mental Illness in the Criminal Justice System: A Literature Review." *Journal of Offender Rehabilitation* 51, no. 8, Nov. 2012:541-558.

The BJS report also found that violations and fight-related injuries are common among mentally ill inmates. Within the state-level prison population, 58 percent of those with mental illness, compared with 43 percent of those without, committed violations or were injured as a result of fighting. Among state and federal prison populations, mentally ill inmates were also more frequently involved in physical or verbal assaults on correctional staff or inmates. Mentally ill inmates are often more disruptive than inmates without mental illness, and disruptive behavior associated with mental illness often leads to the inappropriate placement of mentally ill inmates in administrative segregation.

Given the above national statistics, it is not surprising that mentally ill inmates are more frequently segregated and often spend a longer time in segregation.[45] Mentally ill inmates are also placed in segregation for protective custody reasons and because of a lack of proper placement options. It has also been claimed that the experience of segregation for lengthy periods of can result in an inmate decompensating and developing mental illness(es). Some have suggested that many SMIs worsen due to the stress of incarceration, presenting risks of self-injury and harm to staff or other inmates.[46]

Some courts have held that placement in administrative segregation under certain conditions is unsuitable for mentally ill, developmentally disabled, and nuisance inmates.[47] For example, in 1995 a federal court in California found that the placement of certain inmates—those with mental illness such as, borderline personality disorder, brain damage, mental retardation, chronic depression, and/or impulse control disorders—in California's Pelican Bay SHU constituted cruel and unusual punishment, an 8th Amendment violation.[48] In *Madrid v. Gomez*, the court examined the placement of mentally ill inmates in the SHU at California's Pelican Bay State Prison, a supermax facility, and found that an 8th Amendment violation existed for

> those who the record demonstrates are at a particularly high risk for suffering very serious or severe injury to their mental health,

[45] J. Skeem, J. Peterson, and E. Silver. "Toward Research-Informed Policy for High Risk Offenders with Serious Mental Illness." In B. McSherry and P. Keiser, eds., *Managing High Risk Offenders: Policy and Practice*. New York: Routledge. 2011. 111-121.

[46] Ford, Julian, Robert L. Trestman, Fred Osher, Jack .E. Scott, Henry J. Steadman and Pamela C. Robbins. *Mental Health Screens in Corrections*. National Institute of Justice Research for Practice. May 2007.

[47] F.R. Maue. "Management of the Mentally Ill in Administrative Segregation: Legal and Management Challenges." *Corrections Today*, July 2006, pp 46-47.

[48] Madrid v. Gomez, 889 F. Supp. 1146 (N.D. Cal. 1995)

> including overt paranoia, psychotic breaks with reality, or massive exacerbations of existing mental illness as a result of conditions in the SHU.[49]

The *Madrid* court also found that inmates did not undergo psychiatric screening prior to placement in the Pelican Bay State Prison SHU, and that the provision of mental health services to SHU inmates with SMI was noticeably lacking.

Although many researchers and experts agree that administrative segregation is generally not a suitable placement option for inmates with SMI, the evidence on whether such placement causes deterioration among mentally ill inmates is mixed.[50] For example, a 2010 study of administrative segregation in the Colorado corrections system found that not only did inmates with and without mental illness not deteriorate while in segregation, but some actually exhibited signs of improvement.[51]

The authors of the study warned of its limited generalizability and the need for replication. In supportive reaction to the Colorado study's findings, Berger et al. explained that context matters, and that some mentally ill inmates seek placement in segregation as a way to decrease interpersonal and environmental stimulation.[52] These inmates, according to Berger et al., exhibit tendencies (such as self-imposed isolation) that are similar to individuals with SMI in a community setting. Other inmates self-select into segregated housing as a means of avoiding foes and reducing safety risks that they believe exist in general population settings.

Conversely, Haney noted that personal accounts, descriptive studies, and systematic research published over several decades have substantiated that solitary confinement is associated with negative psychological effects, and that these effects are particularly pronounced among mentally ill inmates.[53] This evidence, Haney asserted, is bolstered by findings from other areas of inquiry that demonstrate the

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[49] Madrid v. Gomez, 889 F. Supp. 1146 (N.D. Cal. 1995)

[50] B.A. Arrigo and J.L. Bullock. "The Psychological Effects of Solitary Confinement on Inmates in Supermax Units." *International Journal of Offender Therapy & Comparative Criminology* 52, no. 6, Dec. 2008: 622-640.

[51] M.L. O'Keefe, K. J. Klebe, A. Stucker, K. Sturm, and W. Leggett. *One Year Longitudinal Study of the Psychological Effects of Administrative Segregation.* National Institute of Justice Document 232973. Oct. 2010.

[52] R.H. Berger, M. P. Chaplin, and R. L. Trestman. "Commentary: Toward an Improved Understanding of Administrative Segregation." *The Journal of the American Academy of Psychiatry and the Law* 41, no. 1, Mar. 2013: 61-64.

[53] Haney, Craig. "Prison Effects in the Age of Mass Incarceration." *The Prison Journal* 92, no. 4, 2012:1-24.

negative effects of acute sensory deprivation, the effects of elderly loss of social contact, and the consequences of isolating mentally ill patients.

Researchers have struggled to disentangle the relationship between high rates of mental illness in the segregation population and the potential role that segregation may play in the deterioration of mental health status.[54] It may be the case that higher rates of mental illness in segregation reflect self-selection of mentally ill offenders into segregation placements. Studies seeking to distinguish and closely examine the effects of segregation have often been constrained due to small sample sizes, timing of segregation placement relative to the study period(s), and reliance on quasi-experimental design. (True experimental design in this context is not feasible due to ethical concerns associated with denial or delay of mental health or medical services for research purposes.) Despite these constraints, research on mentally ill offenders and the use of administrative segregation, along with relevant legal guidance, can help frame discussions regarding appropriateness and application.

In an evaluation of mental health screening tools, Ford et al. explained that mental health screenings and assessments are necessary to the timely identification and effective treatment of inmate mental health needs.[55] Furthermore, information provided through screenings and assessments underlies the provision of services to which inmates are constitutionally entitled and facilitate positive readjustment when the inmate is released into general population or the community. Peters asserted that without early identification of mental disorders, inmates are unlikely to seek treatment, and missed identification of trauma undermines appropriate diagnosis, which in turn may lead to inadequate participation in treatment, supervision, and reentry planning.[56]

The guidance from ASCA on the use of restrictive housing suggests that facilities should conduct an in-person mental health assessment within 72 hours of an inmate's placement in a segregated setting.[57] Further, mental health assessments should be performed by trained personnel and conducted on a periodic basis following the initial assessment.

Despite the disproportionate share of infractions committed by mentally ill inmates and the overrepresentation of inmates with mental illness in segregation settings, a survey of state-level corrections disciplinary processes found that many state

[54] M. L. O'Keefe, et al., 2013.
[55] J. Ford, et al., 2007.
[56] R.H. Peters. *Assessing Dependence, Comorbidity, and Trauma.* Mental Health Law & Policy Faculty Publications Paper 642. 2013.
[57] ASCA, Aug. 9, 2013.

correctional systems do not have formal policies on the role of mental health in the disciplinary process.[58] In some states, mental health plays no role or merely a minor role for mentally ill inmates facing disciplinary charges. However, most states' correctional policies require adequate medical and mental health treatment for mentally ill inmates placed in segregation. For mentally ill inmates found guilty of disciplinary infractions, most states have formal or informal policies directing consultations with mental health professionals regarding inmate disposition.

The ACA National Commission on Correctional Health Care guidelines assert that health care staff should "immediately review the health care needs of offenders placed in disciplinary segregation to determine if there is any known health contraindication to segregation placement."[59] These guidelines also stress that processes must be implemented to ensure that mentally ill inmates in segregation undergo continued evaluation that is conducted by a qualified mental health professional, and significant inmate deterioration—indicating that segregation is no longer suitable—warrants an alert to correctional administrators.

During the ACA 2013 Winter Conference plenary session entitled "Re-evaluating Administrative Segregation: The Human, Public Safety and Economic Impact," correctional administrators highlighted the need for ACA standards regarding segregation. Expert panelists identified several approaches that could enhance compliance with the law,[60] including the following:

- Defining the types of mental illnesses that are incompatible with segregation, and having mental health staff conduct screenings.
- Providing access to in- and out-of-cell mental health treatment for segregation inmates.
- Creating individualized mental health services plans through multidisciplinary treatment team collaborations.
- Identifying mental illnesses in a timely fashion, because early identification prevents deterioration.

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[58] M.S. Krelstein. "The Role of Mental Health in the Inmate Disciplinary Process: A National Survey." *The Journal of the American Academy of Psychiatry and the Law* 30, no. 4, Dec. 2002: 488–96.

[59] Association of State Correctional Administrators, Administrative Segregation Sub-Committee. *Final Restricted Status Housing Policy Guidelines.* Aug. 9, 2013.

[60] J. Scafuri. "Administrative Segregation: Continuing the Conversation." *On the Line: An Online Publication of the American Correctional Association*, Sep. 2013.

Step-down programs

The ASCA's *Guiding Principles for Restrictive Housing Status* also suggested that correctional systems provide segregated inmates with the opportunity to progress through structured levels that link increased privileges to positive behavior and/or program participation.[61] Its recommendation was based on a number of states, as well as the Bureau, that are actively working to reduce the number of inmates in segregation through the development and implementation of step-down, intensive management, and behavioral management programs.[62]

Metcalf et al. examined some of the step-down programs that attempt to link the transition out of administrative segregation to achievement of specific goals, including the completion of behavioral management plans and/or courses. Inmates in transition programs are selected according to specific, stringent processes. A minimum stay (generally six months to one year) is a common feature of these programs, and inmates are made aware that any disciplinary infraction during the program period will likely lead to additional time in segregation.

Several states, including Colorado, Massachusetts, Mississippi, Virginia, and Washington, are developing or have developed programs that provide administratively segregated inmates with increased opportunities for group activities and therapy while maintaining a safe degree of separation. Connecticut, Massachusetts, Mississippi, New Jersey, New Mexico, and Virginia have all reported development of programs that target inmate behavior issues. New Mexico's program, for example, is structured around a two-level system that incentivizes positive inmate behavior through a corresponding measured reduction of restrictions. More detailed reports follow on the Virginia, Mississippi, Washington, and Maine step-down programs.

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[61] Association of State Correctional Administrators, Administrative Segregation Sub-Committee. *Final Restrictive Status Housing Policy Guidelines*. Aug. 9, 2013.

[62] H. Metcalf, J. Morgan, S. Oliker-Friedland, J. Resnik, J. Spiegel, H. Tae, A. Work, and B. Holbrook. *Administrative Segregation, Degrees of Isolation, and Incarceration: A National Overview of State and Federal Correctional Policies*. Yale Law School, Public Law Working Paper No. 301. Jun. 1, 2013.

Virginia

The Virginia Department of Corrections (VADOC) is one of several state corrections departments that have developed an administrative segregation step-down program using evidence-based practices.[63] The program claims to have reduced the administrative segregation population and lowered prison safety incidents, each by over 50 percent, and to have decreased inmate grievance filings by 23 percent.[64] VADOC also reported a reduction in the use of sick leave and highlighted this finding as an indication of reduced staff stress and improved morale, although it is not clear how this assessment was made. The reported size of the Virginia program as of 2013 was 460 inmates and, as of August 2013, approximately two years after inception of the step-down program, none of the enrolled offenders had returned to administrative segregation.

The VADOC step-down initiative includes an enhanced classification review prior to inmate assignment to or placement in segregation.[65] Multidisciplinary staff teams and validated instruments that determine criminal risks, underlying reasons for negative individual inmate behaviors, and inmate motivators form the foundation of the more extensive assessment. Throughout this initiative, inmates are provided cognitive programming opportunities that promote learning and practice of positive behaviors. The process includes an additional step-down classification security level that provides a test bed for changed behavior. Segregation inmates who demonstrate that they can participate appropriately in programs and control behavior can earn additional responsibility.

Mississippi

In response to litigation regarding the use of segregation, the Mississippi Department of Corrections (MDOC) changed its classification process and mental health programming, leading to significantly decreased rates of violence, disciplinary infractions, and use of force in the segregation unit.[66] One of the specific changes

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[63] "Virginia Recognized for Transforming Highest-Security Prisons." *Virginia Department of Corrections Press Release*, Aug. 7, 2003.

[64] "Virginia Step Down Program for Administrative Segregation." *Southern Legislative Conference Press Release*, 2013; These reductions occurred over approximately two years following implementation of the VADOC Step-Down initiative.

[65] Virginia DOC, 2013.

[66] T. A. Kupers, T. Dronet, M. Winter, J. Austin, L. Kelly, W. Cartier, T. J. Morris, S. F. Hanlon, E. L. Sparkman, P. Kumar, L. C. Vincent, J. Norris, K. Nagel, and J.Mcbride. "Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and

made by MDOC was the development of a step-down unit for inmates with SMI, as required under the 2007 *Presley v. Epps* consent decree.

Inmates requiring intermediate mental health treatment, but not inpatient psychiatric services, are eligible for the unit, which is jointly administered by MDOC and its medical and mental health contractor. The step-down unit, housed in MDOC's segregation facility, was designed to gradually move inmates with SMI from a segregated setting to a more open one as they demonstrate appropriate behaviors and the ability to function within an open unit. To be eligible for the step-down unit, inmates must have a condition that is classified as an SMI. Inmates demonstrating motivation to succeed in the unit are given priority. Once in the unit, inmates earn their progress from the segregated tier to the open tier, and finally to general population upon graduation.

The MDOC step-down unit relies on the "assertive community treatment" approach, and staff focus on inmates' "intact faculties, ambitions, positive life experiences, and strengths of character, and how those buffer against disorder," rather than on their mental illness[67]. Inmates learn about their illnesses and the means for appropriately addressing anger, impulses, and anxiety, and are rewarded via incentives (such as additional time alone in activities rooms with media equipment, and use of additional library materials) for positive behaviors. Although initial group treatment among inmates who are still segregated includes the use of ankle restraints secured to the floor, it still provides a necessary opportunity for interpersonal communication and connectedness. Once inmates have transitioned to the open tier, they participate in group sessions without restraints.

Staff selection, training, and collaboration are critical to the success of the MDOC step-down unit. While respecting inmate confidentiality, mental health providers meet on a weekly basis with correctional staff to ensure the delivery of a high level of care in a secure environment. Correctional officers assigned to the unit must complete an intensive mental health training curriculum and upon completion are given the title of correctional mental health manager. The MDOC step-down unit's success is indicated by a reduction in rule violation reports filed against inmate graduates. An examination of a cohort of 43 graduates revealed an average of 4.7 rule violation reports per inmate in the six months prior to unit admission. During the cohort's time in the unit, that figure fell to an average of 1.2 per inmate. In the

Creating Alternative Mental Health Programs." *Criminal Justice and Behavior* 36, no. 10, Oct. 2009: 1037-1050.

[67] Kupers, et al., p. 6

six months following unit graduation, the cohort exhibited an average of only 0.6 per inmate.

Washington

Similar to the experiences in Virginia and Mississippi, the limited information available regarding segregation reduction efforts in Washington indicates decreases in behavioral incidents. The Washington Department of Corrections, in collaboration with Disability Watch Washington and the Vera Institute of Justice, developed "intensive management" or "intensive treatment" programs that allow for structured group activities as well as a variety of therapy options for inmates housed in segregation. Inmates must participate to return to general population, and are assigned to specific programs based on individual mental health and behavioral assessments. Programming delivery formats include self-directed, cell-front and classroom, and course offerings include cognitive programming.[68] It is now rare for an inmate in the Washington State corrections system to spend more than 90 days in segregation, and the proportion of inmates that return to segregation has decreased.[69] In the past, inmates released from segregation came back more than 50 percent of the time. Since the inception of the intensive management program, 131 inmates have graduated and of those, only 24 have returned.

Maine

The Maine Department of Corrections conducts risk assessments for each administrative segregation inmate, and the information from the assessment is used to develop individualized behavioral programs. The unit team reviews inmate cases weekly and determines whether inmates will be provided the opportunity to participate in group recreation and therapy. Program participation/attendance is required and can include in-cell as well as individual and group counseling. While in the program, inmates are under an incentive system that allows them opportunities for increased amounts of out-of-cell time, more recreation time, fewer restraints, and access to additional property. Following the policy changes, the Maine Department of Corrections has not observed increased violence or other problems in the general population. Additionally, although the policy changes are relatively new, both behavioral incidents and the amount of time spent in segregation have decreased since the changes were implemented.

[68] Association of State Correctional Administrators. *Segregation Survey*. Jan. 7, 2013.
[69] J. Martin. "State Prisons Rethink Solitary Confinement." *Seattle Times*, Jan. 7, 2013.

Reductions in segregation populations

A number of states have reduced their segregation populations. As suggested above, these declines have occurred by narrowing the criteria for placement in segregation and/or reducing the period of segregation. The latter is often achieved by implementing a step-down program or by adjusting the lengths of segregation sentences. Following are some examples of states that have accomplished such reductions.

Mississippi

Prior to 2006, Mississippi had approximately 1,000 inmates assigned to its high-security unit 32 at the Mississippi State Penitentiary prison complex in Parchman. In response to ongoing litigation that contested the criteria for placement in segregation and the conditions of confinement, the Mississippi Department of Corrections developed a plan to reduce this population over 12 months. The reforms centered on the following tasks:

1. Develop new criteria to limit the basis for admission to long-term segregation.
2. Using the new criteria, review all inmates in segregation at Parchman to determine who should be immediately transferred to other facilities.
3. Remove all inmates with a SMI and transfer them to the MDOC's mental health facility.
4. For the remaining inmates, create a step-down program that would allow the inmates to be released to the general population within nine months.

By the close of 2008, the Parchman segregation population was below 100. As of 2014, there are fewer than 230 inmates in long-term segregation out of a total prison population of 21,148 (or 1 percent of the total prison population).[70]

The remaining segregation population had been moved by the MDOC to private prisons located in the state that operate on contract with the MDOC. The most recent data indicates that a total of 280 long term segregation inmates are maintained in the system of which 109 are mental health cases. These inmates are

[70] Kupers, T.A., et al., 2009.

housed at the East Mississippi Correctional Center, which is a private prison operated by the Management and Training Corporation (MTC).[71]

Colorado

In 2011 there were approximately 1,500 inmates in administrative segregation in the Colorado Department of Corrections, or 7 percent of the entire prison population. Since then the number of inmates in restrictive housing has steadily declined.[72] This was accomplished by narrowing the criteria for placement in segregation and reducing the length of stay. In particular, a more structured step-down protocol was established that allowed inmates to be released to general population within nine months if their behavior was compliant.[73] This involved a four-level system with specific rules and privileges associated with each of the four 90-day periods.

After the recommendations were implemented, the segregation population began to decline, reaching approximately 600 inmates by the end of 2013. Further programmatic reforms were implemented by the department in 2014, which resulted in the restrictive population dropping to below 200 (1 percent of the total population) by December 2014. There have been no associated increases in rates of institutional violence as the inmate population in restrictive housing has declined.[74]

Reentry and prerelease programming

The reintegration of inmates who have been in segregation for significant periods back into the prison general population or the community is an increasingly important issue. It requires a strategy that balances less restrictive placement of inmates with institutional or community safety and security. Reintegration requires adequate assessment and intervention and should afford inmates the time and opportunity necessary to readjust to more regular human interaction and activity levels prior to a complete transition.

Inmates transitioning out of a segregation environment are at greater risk of recidivism than their general population counterparts. For example, within the

[71] Mississippi Department of Corrections Fact Sheet, December 1, 2014.

[72] Colorado Department of Corrections, http://www.doc.state.co.us/dashboard-measures.

[73] Based on telephone interview with Colorado Department of Corrections officials.

[74] Colorado Department of Corrections, http://www.doc.state.co.us/dashboard-measures.

Colorado Department of Corrections system, the recidivism rate for administrative segregation inmates was between 60 and 66 percent, while the rate for general population was only 50 percent.[75] Furthermore, 12 percent of inmates released from administrative segregation returned to segregation within one year; within two years, 20 percent had returned. One explanation for this trend is the comparative lack of coping skills observed within the recidivist cohort. In addition, as reported earlier, 40 percent of the Colorado inmates released from segregation were being released directly to the community with no period of decompression.

Lessons learned from community re-entry programs (such as Reentry Partnership Initiatives[76]) provide a foundation for developing programs that transition inmates from administrative segregation to lower custody levels or the community. Taxman, Young, and Byrne asserted that a successful reentry program includes an "institutional phase" characterized by a wide range of programming options designed to prepare inmates for life within the community.[77] Program options include education, vocational training, life skills training, and individual and/or group counseling (for example, individual motivational readiness treatment). As applied to administrative segregation, the institutional phase could be viewed as the period during which inmates in administrative segregation have been identified for transition to a lower level of custody and are actively working toward movement out of segregation.

It should be noted that, despite the widespread validity of the re-entry concept, there is little evidence to date that such programs have been effective in reducing recidivism. The national evaluation of 12 adult reentry programs[78] found that while participation in re-entry programs accelerated, there were only modest positive results in post-release employment, housing, and freedom from substance abuse. Furthermore, there were no discernable effects on recidivism rates. The problem with

[75] *A Bill for an Act Concerning Appropriate Use of Restricted Confinement.* Sixty-eighth General Assembly of Colorado. Signed into law Jun. 3, 2011.

[76] Lattimore, Pamela K. and Christy A. Visher. 2013. "Prison Reentry Services on Short-Term Outcomes: Evidence From a Multisite Evaluation. Evaluation Review, 37(3-4) 274-313.

[77] F. S. Taxman, D. Young and J. Byrne. *Targeting for Reentry: Matching 8 Needs and Services to Maximize Public Safety.* National Institute for Justice Document 196491. Aug. 20, 2002.

[78] In 2008, Congress passed the Second Chance Act (P.L. 110-199), an effort to improve outcomes for people returning to communities after incarceration. This first-of-its-kind legislation authorizes federal grants to government agencies and nonprofit organizations to provide support strategies and services designed to reduce recidivism by improving outcomes for people returning from prisons, jails, and juvenile facilities. The Second Chance Act's grant programs are funded and administered by the Office of Justice Programs in the U.S. Department of Justice. Source: http://csgjusticecenter.org/nrrc/projects/second-chance-act.

these reentry programs was that the "dosage" (length of programming) was insufficient to produce stronger treatment effects.[79]

The implications of this study for reentry from segregation to the general population are not clear. We noted earlier that prior studies suggest that exposure to supermax conditions does not affect recidivism. There have been no published studies to date on whether exposure to supermax or other forms of segregation reduce inmate re-offending within the prison system itself. Important unanswered questions are (1) whether increasing or reducing the duration of segregation is of any value to institutional safety, and (2) whether an improved reentry regime would help mitigate that risk.

Summary

The use of various forms of segregation began to increase in the 1970s as prison population growth began to accelerate. As segregation populations have increased, so, too, have concerns about their effects on segregated inmates and overall institutional safety. These concerns have led some states to reconsider their use of segregation and the conditions of confinement. In particular, states are reviewing their criteria for placement in segregation, conditions of confinement, and length of stay. Several states are under consent decrees regarding these issues and other constitutional matters.

The extent to which mental health issues are associated with these high-security units has also been questioned. In particular, are inmates placed in such units who have a diagnosed mental health issue being properly treated and/or should they be placed in a separate mental health treatment unit?

There is little published research to date on the effects of increased use of segregation. Published studies suggest that placement in segregation does not have a positive effect on recidivism rates. States that have reduced segregation populations have found no adverse impact on institutional safety. Still, many questions persist among corrections administrators and other stakeholders.

[79] Lattimore, Pamela V and Christy A. Visher. 2013. "Prison Reentry Services on Short-Term Outcomes: Evidence From a Multisite Evaluation. *Evaluation Review,* 37(3-4) 274-313

Chapter 3: Analysis of the restrictive housing populations

In this chapter, we present data on the key attributes of the three major restrictive housing populations (ADX, SMU, and SHU) in the Bureau. Where available data permit, we make comparisons between these three populations and the much larger number of inmates who are not in restrictive housing and who are mostly housed in the general population.

At the time that this study began, there were approximately 220,000 inmates incarcerated in the Bureau on any given day. Of that number, only 5 percent were housed in the ADX, SMU, or SHU. What follows is a review of this small percent of the Bureau population, their admission and release trends, and their lengths of confinement.

Population characteristics

Table 8 compares the demographic attributes of the restrictive housing population and other Bureau inmates as of November 23, 2013. These and other comparisons are based on snapshot data files produced by the Bureau's Office of Research and Evaluation (ORE). There are few major differences between the restrictive housing populations and the general population, with the following exceptions:

1. The ADX and SMU restrictive housing populations are exclusively male.
2. The SMU population is disproportionately younger.
3. The ADX population is disproportionately older.
4. The SMU population is disproportionately black.
5. All segregated populations are disproportionately U.S. citizens.

Table 8. Demographic attributes of ADX, SMU, SHU, and other Bureau populations, November 23, 2013

	ADX	SMU	SHU	Other
Total population	415	1,675	9,189	207,166
	%	%	%	%
Gender				
Males	100%	100%	98%	93%
Females	0%	0%	2%	7%
Current age				
25 or younger	1%	4%	11%	8%
26–35	18%	46%	41%	33%
36–50	46%	42%	39%	41%
51 or older	35%	8%	10%	19%
Race				
White	59%	46%	55%	60%
Black	38%	48%	40%	37%
Indian	2%	5%	4%	2%
Asian	2%	1%	1%	2%
Hispanic ethnicity	16%	28%	30%	35%
Citizenship				
United States	88%	87%	83%	74%
Mexico	4%	9%	12%	18%
Other	9%	4%	5%	8%

Source: Bureau/ORE.

Primary offenses and sentences

Table 9 summarizes the primary offenses for which inmates have been sentenced. Members of the ADX population (and to a lesser degree, the SMU and SHU populations) are far less likely to be sentenced for a drug crime, which is the dominant offense for the nonsegregated Bureau population. Rather, ADX inmates are more likely to have been sentenced for the violent crimes of homicide, aggravated assault, robbery, and possession/use of weapons/explosives.

Regarding the type of sentences Bureau inmates are serving, ADX inmates are far more likely to have a life sentence (39 percent) than inmates of the SMU (9 percent), SHU (3 percent), or other Bureau facilities (2 percent). Predictably, the ADX inmates without a life sentence also have far longer sentences (average of nearly 30 years),

have served longer periods of incarceration (15 years), and have much longer periods of time left to serve (17 years).

It was also possible to estimate the number of inmates who were scheduled to be released within 12 months (as of November 23, 2013). For the nonsegregated Bureau inmates, about 30 percent or 55,430 were to be released in the next 12 months. In contrast, only 2 percent of the ADX population was to be discharged from prison in that time frame. The numbers were progressively higher for the SMU (9 percent) and SHU (21 percent) populations. Overall, over 2,000 inmates in restrictive housing were scheduled to be released within a year.

Table 9. Primary offenses of ADX, SMU, SHU, and other Bureau populations, November 23, 2013

	ADX	SMU	SHU	Other
Total population	415	1,675	9,189	207,166
Primary offense	%	%	%	%
Drugs	12%	31%	35%	47%
Weapons/explosives	12%	28%	21%	14%
Homicide/aggravated Assault	32%	12%	5%	2%
Burglary/larceny	15%	7%	5%	4%
Robbery	16%	13%	8%	3%
Immigration	1%	5%	10%	11%
Fraud/bribery/extortion	3%	1%	3%	6%
Sex offense	1%	2%	5%	6%
Miscellaneous	7%	2%	2%	1%
Missing/unsentenced	0%	0%	6%	6%

Source: Bureau/ORE.

These data have important implications for reentry programs and other related policies. Clearly, the need for such programs will be significant for the inmates in SHU and as well as the other nonrestricted inmate population; 57,525 of them were scheduled for release over the subsequent 12 months, as shown in table 10. This number should be fairly constant at any time. There is much less of a need for these programs for the ADX and SMU populations. However, given the long periods of placement in restrictive housing for these inmates, as described later in this chapter, the need for reentry programs remains significant for those nearing release in ADX and SMU housing.

Table 10. Sentence and time served attributes of ADX, SMU, SHU, and other Bureau populations, November 23, 2013

	ADX		SMU		SHU		Other	
Attribute	**Inmates**	**%**	**Inmates**	**%**	**Inmates**	**%**	**Inmates**	**%**
Lifers	161	39%	154	9%	286	3%	4,889	2%
	Average	Median	Average	Median	Average	Median	Average	Median
Sentence	29 years	25 years	18 years	15 years	11 years	9 years	10 years	8 years
Time served	15 years	14 years	9 years	7 years	5 years	4 years	4 years	3 years
Time left to serve	17 years	11 years	9 years	5 years	6 years	3 years	4 years	2 years
	Inmates	%	Inmates	%	Inmates	%	Inmates	%
Releases within 12 months	9	2%	155	9%	1,931	21%	55,430	29%

Source: Bureau/ORE.

Medical and mental health care levels

The official medical and mental health status of the restrictive housing population is quite similar to that of the overall Bureau population. As noted earlier, the mental health care levels established by the Bureau are as follows:[80]

- Level 1—no significant mental health care
- Level 2—routine outpatient mental health care or crisis-oriented mental health care
- Level 3—enhanced outpatient mental health care or residential mental health care
- Level 4—inpatient psychiatric care

The medical care levels as defined by the Bureau are as follows:

- Level 1—healthy or simple chronic
- Level 2—stable or chronic care
- Level 3—unstable, complex chronic care

[80] PS5310.16, page 8, 5/1/2014

- Level 4—medical referral center care required

The Bureau states that the mental health care level system is tied to resource needs, not diagnoses. Specifically, an inmate with a mental illness may be classified at mental health care level 1 if his/her treatment needs are minimal, or if he/she does not need care on an ongoing basis or crisis-oriented care of significant intensity. Mental health care levels are designed to identify inmates in need of more intensive mental health resources—for example, individual therapy or residential programming.

The majority (between 68 and 72 percent) of restrictive housing inmates have been classified by the Bureau as healthy or only needing simple chronic medical care, and not requiring any specialized medical treatment (table 11). These proportions are virtually identical to those of other Bureau inmates (also 72 percent). Of those requiring medical care, the level of care is mostly at the lowest threshold; between 26 and 30 percent are at "care level 2—stable, chronic care."

Regarding mental health care level, the proportions of the restrictive population determined to be in need of care or treatment are even lower, with the vast majority assigned to care level 1. The ADX has the highest proportion of inmates at mental health care levels 2 and 3, but they only represent 10 percent of the entire ADX population. These proportions are comparable to the mental health care levels of the populations in nonrestrictive housing.

As noted in the literature review, state prison systems have been reporting much higher proportions of inmates in their segregated population units. The chapter on mental health care does raise some questions on the accuracy of the mental health ratings provided by the Bureau's mental health staff and suggests that a higher proportion of the segregated population may have a significant mental health ailment.

Table 11. Medical and mental health care levels of ADX, SMU, SHU, and other Bureau populations, November 23, 2013

Medical and mental health care levels	ADX	SMU	SHU	Other
Total Cases	415	1,675	9,189	207,166
Medical	%	%	%	%
Level 1	67%	72%	72%	72%
Level 2	30%	28%	26%	24%
Level 3	2%	0%	1%	2%
Level 4	0%	0%	0%	1%
Missing	0%	0%	1%	1%
Mental health				
Level 1	90%	94%	87%	93%
Level 2	6%	5%	8%	6%
Level 3	4%	0%	1%	0%
Level 4	0%	0%	0%	0%
Missing	0%	0%	4%	1%

Source: Bureau/ORE.

Security and special management issues

As expected, the Bureau populations in restrictive housing pose special management issues, which is why they have been placed in ADX, SMU, or SHU. The Bureau's classification system is designed to identify those inmates who pose the highest risk to inmate and staff safety. Table 12 shows that, unlike other Bureau inmates, the inmates in restrictive housing are classified at the highest security levels. Virtually all ADX and SMU inmates are assigned to the "high" category. The SHU population is classified predominantly as high (36 percent) or medium (40 percent) security, while the rest of the Bureau population is largely classified as medium, low, or minimum security.

Table 12. Security and other management issues of ADX, SMU, SHU, and other Bureau populations, November 23, 2013

Security attribute	ADX	SMU	SHU	Other
Total cases	415	1,675	9,189	207,166
Security level	%	%	%	%
Unclassified	0%	0%	4%	4%
Minimum	0%	0%	5%	18%
Low	0%	0%	16%	41%
Medium	1%	1%	40%	29%
High	99%	99%	36%	9%
Other Issues				
Separation required from specific other inmates	96%	93%	67%	40%
Gang member	57%	52%	21%	8%
Average criminal history score	10	11.1	9.3	6.2

Source: Bureau /ORE.

The higher number of medium-security custody inmates is largely due to the high number of protective custody inmates assigned to SHU status and inmates who are being investigated for possible rules violations.

Virtually all ADX and SMU inmates have "separation" restrictions, which means that they cannot normally be placed in the same Bureau facility with one or more specific other inmates. Separation orders are often linked to rival gang affiliations, which are also a common attribute of the ADX, SMU, and SHU populations. Together, the separation and gang membership issues complicate efforts to double-cell inmates within the ADX, SMUs, and SHUs as well as to release them to the general population. The "Other" population has a lower but still noteworthy proportion of inmates with separation orders: 40 percent.[81]

Finally, the restrictive housing populations have significantly higher criminal history scores (CHSs). The CHS is a measure used by the federal courts to help determine whether a person should be incarcerated and how long the sentence should be. The higher the CHS, the more likely the person will be sentenced to prison and/or to a longer prison term. The higher CHS for the segregated populations means they have significantly more extensive prior convictions.

[81] "Other" refers to all other Bureau inmates who were not in any form of segregation as of November 23, 2013.

Time in restrictive housing

The one-day snapshot also makes it possible to measure how long the current population has been in restrictive housing (table 13). ADX inmates have the longest periods of continuous assignment, with an average of approximately four years. The lower median number reflects inmates recently assigned to ADX and the small number of ADX inmates with extremely long periods of continuous confinement.

The SMU population has an average stay in the program of 277 days. The SHU population has a relatively short period of confinement of 76 days. The median numbers are considerably lower for the same reasons as for the ADX population.

The available data did not permit an analysis of length of stay in SHU for the various subgroups in this status (disciplinary segregation, administrative segregation, protective custody). SENTRY (the Bureau's inmate management/database system) and other Bureau data systems do not track this status in terms of length of stay.

Table 13. Length of time in ADX, SMU, and SHU status, November 23, 2013

	ADX	SMU	SHU
Number of Inmates	415	1,675	9,189
Time In restrictive housing			
Average	1,376 days	277 days	76 days
Median	941 days	211 days	40 days

Source: BOP/ORE.

Disciplinary conduct of the SMU and ADX

As suggested by the classification and special management data, inmates in ADX and SMU have accumulated lengthy histories of misconduct. The average number of disciplinary reports (DRs) for the ADX population prior to placement in ADX was 15 with a median of 7. For the SMU population, the numbers were even higher, with an average of 17 and a median of 11 reports prior to placement in SMU.

For both groups, the number of reports since being placed in restrictive housing is substantially lower. However, these comparisons of disciplinary histories before and after restrictive housing do not account for the varying amounts of time different inmates served in the Bureau before and after placement in restrictive housing. Further, the number of DRs prior to the most recent placement in restrictive housing includes DRs received during prior commitments to ADX and SMU.

To further isolate the possible effects of restrictive housing on inmate misconduct, the analysis time frame was limited to the 12 months immediately before and after placement in restrictive housing (Table 15). Although the 12-month average and median numbers are lower than those based on total prior history, a suppression effect does not appear. This means that the conduct of the inmates in restrictive housing continues at the same rate that was occurring prior to placement in restrictive housing. While the inmates have been incapacitated, there appears to be little change on their behavior at least initially during the first 12 months of restrictive housing.

Table 14. Disciplinary reports for current ADX and SMU populations, as of November 23, 2013—total number of reports

Number of disciplinary reports	ADX	SMU
Number of inmates	415	1,675
DRs prior to placement		
Average	15	17
Median	7	11
DRs after placement		
Average	10	7
Median	3	2
Total		
Average	19.5	19.8
Median	8	12

Source: BOP/ORE.

Table 15. Disciplinary reports for ADX and SMU populations, as of November 23, 2013—reports in the 12 months before and after restrictive housing placement

Disciplinary reports in past 12 months	ADX	SMU
Number of inmates	415	1,675
12 months before placement		
Average	5.1	4.3
Median	2	2
12 months after placement		
Average	5.6	4.6
Median	1	2

Source: BOP/ORE.

The types of infractions in the reports accumulated by ADX and SMU inmates both prior to and while in restrictive housing status are quite varied but include a

significant number of very serious rule violations. The Bureau has classified all of the possible violations into four levels of severity: greatest, high, moderate, and low. The 415 ADX inmates had accumulated about 4,500 infractions prior to being placed in ADX, of which 65 percent were in the "greatest" or "high" levels.

For ADX, of the 50 "killing" incidents that include attempts and aiding and abetting, 23 involved injuries that proved to be fatal. Of the four that occurred after placement in ADX, only one involved a fatal injury. For SMU, of the 24 "killing" incidents prior to placement, two involved injuries that proved to be fatal. Neither of the two that occurred after SMU placement resulted in a fatality. All 26 fatalities were inmates.

The 1,675 SMU inmates had accumulated 25,996 infractions of which 62% were also in the "greatest" or "high" severity levels. Since being in ADX and SMU, the accumulated numbers have declined as well as the proportions that are in the "greatest" and "high" severity levels. This decline is expected given that the time frame for the "before" period exceeds the time in SHU and ADX. And as noted earlier, when one controls for time frames (12 months before and after), the number and rate of DRs have not changed.

It should be emphasized that these results are largely descriptive in nature and not intended to test the impact of restricted housing on inmate conduct. That type of analysis was beyond the scope of this project and could not be supported by the data provided by the Bureau.

Table 16. Types of disciplinary infractions by ADX inmates, as of November 23, 2013

	Before ADX placement		During and after ADX placement	
	N	% of total	N	% of total
Total	**4,500**	**100%**	**2,142**	**100%**
Greatest severity / 100 level	**812**	**18%**	**350**	**16%**
Killing	50	1	4	<1
Assault with serious injury	191	4	13	<1
Escape	10	<1	0	0
Setting a fire	53	1	2	<1
Possessing dangerous weapon	307	7	33	2
Rioting	4	<1	0	0
Encouraging riot	6	<1	0	0
Possessing hazardous tool	20	<1	7	<1
Refusing drug or alcohol test	95	2	278	13
Introducing drugs or alcohol	2	<1	6	<1
Using drugs or alcohol	41	<1	3	<1
Possessing drugs or alcohol	17	<1	2	<1

	Before ADX placement		During and after ADX placement	
	N	% of total	N	% of total
Other "greatest severity"	16	<1	2	<1
High severity / 200 level	**2,148**	**47%**	**697**	**33%**
Fighting with another person	116	3	5	<1
Threatening bodily harm	503	11	201	9
Engaging in sex acts	308	7	143	7
Making sex proposal or threat	34	<1	17	<1
Interfering with security devices	169	4	31	1
Group demonstration	28	<1	2	<1
Destroying property over $100	156	4	79	4
Possessing intoxicants	117	3	24	1
Refusing alcohol test	31	<1	46	2
Assault without serious injury	581	13	111	5.
Disruptive conduct—high	50	1.	13	<1
Other "high severity"	55	1	25	1
Moderate severity / 300 level	**1,490**	**34%**	**1,083**	**51%**
Possessing unauthorized item	118	3	43	2
Refusing work/program assignment	111	3	78	4
Refusing to obey order	619	14	506	24
Being insolent to staff	165	4	63	3
Failing to stand count	86	2	180	8
Destroying property $100 or less	106	2	50	2
Being unsanitary or untidy	66	2	30	1
Other "moderate severity"	219	5	133	6
All "low severity" / 400 level	**50**	**1%**	**12**	**<1%**

Source: BOP/ORE.

Table 17. Types of disciplinary infractions by current SMU inmates, as of November 23, 2013

	Before SMU placement		During and after SMU placement	
	N	% of total	N	% of total
Total	**25,966**	**100%**	**5,061**	**100%**
Greatest severity / 100 level	**4,733**	**18%**	**694**	**14%**
Killing	24	<1	2	<1
Assault with serious injury	547	<1	19	<1
Escape	15	<1	0	0
Setting o fire	161	<1	23	<1
Possessing dangerous weapon	2,405	9	233	5
Rioting/encouraging riot	24	<1	0	0

	Before SMU placement		During and after SMU placement	
	N	% of total	N	% of total
Taking hostages	3	<1	1	<1
Possessing hazardous tool	114	<1	10	<1
Refusing drug or alcohol test	300	1	305	6
Introducing drugs or alcohol	82	<1	9	<1
Using drugs or alcohol	541	2	7	<1
Possessing drugs or alcohol	397	2	38	<1
Destroying/disposing of item during search	45	<1	30	<1
Interfering with staff—greatest	12	<1	1	<1
Disruptive conduct—greatest	47	<1	12	<1
Other "greatest severity"	16	<1	4	<1
High severity / 200 level	**11,402**	**44%**	**2,396**	**47%**
Fighting with another person	1,289	5	257	5
Threatening bodily harm	1,471	6	467	9
Engaging in sex acts	2,254	9	460	9
Making sex proposal/threat	226	1	60	1
Interfering with security devices	937	4	217	4
Group demonstration	100	<1	3	<1
Destroying property over $100	391	2	51	1
Possessing intoxicants	959	4	7	<1
Refusing alcohol test	159	<1	0	0
Assault without serious injury	2,498	10	451	9
Interfering with staff—high	100	<1	35	<1
Disruptive conduct—high	288	1	138	3
Other "high severity"	730	3	250	5
Moderate severity / 300 level	**9,624**	**37%**	**1,967**	**39%**
Possessing unauthorized item	1,015	4	245	5
Refusing work/program assignment	905	4	200	4
Refusing to obey order	3,144	12	613	12
Being insolent to staff	874	3	119	2
Failing to stand count	872	3	239	5
Destroying property $100 or less	422	2	205	4
Being unsanitary/untidy	153	<1	31	<1
Other "moderate severity"	2,239	9	560	11
All "low severity" / 400 level	**207**	**<1%**	**4**	**<1%**

Source: BOP/ORE.

Recidivism rates of ADX and SMU inmates

To examine the question of how many inmates released from ADX or SMU subsequently return to restrictive housing, a cohort of inmates released in 2011 was created and recorded to determine whether they have returned to restrictive housing. Although the number of ADX and SMU releases are relatively small, the overall return to restrictive housing status are also low. Of the 66 ADX inmates released to the general population, only 9 percent returned to ADX. Of the 585 SMU inmates released, 19 percent have returned to SMU status (see table 18).

A much higher proportion of the releases do incur at least one additional disciplinary report during the follow-up period. Of the inmates released from SMU, 84 percent recorded another disciplinary report, with an average of 3.7 reports.

For the inmates released from ADX, the percentages are similar, 83 percent with a new disciplinary report, but for a much lower average of 1.6 reports.

It is beyond the scope of this report to explain the higher prison recidivism rates for the SMU releases. Clearly, there are substantial differences between the attributes of the two cohorts that are related to institutional misconduct. For, example the inmates released from SMU are younger than those released from ADX. Older inmates are less likely to become involved in misconduct, so the maturation effect may be greater for the ADX inmates. The small number of ADX inmates released does not permit a multivariate analysis that could adequately control for age and other factors possibly related to recidivism.

The larger number of inmates released from SMU makes it possible to examine the bivariate relationship between time in SMU and recidivism (table 19). Most of the releases are clustered in the 19–24 month range. The prison recidivism rates do not vary significantly by shorter or longer periods of SMU confinement. Those inmates who spent more than two years in SMU had a significantly higher rate of return to SMU but an equivalent rate of new disciplinary reports. Younger SMU inmates also tended to have shorter periods of SMU placement.

These data suggest that the amount of time in the SMU is not a strong predictor. In fact, longer periods of time in SMU are associated with higher in-prison recidivism rates. While the numbers are not large, they do raise the question of whether the current time frame of 18 months or longer for completing the four-phase SMU program is excessive. As noted in the literature review, some state systems have shorter step-down programs, and these data support a move to moderate the current length of the SMU program.

Table 18. In-prison recidivism rates for inmates released from ADX and SMU

Attribute	ADX	SMU
Releases	66	585
Average age at release	44 years	36 years
Average time in segregation	6.8 years	1.7 years
Median	5.4 years	1.6 years
Total (%) released directly to streets	5 (8%)	77 (13%)
% returned to segregation (ADX or SMU)	9%	19%
Average time to segregation return	246 days	469 days
% with DR	83%	84%
Average number DRs after release	1.6	3.7

Table 19. Prison recidivism rates for inmates released from SMU by time in SMU

Length of Stay	Releases	% return	% new DR
18 months or less	146	16%	69%
19–24 months	346	17%	77%
25 months or more	93	29%	75%

Source: BOP/ORE.

Trends in assault rates and lockdowns

To what extent have overall rates of inmate assaults and the use of lockdowns changed as the Bureau's segregation populations have increased? One of the key purposes of restrictive housing is to provide greater safety for inmates and staff as the more disruptive and violent inmates are incapacitated by removing them from the general population for extended periods of time.

Figure 3 compares the rise in the SMU population with the annual inmate assault rate. The assault rate, which is low at less than three assaults per 100 inmates, has remained stable since 2004. There has been a slight decline since the rapid increase in the SMU population.

However, while the overall assault rate has remained constant, there may have been a reduction in the high-security populations. Since most of the inmates placed in restrictive housing were classified at higher security levels and housed at the USPs, the reduction in assault rates may be limited to those facilities.

Table 20 shows that there has been a decrease in the assault rate at the Bureau's high-security prisons, suggesting that the rapid increase of the SMU population did have an incapacitation effect. Further, there has been a significant reduction in

(1) the number of lockdowns at the various Bureau prisons and (2) the total number of lockdown days (table 20). Again, no claim of causation can be made, as other external factors may be related to these trends.

Figure 3. ADX and SMU populations and inmate assault rate, 2004-2013

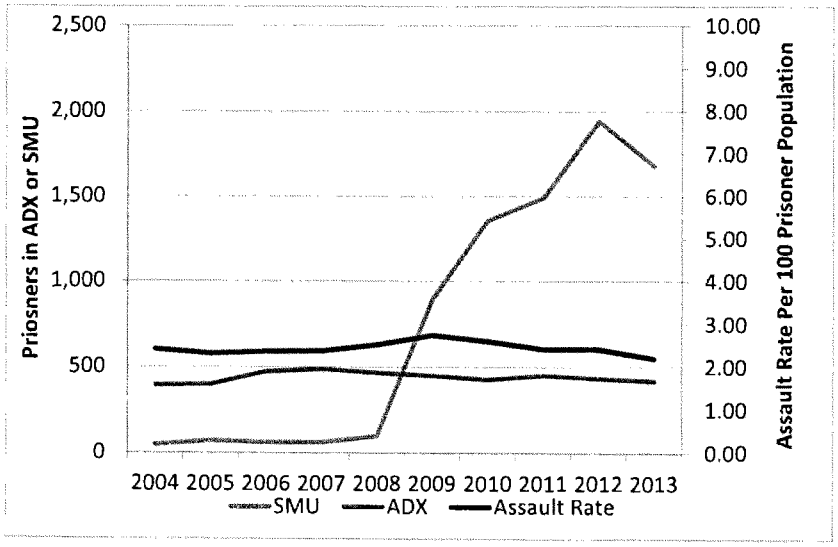


Table 20. Changes in ADX and SMU populations, assaults, and lockdowns, 2008–2013

Year	SMU	ADX	Assaults per 100 inmates	Assault rates in high-security prisons	Lockdowns	Total lockdown days	Days per lockdown
2008	100	471	2.5	10.5	148	1,210	8.2
2009	936	447	2.7	10.9	111	917	8.3
2010	1,398	433	2.6	10.4	129	877	6.8
2011	1,545	450	2.3	9.1	93	773	8.3
2012	2,042	434	2.4	8.7	86	526	6.1
2013	1,675	415	2.2	8.6	71	706	9.9

Source: BOP/ORE.

Summary of major findings

Inmates placed in ADX, SMU, and SHU status represent a small proportion of the Bureau's prison population. They also differ from other BOP inmates on a number of key attributes. In particular, they are disproportionately male and older, and more of them are U.S. citizens. They tend to have been sentenced for a more serious/violent offense and assigned to higher custody levels, to be associated with a gang (either street- or prison-organized), and to have separation restrictions.

All three populations have substantial time left to serve on their sentences. However, there are over 2,000 inmates in restrictive housing who will be released within a year, which suggests the need for reentry services. Differences in sentence lengths, time served, and time left to serve are especially pronounced among the ADX and SMU inmates.

The majority of inmates in restrictive housing do not require any specialized medical treatment and are virtually identical to other Bureau inmates. Somewhat surprisingly, relative to mental health care level, the proportions of inmates that are reported in need of care or treatment are even lower and comparable to the mental health care levels of the nonrestrictive populations.

The SMU and ADX inmates have lengthy disciplinary records, which include repeated histories of institutional violence and other types of serious misconduct. It does not appear that initial placement in the SMU and ADX units has any impact on the rate of misconduct that was occurring prior to placement in restrictive housing.

The vast majority of ADX and SMU inmates released in 2011 were not returned to restrictive housing status, although most incurred another DR within two years. There was no strong or consistent relationship between time in SMU and in-prison recidivism rates, although inmates with the longest placement in SMU had a higher rate of return to restrictive housing. This may be due to the inmates' failure to comply with the SMU program for a substantial period of time and thus their higher risk of recidivism than that of inmates who complied and completed the program in a shorter period of time.

The Bureau's assault rate remained unchanged as the size of the SMU population dramatically increased. However, there has been an associated decline in the rate of assaults in the high-security prisons, the number of lockdowns, and the number of lockdown days.

Chapter 4: Due process

The project team conducted a comprehensive review of the application of inmate due process rights in the assignment and management of inmates in special housing at each site visited, including an evaluation of procedures to protect due process rights during referral, designation, and throughout the duration of placement within SHU, SMU, and/or ADX. This assessment reviews the application of the Bureau's disciplinary process and assesses its administrative remedy procedures.

The following documents were reviewed as part of the assessment:

- Applicable decisions of the United States Supreme Court and circuit and district courts
- P.S. 5212.07: Control Unit Programs
- P.S. 5217.01: Special Management Units
- P.S. 5270.09: Inmate Discipline Program
- P.S. 1315.07: Legal Activities, Inmate
- P.S. 1330.17: Administrative Remedy Program
- P.S. 5270.10: Special Housing Units
- Special Management Unit Handbook

As outlined earlier in this report, data collection and analysis focused on representative samples of inmates at selected facilities. The Bureau placed no restrictions on the team's access to inmate files. By closely examining the selected inmates through case file review, observations, and interviews, the project team developed a better understanding of the due process systems associated with placement into restrictive housing within the Bureau. The file reviews of the sampled inmates included a review of the basis of placement in restrictive housing, the review process involved in placement, inmates' progress through the programs, and the process used to determine either release or transfer to another facility.

A number of recent disciplinary cases were also reviewed at each facility to more fully understand the basis of disciplinary sanctions imposed and the compliance with due process standards in administering discipline. The number of disciplinary cases varied at each facility, but a review typically covered 30-50 of the most recently completed disciplinary cases. The project team reviewed each case along with all supporting documents, including the incident report and associated hearing documents.

The case file review was supplemented by interviews with inmates, disciplinary hearing officers (DHOs), and the administrative remedy coordinator at each facility. Staff at the Central Office who directly managed due process functions were also interviewed, as were staff at the Designations and Sentence Computation Center (DSCC).[82]

Federal due process standards

The United States Supreme Court has held that prison inmates are entitled to certain procedural protections before they can be deprived of protected liberty interests. This is known as the right to due process. The Supreme Court holds that, when a protected liberty interest exists, for example in the case of good-time credits, certain minimum requirements are due to the inmate before this interest can be infringed upon.

The inmate's interest must, however, be considered in view of the fact that he is incarcerated and the environment is secure in nature. In *Superintendent v. Hill*, 472 U.S. 445, 454-55 (1985), the Court recognized that the safeguards of due process are to be considered in light of the "legitimate institutional needs of assuring the safety of inmates and staff, avoiding burdensome administrative requirements that might be susceptible to manipulation, and preserving the disciplinary process as a means of rehabilitation."

When a prison disciplinary action infringes on an interest protected by the due process clause (a protected liberty interest), the inmate must receive (1) advance written notice of the disciplinary charge, (2) an opportunity to call witnesses and present documentary evidence in his or her defense, and (3) a written statement by the fact finder of the evidence relied upon and the reasons for the action taken (*Wolff*

[82] The Designations and Sentence Computation Center (DSCC) is located in Grand Prairie, Texas and is responsible for the review of recommendations for designation to a specific facility, re-designation or transfer to a different facility, and also review the placement recommendations to SMU and the ADX General Population.

v. McDonnell, 418 U.S. 539 1974). If there is "some evidence" to support the decision, then due process is satisfied (*Superintendent v. Hill*). "Some evidence" means "any evidence on the record that could support the conclusion reached" (*Id.*)

In regard to timing, there must be at least 24 hours between the time the inmate receives the written charges and the hearing. This has been determined to be sufficient time to allow the inmate to prepare a defense.

The inmate has the right to call witnesses and present documents supporting his defense, as long as doing so is not hazardous to institutional safety. Prison regulations control when the hearing is held; if the hearing is not held within the time specified by the regulation, this failure is not in and of itself a violation of due process. In the court's view, the relevant inquiry will not concern whether the prison complied with its own regulations, but rather whether the inmate ultimately received all he or she was entitled to under the *Wolff* standard outlined above.

If an inmate needs legal assistance, the prison should provide access to a "reasonably adequate law library" for conducting legal research. The Supreme Court has declined to find that inmates have a right to counsel for disciplinary matters (*Wolff*, 18 U.S. at 570). The Court did indicate, however, that if an inmate is illiterate or suffers from a mental condition, legal assistance may be appropriate. However, that assistance need not be provided by an attorney.

In sum, as long as the prison ensures that the requirements of *Wolff* are met, due process is viewed as being satisfied.

Finally, even though an inmate may be able to file a grievance regarding a condition of confinement at any time for any reason, the mere fact that such a grievance process exists does not create a protected liberty interest. Most such "blanket" grievance processes are designed to comply with the *Wolff* standards and can serve as an additional fail-safe measure to protect against inadvertent violations of due process rights. However, if an inmate challenged the underlying decision in court, the court would first determine whether or not the particular issue the inmate raised implicated a protected liberty interest. If not, then the blanket grievance process would be unnecessary.

Decisions to place inmates in some type of special housing unit, such as segregation or restrictive housing, that may result in a deprivation of the inmate's liberty interest are protected by the Due Process Clause. Whether such placement amounts to a violation of a protected liberty interest requires an answer to the following question:

Does the segregation assignment impose an "atypical and significant" hardship on the inmate "in relation to the ordinary incidents of prison life?"[83]

It is important to remember that the act of confining an inmate to special housing is not, in and of itself, a violation of due process and therefore, the *Wolff* standard does not apply just because a transfer occurs. The transfer has to amount to an "atypical and significant hardship" in order to trigger due process protections. While an inmate may feel burdened by being placed in administrative segregation, if it is for a short time, this is not generally considered an "atypical and significant hardship."

On the other hand, courts have also held that even a minor hardship can amount to a deprivation of liberty if it is imposed for an extended period of time. As federal courts have applied this rule, it has become apparent that very few instances of administrative segregation, except those that clearly affect the total duration of the inmate's incarceration, will result in infringement of due process. A recent relevant ruling[84] held that if segregation leads ultimately to a longer prison sentence compared to those served by inmates in the general population, then the segregation may be "atypical and significant" and due process should be afforded.

Inmate discipline

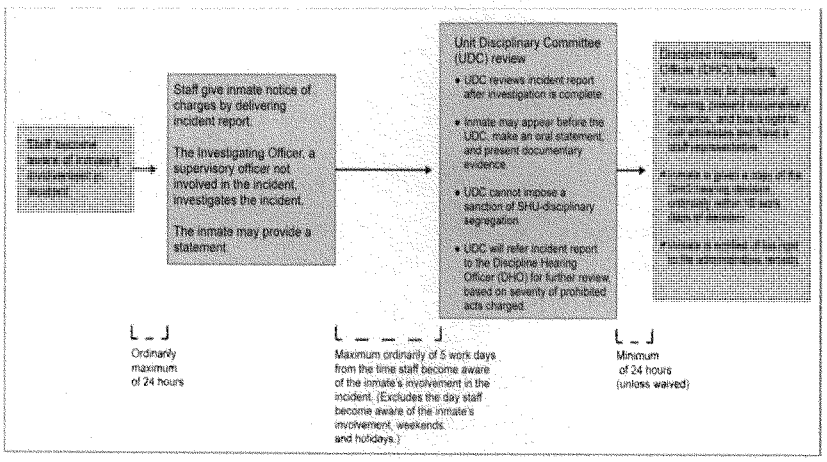
Inmate discipline within the Bureau is governed by *Program Statement 5270.09, Inmate Discipline Program*, as amended July 8, 2011. The provisions of the policy apply to all people in the custody of the Bureau including in Bureau contract facilities.

A May 2013, the Government Accountability Office report *Improvements Needed in Bureau of Prisons' Monitoring and Evaluation of Impact of Segregated Housing* included a simplified summary of the process outlined in *Program Statement 5270.09,* from staff observation of a potential prohibited behavior through the referral process for review of the allegation to conclusion of the hearing process. This summary is included in figure 4.

[83] *Sandin v. Conner*, 515 U.S. 472, 483 (1995).

[84] *Sandin v. Conner*, 515 U.S. 472, 483 (1995).

Figure 4. Inmate disciplinary process



Source: GAO analysis of BOP documents.

The key elements of the inmate discipline program as required by PS 5270.09 are summarized in the pages that follow.

The disciplinary process is initiated when a staff member believes the inmate has committed, or observes the inmate committing, a prohibited act. The resulting incident report must contain all known facts (except when there is information that must remain confidential). All people present during the incident are to be listed, as is any physical evidence. The staff member will issue the inmate the incident report within 24 hours of becoming aware of the incident. The incident report is then forwarded to the supervising lieutenant.

The 24-hour notice period begins at the point at which staff becomes aware of the incident or of probable cause to believe that the inmate was involved in an incident. For example, it would begin on the date that a probable-cause drug test came back positive, not necessarily on the date that the staff observed inmate behavior that gave rise to the test.

The lieutenant usually serves as the investigating officer and is responsible for completing the investigation and providing the inmate with formal notice of the charges as contained on the second page of the incident report. The investigating officer may informally resolve the incident report (except for those in the "greatest" and "high" severity levels). If not resolved informally or referred for external

investigation due to the nature of the incident, the incident report is forwarded to the unit disciplinary committee (UDC).

The UDC reviews both the incident report and the investigation results, and can render one of the following decisions:

- Determine the inmate committed the prohibited act or identify similar prohibited acts.
- Determine that the inmate did not commit the specified acts.
- Refer the incident report to the DHO for further review based on the nature of the charges (prohibited acts of "greatest" or "high" severity level are automatically referred to the DHO).

The following are examples of prohibited acts within each severity level:

- Greatest—killing, escaping from escort, manufacturing a weapon, rioting, assaulting any person, including sexual assault, taking a hostage, introducing or making any narcotics, drugs, alcohol, or related paraphernalia
- High—escaping from a work detail or other non-secure confinement, fighting, threatening with bodily harm, bribery, extortion, making sexual proposals or threats, engaging in sex acts, stealing, destroying government property
- Moderate—indecent exposure, misusing authorized medication, refusing to work or to accept a program assignment, violating conditions of a community program, insolence, gambling, possessing money, smoking where prohibited, communicating a gang affiliation
- Low—malingering, using obscene or abusive language, unauthorized physical contact, interfering with a staff member, conduct which disrupts or interferes with the security or orderly running of the institution or Bureau

The UDC is ordinarily composed of two or more unit staff members. It is required to review the incident report and hold a hearing within five working days. It can dispose of most charges with findings and sanctions, but must refer 100- and 200-level offenses to the DHO. To render findings and order sanctions for low-level offenses (300 and 400 levels), two members of the UDC must participate in the hearing. If the UDC renders findings and sanctions (on low-level offenses), the inmate has no due process rights, as the low-level sanctions available for such offenses do not implicate any liberty interest. Even so, inmates may appeal the decision of the UDC and, using the appropriate section on the incident report, the UDC provides the inmate with notice of appellate rights.

For minor (300- and 400-level) infractions, the program statement also provides an informal resolution process. In this process, after the inmate receives a copy of the incident report, and the unit team and inmate may agree to an informal resolution. Informal resolution of an incident report requires the consent of both the staff and the inmate but occurs at the sole discretion of staff. The incident report is placed in "pending informal resolution" status. If the inmate completes tasks that may be required of him or her, the status is changed to "informally resolved." If informal resolution fails for any reason, the disciplinary process starts again and the incident report is forwarded to the UDC.

Incidents that involve possible criminal behavior—those involving narcotics, weapons, assaults, or cell phones—must first be referred to the Federal Bureau of Investigation or other outside authorities for further investigation and possible prosecution prior to initiating the disciplinary process. Similarly, cases that require laboratory testing are deferred until the lab results are obtained. Accordingly, the incident report may not be fully completed or provided to the inmate until a later date. Incident reports may also be updated, supplemented, or rewritten and resubmitted after additional facts become known.

For a referral to the DHO, only one member of the UDC is required. The UDC is required to provide the inmate with its disposition/notice of charges at least 24 hours prior to the DHO hearing.

The policy lists the prohibited acts that may result in discipline.[85] The acts are divided into four categories based on severity: greatest, high, moderate, and low. The policy also includes a table that outlines the prohibited acts and indicates the available sanctions for each act. Sanctions are imposed either by the DHO or the UDC depending on the severity level.

Inmates have the right to select a staff representative to assist in preparation for the hearing and to serve as a representative during the hearing. This option was utilized frequently in the cases we reviewed, and in many instances continuances were granted to ensure the availability of the requested staff representative.

If evidence indicates that an inmate does not fully understand the nature of the process or the allegations or cannot assist in his or her own defense, the disciplinary hearing may be postponed until the inmate is competent to participate. The UDC or

[85] Table 1. Prohibited Acts and Available Sanctions, PS 5270.09

DHO will make this decision based on available evidence, including evidence presented by the mental health staff. [86]

Bureau policy allows for the possibility that an inmate who has been determined to be mentally ill may not be held responsible for his/her conduct. In that case, the inmate is cleared but the incident report is retained in the inmate's file for informational purposes only.

If the charges in the incident report are sustained, the hearing officer may impose sanctions that vary depending on the severity level and related circumstances of the incident as outlined below.

- Greatest severity level: forfeit or withholding of earned statutory good time and nonvested good conduct time up to 100 percent; disciplinary segregation up to 12 months; monetary restitution or a monetary fine; impoundment of property; removal from a program, group activity, or job; loss of privileges including visits, telephone, commissary, movies, and recreation
- High severity level: forfeit or withholding of earned statutory good time and nonvested good conduct time up to 50 percent or up to 60 days, whichever is less; disciplinary segregation up to six months; monetary restitution or a monetary fine; impoundment of property; removal from a program, group activity, or job; extra duty; loss of privileges including visits, telephone, commissary, movies, and recreation
- Moderate severity level: forfeit or withholding of earned statutory good time and nonvested good conduct time up to 25 percent or up to 30 days, whichever is less; disciplinary segregation up to three months; monetary restitution; monetary fine; impoundment of property; removal from program, group activity, or job; extra duty; loss of privileges including visits, telephone, commissary, movies, and recreation
- Low severity level: forfeit of up to 12.5 percent of good conduct time credit available for year (on second occurrence of same offense in six months), or forfeit of up to 25 percent of good conduct time credit for year (on third occurrence of same offense in six months); monetary restitution or a monetary fine; impoundment of property; removal from a program, group activity, or job; extra duty; loss of privileges including visits, telephone, commissary, movies, and recreation

[86] PS5270.09, Chapter 3, 541.6(b)

The maximum sanctions for disciplinary segregation for these levels are higher than the authorized levels applied in many state systems. Georgia limits disciplinary segregation to 30 days. In certain circumstances in Ohio, the 15-day segregation can be increased to 30 days.[87] Other systems limit segregation to 180 days; systems including those in Illinois, New York, and Kentucky limit segregation for a single offense to 12 months. However, most states allow consecutive segregation sentences, which can lead to very long periods of disciplinary confinement.

Disciplinary process observations

In the course of this review, UDC and DHO hearings were reviewed and observed at each of the locations reviewed. DHO docket summaries were reviewed at each institution that was reviewed. The docket summaries included information on the violation code, location, and result of the hearing including the sanction imposed. The review also included interviewing staff involved in the UDC hearing process and the DHO assigned to each facility.[88] In addition, hearing documents for the most recent 40-50 DHO cases were reviewed. This included all related materials that were used in the hearing process, including the original incident report, results of the investigation of the incident, documentation of the UDC review and referral to the DHO, all materials associated with the DHO hearing, and the imposed sanctions. In total over 450 case files were reviewed in the course of the site visits.

The DHO staff members assigned to the facilities do not directly report to the local institution's warden or a designated staff. DHO staff members have autonomy to impose sanctions and do not consult with the operations staff when determining those sanctions. The DHO staff report up through the organizational structure to the Bureau's Correctional Programs Division. Regional DHO staff and central office staff provide direction, guidance, oversight, and training to the field-based DHO staff, but there is no direct reporting relationship to the administration of the institution where they are assigned. This is done in order to ensure the independence of the hearing process.

At all facilities visited (with the exception of USP Terre Haute, where the assigned DHO was located in the Kansas City Regional Office and hearings were conducted by

[87] Inmate Disciplinary Process, 56-DSC-01, effective December 10, 2009, Ohio Department of Rehabilitation and Correction.

[88] All DHO staff were interviewed at the facility assigned with the exception of USP Terre Haute where the DHO was based in the regional office. In this case the interview was completed telephonically.

video), the disciplinary hearings were held out of cell in a private location in the presence of the DHO, consistent with policy and best practices.

FINDING: The DHOs and others involved in the disciplinary process were well versed in their duties. All appropriate notices and procedures were followed, and inmates responded respectfully to the process and the decision.

Generally, the DHO at each facility had arranged for a staff representative to attend or postponed the hearing until the staff representative could be present. In two cases, although the paperwork clearly indicated that the inmates had been given appropriate notice and service of charges, when the inmates questioned appropriate notice and/or service, the DHO re-served the inmates and delayed the hearings.

FINDING: Bureau disciplinary processes and procedures provide substantial and redundant assurances for due process compliance.

At some facilities, the file review of DHO cases found that a significant percent of charges filed through incident reports were expunged as a result of the DHO hearing process (table 21). This is the equivalent of a dismissal or acquittal for the inmate.

Table 21. Hearing dismissal rates

Facility	Dismissal rate
USP Lewisburg	12%
USP Allenwood	12%
USP Florence	22%
USP Hazelton	6%
USP Victorville	7%
FCI Butner II	15%

Source: BOP.

These dismissal rates are higher than rates observed by project team members at comparable facilities at the state level, which is an indicator that the process is valid and ensures due process in the review of charges and allegations. It is also significant given that the process has multiple review points where the charges can be dismissed prior to referral to the DHO.

Sanctions issued by the DHO were found to be consistently lower than the allowed level for each of the severity levels. For example, offenses in the "greatest" severity level carry a maximum time in disciplinary segregation of 12 months. Of all the case files reviewed, not one included a sanction of 12 months segregation. For 100-level offenses such as possession of a weapon the typical sanction included 30-45 days disciplinary segregation and in many cases was 15-20 days segregation. At USP Victorville, the typical sanction for an assault or a weapons offense was 30-60 days disciplinary segregation. At USP Tucson, a typical sanction for possession of a

weapon was 45 days, while an assault resulted in 60-90 days segregation. At USP Coleman, a weapons offense resulted in 30 days of disciplinary segregation.

Bureau DHOs use the restriction of privileges such as visiting, commissary, and telephone extensively as a sanction for offenses within all severity levels. Almost every sanction issued by the DHO at each of the facilities reviewed included a restriction of one or all of the above privileges. At USP Coleman, weapons offenses typically resulted in a sanction of 41 days loss of good conduct time; 15 days placement in disciplinary segregation; or 180 days restriction on visits, commissary, and telephones. Similar sanctions, with some variance in the amount of segregation time, were found in virtually all the institutions reviewed. In the cases reviewed, it was normal for the DHO to impose 180 days loss of commissary, telephone, and visits. The extensive use of restriction of privileges resulted in the accumulation of loss of privileges over an extended period. It was not unusual to find inmates who had lost visit privileges for more than one or two years. During one interview, an inmate reported that he had lost visit and phone access for seven years. This was confirmed through review of disciplinary records provided by the DHO. File reviews confirmed that similarly lengthy restrictions of privileges were common in the system. The use of these sanctions is an outgrowth of the attempt to find alternative sanctions to placement in disciplinary segregation.

Sanctions issued by the DHO are effective the date of the hearing and are not made retroactive to the date of the incident report or the date of referral by the UDC to the DHO. There is no time limit in policy that governs how quickly the DHO must hold a hearing after the investigation/UDC process is complete. Scheduling of hearings is at the discretion of the DHO.

The lack of time limits for completion of disciplinary hearings results in substantial variation among facilities in the amount of time served in restrictive housing for similar offenses, and can result in disproportionately long sanctions.

During our review we found institutions that had established informal internal requirements that the hearing be completed within 14 days of receipt by the DHO. Another facility had established a guideline of 20 days. In the course of this review, instances of hearings held more than 30 days after the incident date were not unusual. Longer delays occurred when cases were continued awaiting the results of drug tests or other information or referred for further investigation. For example, a sanction of 30 days in restrictive housing can extend to 90 days or longer since time served is not credited and the time frame of the sanction is not made retroactive to the date of original confinement in restrictive housing.

By comparison, most state systems have specific time requirements for conducting a hearing or issuing a continuance based on need for additional information (such as investigation results or availability of witnesses). Ohio policy requires that inmates

charged with a rule violation must be scheduled for a hearing as soon as practicable but no later than seven days, excluding weekends and holidays, after the alleged violation is reported—unless the hearing is prevented by exceptional circumstances, unavoidable delays, or reasonable postponements, which must be documented.[89]

FINDING: Sanctions issued by the DHO are effective the date of the hearing and are not made retroactive to the date of the incident report or the date of referral by the UDC to the DHO.

The result was that in many cases a sanction of 30 days segregation in actuality became a restrictive housing sanction of 90 day or longer since the time served in segregation was not credited to the sanction or made retroactive to the date of original confinement in a restrictive housing setting.

RECOMMENDATION 4.1: Establish reasonable time frames in which the hearing must be scheduled while permitting reasonable continuances while awaiting investigation reports, drug test results, and other essential information.

RECOMMENDATION 4.2: Establish by policy that a sanction of segregation time should be issued retroactive to the date of original admission to restrictive housing, providing credit for time served.

File reviews indicated that sanctions for similar offenses vary from institution to institution. The policy only specifies the maximum sanction for each severity level, thus providing the DHO only general guidance for determining appropriate sanctions. We were also informed that the Bureau has no systemic way to measure disparities in sanctions across this large system. Over the years, initial DHO training has reportedly been cut from two weeks to one week to the current three days.

In our visits to the selected facilities, we noted wide disparities in the type and severity of sanctions imposed for similar offenses. As noted, weapons offenses sanctions varied from 15 days of restrictive housing plus loss of privileges to 60 or 90 days of restrictive housing plus loss of privileges. The independence of the DHO staff in determining sanctions also results in some disparity in sanctions. The chief disciplinary officer of the Bureau[90] stated that the central office does not monitor sanctions for consistency. They do, however, have the ability to identify inconsistencies from hearing officer to hearing officer and can address those when necessary and appropriate.

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[89] Inmate Disciplinary Process, 56-DSC-01, effective December 10, 2009, Ohio Department of Rehabilitation and Correction.

[90] Interview conducted on 11/14/2013.

RECOMMENDATION 4.3: Establish a system for monitoring patterns and trends in the use of disciplinary sanctions among Bureau facilities.

It was also noted through our review of individual cases that different DHOs have different philosophies about the use of specific types of sanctions. DHOs at some locations used monetary fines with great success in lieu of restriction of privileges or extended time in restrictive housing. However, this sanction was not universally used, and at some facilities appears not to have been used at all, based on the cases reviewed and the interviews with the DHO assigned to the unit.

PS 5270.09 authorizes the DHO to suspend any sanction for a period not to exceed six months. In the event a sanction is suspended by the DHO or the UDC, the effect of the sanction is waived unless the inmate receives a new incident report for a prohibited act during the period of the suspension. In the event of a new incident the DHO or UDC will act on the new incident report and retroactively determine and impose the sanction for the suspended case. Review of case files and interviews with the DHO indicated that this option is used extensively by some DHOs as a means of providing motivation to avoid committing future prohibited acts.

Overall, our findings show that DHO staff are adequately trained on the disciplinary processes and procedures, and that compliance with these requirements is consistent from facility to facility. The organizational independence of the DHO from the local administration is rare outside of the Bureau as only a small number of state systems use this option. This independence was apparent during interviews with staff both in headquarters and at the local institutional level. This, combined with the relatively high percent of dismissals and expunged cases as compared to what is observed in state systems, are indicators of the independent decision making of the DHO process. However, the review did note issues with consistency in the level of sanctions for similar offenses between facilities, hearing delays that resulted in prolonged stays in segregation, and loss of access to basic privileges (visits, telephone, and commissary) for extended periods of time.

Special housing units

SHUs are housing units in Bureau institutions where inmates are securely separated from the general inmate population and may be housed either alone or with other inmates. SHUs help ensure the safety, security, and orderly operation of correctional

facilities, and protect the public, by providing alternative housing assignments for inmates removed from the general population.[91]

According to Bureau policy, placement in an SHU is a result of assignment to either administrative detention or disciplinary segregation status. Administrative detention is an administrative and nonpunitive status and can occur for a variety of reasons. Disciplinary segregation is a punitive status that can be imposed only by a DHO.

An inmate may, under Bureau policy, be placed in administrative detention for the following reasons:

- Pending classification or reclassification—for example, in the case of a new inmate or one whose classification is under review
- Holdover status during transfer to a designated institution or other destination
- Pending transfer to another institution or location
- Removal from general population, where it has been determined that placement poses a threat to life, property, self, staff, other inmates, the public, or the security or orderly running of the institution
- Being under investigation or awaiting a hearing on charges of violating a Bureau regulation or criminal law
- For protection, whether requested by the inmate or determined by staff to be necessary
- After completion of disciplinary detention when return to the general population would threaten the safety, security, and orderly operation of the facility, or public safety

Placement

Each inmate who is placed in the SHU is notified of the basis of the placement when the lieutenant or other correctional supervisor prepares and issues an administrative detention order. A separate administrative detention order is required when an inmate's status in administrative detention changes.

[91] PS 5270.10, Special Housing Units, Effective date of August 1, 2011.

- Administrative detention status: When placed in administrative detention status, the inmate receives a copy of the administrative detention order within 24 hours detailing the basis for the placement. When an inmate is placed in administrative detention status pending classification or while in holdover status, an administrative detention order is not issued.

- Disciplinary segregation status: When an inmate is placed in disciplinary segregation status as a sanction for violating Bureau regulations, notice is provided to the inmate by the DHO at the end of the discipline hearing.

Placement in the SHU is reviewed by the segregation review official (SRO) based on the following requirements as outlined in PS 5270.10.

- Three-day reviews: Within three work days of placement in administrative detention status, not counting the day of admission, weekends, and holidays, the SRO will review the supporting records. Inmates in disciplinary segregation status do not receive this review.

- Seven-day reviews: Within seven continuous calendar days of placement in either administrative detention or disciplinary segregation, the SRO will formally review the placement status at a hearing that the inmate may attend. The inmate must sign a waiver if he or she does not want to participate in this face-to-face review. Subsequent reviews of the case records will be performed by the SRO every seven continuous calendar days thereafter.

- Thirty-day reviews: After every 30 calendar days of continuous placement in either administrative detention or disciplinary segregation, the SRO will formally review the placement status at a hearing that the inmate may attend. Again, inmates must sign a waiver if they do not want to participate in these face-to-face reviews.

Placement of protection cases in administrative detention

Inmates may be placed in administrative detention as a protection case in the following circumstances:

- The inmate was the victim of an inmate assault, or was being threatened by other inmates.

- The inmate's safety is threatened because of providing, or being perceived as having provided, information to staff or law enforcement authorities regarding other inmates or people in the community.

- The inmate refuses to enter the general population because of alleged pressures or threats from unidentified inmates, or for no expressed reason.
- Based on available evidence, staff believe the inmate's safety may be seriously jeopardized by placement in the general population.

When an inmate is placed in administrative detention for protection, the warden or designee (ordinarily the captain) must review the placement within two business days to determine if continued protective custody is necessary. This review consists of:

- Staff investigation: Whenever an inmate is placed in the SHU as a protection case, whether requested by the inmate or staff, an investigation will occur to verify the reasons for the placement.
- Hearing: The inmate will receive a hearing conducted by the SRO according to the procedural requirements within seven calendar days of the placement.
- Periodic review: If the inmate remains in administrative detention status following the hearing, he/she will be periodically reviewed as an ordinary administrative detention case.

This review includes documents that led to the inmate being placed in protective custody status and any other documents pertinent to the inmate's protection. In addition, P5324.08 *Suicide Prevention Program* mandates that protective custody inmates be screened for suicidal ideation within 72 hours of being placed in SHU.

Protective custody

Despite the very different purposes of the SHU, all inmates including those in protection status are exposed to the same security and operational restrictions as well as the same access to programs and privileges.

As shown in table 5, 15 percent of those housed in SHUs system-wide as of June 2014 were there based on protection needs. The percent varies from institution to institution, with the percentage in the USP SHUs being significantly higher. An additional portion of inmates in SHUs are unverified protection cases who refuse assignment outside of the unit. Some of the protection claims are the result of the inmate's own behavior, while others are not validated. However, a significant portion of these offenders have legitimate protection needs.

FINDING: A disproportionate number of inmates are being housed in the SHUs based on protection claims.

Often the reason for an inmate's request for protection is gang related. The number of inmates that have separatee issues (cannot be housed with specific other inmates) is significant and affects inmate management. The warden at USP Lewisburg advised the assessment team that of 748 inmates at that facility, 334 had separatee issues.[92]

This raises the question of the appropriate way to manage inmates with verified protection needs. Such inmates are presently housed in administrative detention, which is identified by Bureau policy as a nonpunitive status. However, they are assigned to the same housing unit as inmates in punitive segregation. Inmate movement procedures, including application of restraints, are the same; the frequency of recreation and telephone access is the same, as was the frequency of visits at all but two facilities visited. With the exception of minor differences in personal property allowed and in-cell programming opportunities, the day-to-day conditions of confinement were not much different. Considering that one status is nonpunitive and that some individuals are included strictly as a result of being verified as requiring protection, serious consideration should be given to reevaluating the day-to-day conditions of confinement for individuals who have been verified as needing protection.

FINDING: The application of the same security and operational restrictions to the protective custody population as to others in administrative segregation is contrary to nationally accepted practices.

This is a complex issue within the Bureau due to the extensive presence of security threat group members, even in the SHU. Many of those have verified need for protection as a direct result of their prior involvement with a security threat group, who are also victims or potential victims that need protection while assigned to the Bureau. These protection needs should be provided, but in a more normalized setting than what is presently provided in the SHU.

In numerous states, the conditions of confinement for protection cases have been altered to parallel that provided to other general population inmates. In these instances, inmates are housed in SHUs or similar units while the claim for protection is investigated. Once the need for protection is verified, they are moved to a separate unit that provides conditions of confinement that are similar if not identical to those provided to general population inmates. These units operate separately from other general population units and afford inmates the ability to function in a normalized prison environment while ensuring they are protected. Kentucky has done this successfully at the Eddyville facility, and Ohio operates units that replicate general

[92] Interview briefing with Warden, January 21, 2014

population conditions for protective custody inmates. The Bureau is moving in the same direction with the establishment of the reintegration housing unit (RHU) in Oakdale, Louisiana.

The RHU was activated in October 2013 with an objective to target male inmates who consistently refuse to enter general population.[93] The facility was opened with an initial capacity of 160 beds but was increased to 208 in February 2014; it has a potential future capacity of 320 beds. The actual population of the facility in September 2014 was 82. The criteria for placement include documentation that the inmate is classified as a protective custody case, an assessment from psychological services that the inmate is willing to participate in programming offered at the RHU, and the following additional criteria:

- The inmate has refused to enter general population and this fear is unsubstantiated (cannot be verified by staff).
- The inmate will have been housed in an SHU for more than 12 months.
- Medium and high security inmates are considered appropriate.
- Inmates whose SHU placement is based on a gang-specific security threat group assignment are ordinarily excluded.
- Those currently in disciplinary segregation are excluded.
- Those whose sex offender classification is the basis for placement in SHU will ordinarily not be assigned to the RHU.
- Inmates must be classified in medical and mental health care level 1 or 2.
- Inmates should normally have at least 6 months remaining to serve.

Sex offenders who require protection and who meet the established criteria have been designated for the Sex Offender Management Program at USP Tucson. This is a normalized general population program and allows this group of protection inmates to fully participate in programs. The Bureau reported that it operates nine Sex Offender Management Program facilities, all of which offer an environment which increases the likelihood a sex offender can remain in general population.

[93] Memorandum of October 18, 2013, FCC Oakdale – RHU Activation Procedures, authored by the Acting Assistant Director, Correctional Programs Division.

These are the only two general population options for verified protective custody inmates that the consultant team identified within the Bureau.

RECOMMENDATION 4.4: Expand housing alternatives for inmates in verified protective custody status that have levels of programs and privileges that are equivalent to those for general population inmates.

Weekly review meetings

At all the Bureau facilities visited, SHU weekly review meetings were observed. These meetings are convened and directed by the warden of each facility and are attended by representatives of the warden's management team as well as representatives of each key discipline within the facility. This includes associate wardens, unit managers, directors of psychological services and medical services, investigative staff, case management representatives, and security and chaplaincy staff.

The purpose of the meeting is to review the status of each inmate held in the SHU and determine if continued placement in the SHU is appropriate or whether an alternative placement can be identified. The structure and approach to these meetings was similar at each location we observed.

The reviews are guided by a formatted document that contains all the key information on an inmate including name, reason for placement in the SHU, mental health status, any medical issues, unit team comments, and status of any program referrals or redesignations. Also included in the document is a picture of the inmate so all participants in the meeting can identify the inmate being discussed.

The participants in the review meeting systematically review the status of each inmate. A designated representative, usually a unit manager, summarizes the offender's status, including any changes or pending actions. These can include pending transfer requests, status of any investigation, mental health or medical actions, program participation or completion, and general adjustment to the facility and/or unit. A representative of each discipline presents updated information on the inmate where appropriate. After discussion, the group with the concurrence of the warden may take action on the case, such as releasing the inmate from SHU (we observed that this action occurs frequently), referring the inmate for redesignation, or accelerating the investigation into the inmate's case.

The formal discussion is normally followed by the entire group touring the SHU and addressing any informal or formal requests presented by inmates.

FINDING: The conduct of weekly reviews of SHU placements in a formalized setting with the facility's entire management team is an exemplary practice that ensures ongoing review of the status of inmates and their placement options.

The review team for this project has not observed anything similar to this practice in terms of frequency of reviews, breadth of participants, and level of discussion on each and every case as was observed in the facilities reviewed. This process ensures that inmates housed in the SHU are reviewed at the highest levels on a weekly basis and that their placement options are evaluated regularly.

Segregation reviews

Policy requires frequent contact and review of those inmates placed in administrative segregation. Through the SRO reviews and the previously described SHU Weekly Review process, there is ongoing review of the status of each inmate in relation to his/her continued placement in the SHU. There is however, inconsistency in how the SRO reviews are conducted and the scope of these reviews. In some of the facilities reviewed, the SRO reviews are conducted cell-side and consists simply of an inquiry as to how things are going and if any problems exist that need to be addressed. This provides no privacy and little opportunity for the inmate to have a dialogue with staff on his situation and what may have precipitated the problems that resulted in his placement in the SHU. This is especially important given the prevalence of security threat group members housed in the same units as those with protection claims.

RECOMMENDATION 4.5: Establish a policy standard requiring private, face-to-face interviews for the segregation review.

The Bureau reports that Program Statement 5270.10 requires face to face meetings at the 7 and 30 day review. Three day reviews are paper reviews, seven day and 30 day reviews give the inmate an opportunity to attend the hearing. Those inmates who refuse to attend the hearing are required to sign a waiver stating they refuse. Some Bureau facilities provide the opportunity for the inmate to meet privately with the SRO outside of the cell area and in a private location where there can be an open discussion of the issues and concerns that the inmate may face. This should become the standard for the Bureau in conducting the SRO hearings. Other facilities do not encourage or facilitate the face to face meeting in a private location.

FINDING: The SRO reviews at some of the facilities reviewed appeared perfunctory and lacked substance in contact and purpose.

In these instances the SRO review becomes a situation of quickly doing "how are you doing and do you have any problems" rather than a review of the reasons for

placement, program needs, placement issues if any, and verifying that the inmate has access to medical, mental health issues, etc. It appeared that there was little formal structure to the purpose and content of the reviews.

The GAO segregation review report issued in May 2013 found that "...the facilities did not consistently document conditions of confinement and procedural protections as required under Bureau policy guidelines." The GAO reported deficiencies such as missing documentation, monitoring rounds not being consistently conducted, or inmate review policies not fully implemented.

FINDING: The review of randomly selected inmate records found some omissions in the maintenance and content of inmate records documenting the placement rationale in the SHU.[94]

At one facility reviewed, ten percent (10 percent) of the files reviewed had problems with filing of these documents in the inmate record file including the absence of required supporting documents and the existence of a backlog in filing these documents in the inmate record. This was only observed at one facility during the course of the review.

RECOMMENDATION 4.6: Develop and deploy an electronic inmate record system to document SHU placement decisions.

The missing documents were later found as they were available elsewhere, but the inability to maintain inmate records in a timely and accurate fashion illustrates the need for the Bureau to substantially improve their recordkeeping, including the use of electronic means.

FINDING: The requirements that are contained in the policy and procedures that govern the placement and review of inmates housed in the SHU are consistent with national standards and afford inmates in these units with due process in relation to their placement in the units.

The execution of these requirements could be improved through the use of private, face-to-face, reviews with the inmates of his/her status in the SHU. This is done in some facilities, but not consistently applied throughout the system.

[94] Documents examined and filed include *Incident Reports*, BP-AO298, *Inmate Rights at Disciplinary Hearing*, BP-293, *Administrative Detention Orders*, BP-308. The Bureau reported that in August 2014, the SHU application was upgraded to include a warning screen feature notifying staff when omissions from the records were noted. This upgrade resulted in no deficiencies for this step in any Correctional Services Program Reviews conducted during the last quarter

Special management units

According to PS 5217.01, Special Management Units, assignment to a special management unit (SMU) is considered to be a programmatic assignment. PS 5217.01 states that SMU designation is nonpunitive, and may be appropriate for any inmate meeting the referral criteria outlined in the program statement.

The conditions of confinement for SMU inmates are more restrictive than for general population inmates. Inmates are expected to complete the four-level SMU program in 18 to 24 months, at which time they may be re-designated (transferred) to an appropriate facility. At the time of the initiation of this review SMU programs were functioning at USP Lewisburg, USP Allenwood, and USP Florence. During the course of the review, the Bureau began the phasing out of the SMU at USP Florence through the gradual transfer of inmates in the unit to USP Lewisburg.

Referral and assignment

Per the program statement, designation to a SMU may be considered for any "sentenced inmate whose interaction requires greater management to ensure the safety, security, or orderly operation of Bureau facilities, or protection of the public." Placement to a SMU requires that the inmate meet any of the following:[95]

- Participated in disruptive geographical group/gang-related activity.
- Had a leadership role in disruptive geographical group/gang-related activity.
- Has a history of serious and/or disruptive disciplinary infractions.
- Committed any 100-level prohibited act, according to 28 CFR part 541, after being classified as a member of a Disruptive Group pursuant to 28 CFR part 524.
- Participated in, organized, or facilitated any group misconduct that adversely affected the orderly operation of a correctional facility.
- Otherwise participated in or was associated with activity such that greater management of the inmate's interaction with other persons is necessary to

[95] PS 5217.10, Section 2, effective 11/19/2008.

ensure the safety, security, or orderly operation of Bureau facilities, or protection of the public.

Referral. If an inmate meets any of the referral criteria the unit team may present a re-designation referral to the warden. The referral packet consists of a completed Request for Transfer/Application of Management Variable (EMS-A409), copies of pertinent Special Investigative Supervisor reports and incident reports, and a cover memorandum to the warden summarizing the rationale for referral for SMU designation. If the warden approves the referral, it is submitted to the regional director.

Hearing on the redesignation request. If the regional director determines that sufficient evidence exists to convene a hearing, the regional director appoints a hearing administrator to conduct a hearing into whether the inmate meets the criteria for SMU designation. The hearing administrator will have been trained and certified as a discipline hearing officer (DHO), will be an impartial decision-maker, and will not have been personally involved as a witness or victim in any relevant disciplinary action involving that inmate.

Interviews with Bureau executive staff indicated that the Bureau decided to use DHO's in the SMU review process because they are trained to provide due process protections in administering the disciplinary systems and they are independent of the operational chain of command, reporting directly to the regional hearing administrator and to the Office of General Counsel.

The warden will be notified of the regional director's decision to conduct a hearing before the inmate is provided pre-hearing notice. The inmate's security needs will be assessed and staff made aware of any additional security precautions.

The appointed hearing administrator completes a notice of the hearing referral and sends it to the inmate's current institution. Unit team staff at the institution provides the inmate with a copy of the notice at least 24 hours before the hearing, and document delivery to the inmate. If the inmate is illiterate, the delivering staff member will read the notice verbatim. If the inmate does not speak English, the unit team staff will make arrangements to provide translation.

The notice advises the inmate of the date and time of the hearing and advises the inmate of the opportunity to appear at the hearing. The notice also provides a sufficiently detailed explanation of the reasons for the referral. The notice also informs the inmate that a nonprobationary staff member will be available to help the inmate compile documentary evidence and written witness statements to present at the hearing. The assisting staff member's responsibility in this role is limited to assisting the inmate in obtaining copies of documents needed, for example, from his

central file or other reasonably available source(s), or a written statement(s) from other reasonably available inmates or staff.

The inmate has the opportunity to appear at the hearing, make an oral statement, and present documentary evidence and written witness statements, except where contrary to the safety, security, or orderly operation of Bureau facilities, or protection of the public. The inmate may not call witnesses at the hearing.

Post-hearing findings and decision. The hearing administrator is required to consider whether the inmate meets the criteria as specified in PS 5217.10 for placement into the SMU program. Upon completion of the hearing the hearing administrator will prepare the "Hearing Administrator's Report on Referral for Designation to a Special Management Unit" and will submit it to the regional director. The report will provide a detailed explanation of the reasons for the hearing administrator's findings.

Upon receipt of the hearing findings the regional director determines whether the SMU referral is necessary to ensure the safety, security, or orderly operation of the Bureau or protection of the public. The regional director includes a recommendation on the placement request and then forwards it to the DSCC in Grand Prairie, Texas, for final review.

The DSCC reviews all documents related to the case including the hearing administrator's report and, after consulting with the assistant director, Correctional Programs Division, Central Office, will determine whether a SMU referral is approved. If the SMU referral is approved, the DSCC selects the SMU that best meets the inmate's greater management needs. The DSCC will then forward the decision to the receiving regional director and warden, with copies to the referring regional director and warden. This review also includes a mandatory review by the Bureau's Psychology Services Branch to determine if admission to SMU is appropriate.

Post-decision notice and appeal. The inmate's copy of the completed report will be sent to the referring warden, who is to ensure delivery to the inmate. The report advises the inmate of the opportunity to appeal the decision through the Administrative Remedy Program, directly to the Office of General Counsel. An inmate's appeal of the decision or the hearing administrator's findings does not delay designation and transfer to a SMU.

FINDING: The Bureau has established policies and procedures that afford due process protections to inmates in the referral and assignment to SMU.

Bureau policies and procedures governing referral and assignment to SMU provide for multiple layers of review and are clearly intended to comply with the principles of due process. The review of the documents and the process indicate that the

Bureau complies with its own requirements throughout the review and placement process.

One indicator of the validity of the process of referral and review of requests for placement in the SMU is the number of individuals who had been referred for SMU placement since the initiation of the program and of those referred, the number that have been rejected for placement either by the regional director or by DSCC.

Documentation provided by the DSCC indicated that a total of 5,435 inmates had been submitted from January 2009 to June 6, 2014. Of the inmates referred, 1,057 (19.5 percent) had been denied placement by the DSCC[96]. This does not include denials/rejections that occurred at the regional offices as those records were not readily available.

A more recent picture of the validity of the referral and review process was obtained by reviewing the number of referrals by month that have been submitted since January 2013 through February 2014 and the number that have been rejected by either the DSCC or the regional director (see table 22).This more recent snapshot of the review process indicates that 14 percent of the referrals have been denied placement.

[96] DSCC Initiatives Report of 6-6-14

Table 22. SMU referrals and outcomes, January 2013 – February 2014

Date	Submitted	DSCC approved	DSCC denied	Region denied	DSCC deferred
January 2013	52	40	11	6	1
February 2013	61	52	9	2	0
March 2013	53	49	4	2	0
April 2013	75	57	18	3	0
May 2013	43	37	6	2	0
June 2013	68	53	15	4	0
July 2013	44	38	6	3	0
August 2013	47	42	5	1	0
September 2013	12	11	1	9	0
October 2013	50	46	3	5	1
November 2013	43	40	3	8	0
December 2013	59	53	6	10	0
January 2014	76	66	10	8	0
February 2014	73	63	10	2	0
Total	**756**	**647**	**107**	**65**	**2**
Rate	**100%**	**86%**	**14%**	**9%**	**<1%**

Source: Bureau ORE.

FINDING: The significant level of SMU placement request denials indicates the review process provides independent assessment beyond the institution level of the necessity of the SMU placement that reduce the number of admissions by about 14 percent.

Periodic review. SMU inmates are reviewed by the unit team in conjunction with regularly scheduled Program Reviews as provided in the policy on Inmate Classification and Program Review[97]. The unit team specifically reviews inmates for progression through the levels of the program. An inmate's institutional adjustment, program participation, personal hygiene, and cell sanitation are considered when reviewing the inmate for progression to further levels.

Redesignation criteria. To be re-designated from SMU status, an inmate must for a period of 12 to 18 months, abstain from all of the following:

- Geographical group/gang-related activity
- Serious and/or disruptive disciplinary infractions

[97] P5100.08 Inmate Security Designation and Custody Classification (9112/06)

- Group misconduct that adversely affects the orderly operation of a correctional facility

The inmate must also demonstrate a sustained ability to coexist with other inmates, staff, and other persons.

Referral procedures. When an inmate has met the re-designation criteria, the unit team will submit a referral to the warden for designation to the general population. A review of records indicated that the referral is ordinarily for placement at another institution.

If an inmate is not recommended by the unit team for re-designation after 24 months, a referral for continued SMU designation must be submitted to the regional director. If the regional director approves continued SMU designation, the inmate will receive written notice of the decision and the rationale for it. The inmate may appeal the decision as provided by the Administrative Remedy Program.

The review of records, interviews with staff and inmates confirmed that the Bureau is in compliance with SMU referral and assignment policies and procedures both in form and in substance. However, the following concerns were identified in the review of this program and its associated processes.

Subjective criteria for admissions. The Bureau placement criteria provides for discretion and flexibility in assigning inmates to the SMU program. This is similar to the selection process in similar programs operated in state prison system. Instances of inconsistent assignments/rejections were found both in the file reviews and in observing the weekly SHU review meetings. The inconsistencies primarily existed from region to region. This inconsistency is balanced by the layered review process and the fact the final placement decision is made centrally.

While case law has indicated that assignment to programs like the SMU is left to the discretion and judgment of prison officials, inconsistencies in assigning practices have the potential to risk creating fairness and equity concerns. For example, we observed SMU inmates being referred for re-designation after a single serious disciplinary violation, while recommendations for other inmates with repeated instances of the same violation were rejected – or, in some cases – not initiated by the local administration. Demonstrable inconsistencies in assignment decisions create equity issues in the application of the placement of inmates to the SMU program. The balance between discretion of placement versus creating a consistent and reliable placement process is a challenge that all systems are presented with in rendering these types of placement decisions.

Periodic reviews. As noted earlier, SMU inmates are reviewed by the unit team in conjunction with regularly scheduled Program Reviews as provided in the policy on

Inmate Classification and Program Review. Upon arrival to the SMU, an intake screening is to be completed within 24 hours of the placement, with follow-up review to be completed after three days in SMU. Subsequent reviews are then conducted at seven, fourteen and twenty-eight days. Thereafter, the case manager complete thirty day reviews using form *BP-951, Special Management 30-Day Conditions Review.* This schedule of reviews is completed for the duration of the inmate's assignment to SMU.

Our observations, file reviews, and interviews with staff and inmates confirmed compliance with these SMU assignment reviews. However, while the documentation was available electronically and/or in paper form in the appropriate units, we found that official inmate records were not updated in a timely or consistent manner. During the course of observing the reviews we found that in some cases the reviews were held cell-side. It is most appropriate that all reviews be conducted in a private setting so that a proper and private review and hearing can be conducted.

FINDING: Scheduled SMU Conditions Reviews were in some cases not conducted in a private setting, consistent with professional practices, and were not reflected in the official inmate records in a timely manner.

Progression through program phases

The SMU program consists of four levels, with each level differentiated by conditions of confinement and anticipated time frames. Completion of all four levels will take at least 18-24 months with the goal of integrating the inmate successfully into a general population setting. An assessment of the progression process and the associated conditions of confinement from one level to the next is addressed in this section of the report.

To determine the conditions outlined above, we examined several key factors:

- Statutory requirements
- Bureau program statements
- Special Management Unit Inmate Handbook
- Bureau performance review reports
- Inmate files
- Housing unit activity schedules
- Manual and electronic systems designed to document conditions of confinement

- On-site observations of operational practices
- Staff interviews
- Inmate interviews

The project team found that the conditions of confinement for inmates assigned to the special management unit program were generally more restrictive than the conditions for inmates assigned to the general population and less restrictive than those assigned to a special housing unit (SHU). Although the conditions were more restrictive than in a general population setting, the conditions being provided in SMU appeared to be consistent with applicable federal regulations. As the inmate progresses from one level to the next, the program is designed to provide fewer restrictions on the inmate and more opportunity for programming. The following general findings for each level within the program are described.

SMU level 1. An inmate in Level 1 may be single or double-celled and is normally allowed to participate in recreation at the same time as other inmates however the overall interaction between inmates is minimal. With the exception of recreation almost all programming is provided while the inmate remains in the cell. The expected time to complete this level of the program is approximately four months. An initial programming assessment is completed by staff within the first 28 days of the inmates' arrival to the unit and every 90 days thereafter. All of the conditions of confinement identified in the federal regulations and program statements appeared to be provided to the inmates.

Progression through Level 1 is based on the inmate's compliance with behavioral expectations, completion of treatment assignments and absence of significant misconduct reports. Inmates meeting the program stipulations are expected to advance to the next level in approximately four months. At the time of the project teams site visits, inmates in Level 1 were being housed at USP Florence and USP Lewisburg. Inmates in Level 1 at USP Florence were housed in separate cells from inmates in Level 2. However at USP Lewisburg inmates in both levels were housed together.

The primary differences in conditions of confinement for inmates in this level compared to Level 2, were inmates in Level 1 are allowed two telephone calls per month compared to four per month for Level 2 and the topics covered in the in-cell treatment curriculum for each level were different.

SMU level 2. Interaction between inmates allowed in Level 2 was found to be very similar to the interaction allowed between inmates in Level 1. With the exception of recreation, almost all programming is provided while the inmate is in the cell. *Program Statement P5217.01 Special Management Unit* states that inmates in this

level have minimal interaction with other inmates and inmates will ordinarily be restricted to their assigned cells. Level 2 inmates were being housed at USP Florence and USP Lewisburg. Observations made by team members reflect that operational practices were generally consistent with the program statement at this level. The progress of each inmate in Level 2 is formally reviewed by staff at least every 90 days. Progression through Level 2 is based upon the inmate demonstrating the potential for positive "community" interaction. Inmates meeting the program expectations of Level 2 are normally double-celled and expected to advance to the next level in approximately six to eight months.

The primary differences in conditions of confinement between Level 1 and 2 were the number of telephones calls allowed per month (2 versus 4) and the treatment curriculum. In addition, at USP Florence, there was an incentive program for inmates who were on extensive telephone restriction to be allowed a telephone call if their adjustment and progress in the program was positive. All programming with the exception of recreation was being provided on an individual basis while the inmate remained in their cell.

SMU level 3. The *Program Statement, P5217.01, Special Management Unit*, states in part the following: "inmates at this level will begin to interact in an open, but supervised, setting with individuals from various groups, to include open movement in the unit and frequent group counseling sessions commensurate with the inmate's demonstrated ability to effectively coexist with other inmates." The progress of a Level 3 inmate is formally reviewed by staff at least every 90 days. Progression through Level 3 is based upon the inmate's ability to demonstrate positive "community" interaction skills. Inmates meeting the program expectations of Level 3 are normally double-celled and expected to complete Level 3 in approximately six to eight months.

At the time of the project teams site visits, Level 3 inmates were being housed at all the three SMU program facilities; USP Allenwood, USP Lewisburg and USP Florence. Inmate interaction and conditions of confinement for inmates in Level 3 at USP Allenwood and USP Florence were noticeably increased compared to Level 1 and 2. The increase was primarily the result of the addition of indoor recreation opportunities being provided and expanded access to telephones, commissary and visits. Inmates housed at USP Lewisburg in Level 3 appeared to have little increase in inmate interaction as no indoor recreation was offered. Although inmate interaction and average out-of-cell time had increased at USP Allenwood and USP Florence when compared with Level 2, there was no "frequent group counseling" that was being offered at any of the three facilities.

The lack of frequent group counseling or virtually any group counseling is in contrast with the language found in the SMU program statement which states "... to include frequent group counseling sessions." Group counseling was almost

nonexistent. The only group program being provided at the time of the review was a "cognitive skills for reentry preparation" group that was being offered to Level 3 and 4 inmates at USP Florence. Facility staff reported that due to construction delays the group had recently started just prior to the project team's arrival.

SMU level 4. Program Statement P5217.01 states that "...inmates must be able to demonstrate their sustained ability to coexist and interact appropriately with other individuals and groups in the unit." Inmates in Level 4 are reviewed by staff at least every 30 days. Progression through Level 4 is based upon the inmate's ability to function in a general population setting with inmates of various group affiliations. Inmates meeting the program expectations of Level 4 are double-celled and expected to be integrated into the general population after being in the level between two and four months.

There were very few differences noted in the conditions of confinement between Level 3 and 4 at USP Florence and USP Lewisburg. The primary difference was the increased treatment focus on preparation and transitioning out of the SMU program. At USP Allenwood, there were a few additional differences, including: Level 4 inmates were allowed to purchase extra clothing (sweat shirt/pants), make up to 300 minutes of social telephone calls per month (Level 3 150 minutes) and receive additional visiting hours per month (four). At USP Lewisburg and USP Florence there were no noted significant differences between the two levels with the exception of the treatment curriculum.

Observations on progression

At the time of the review, the USP Lewisburg SMU program was considered a Level 1 and 2 facility; however, a number of Level 3 inmates were being housed at USP Lewisburg in the SMU program. The inmate handbook dated May 2013 states that "...since bed space is sometimes limited some inmates will complete Level 3 at USP Lewisburg." On the second day of the project team's site visit, there were over one hundred Level 3 inmates housed at USP Lewisburg. Management personnel reported that a combination of factors resulted in a higher than normal number of inmates in Level 3 and 4 being housed in the SMU. The Bureau was unable to identify the number of Level 3 inmates housed with Level 2 and Level 1 inmates are Lewisburg.

Factors influencing housing at USP Lewisburg included the following:

- USP Florence was no longer accepting Level 3 inmates as a result of a revised agency plan to phase out the SMU program at USP Florence. This decision temporarily reduced the number of available Level 3 and 4 beds in the SMU program.

- USP Lewisburg had space available in the SMU while USP Allenwood, a Level 3 and 4 facility, had limited beds available to accept additional inmates.
- Several inmates in Level 3 and 4 had a scheduled release date into the community that was within the next few months, and a decision was made to allow those inmates to remain at USP Lewisburg until their release.
- Limited bed space was reported to be available at FTC Oklahoma City which serves as an administrative security federal transfer center designed to house holdover inmates in-transit to other facilities.
- The transfer review and authorization process including the centralized efforts by staff at the DSCC, located at the Grand Prairie, Texas, office complex, reportedly impacts the timeliness of transfers. Staff reported that several inmates had been approved for Level 3 program placement. However, because of a lack of alternative space being available and/or inmate separation issues, numerous inmates were on an approved waiting list pending transfer out of Lewisburg or were awaiting a decision regarding their transfer. This backlog appeared to impact the program progression process and the conditions of confinement received for inmates in Level 3 and 4. The average time on the waiting list for transfer to USP Allenwood was 60 days as reported by the associate warden for programs. A delay in transfers to various degrees was noticed at all three facilities providing a SMU program, however it was most significant at USP Lewisburg.[98]
- The waiting list for inmates to transfer to USP Allenwood was not based on a chronological order. Staff reported that command personnel from USP Allenwood are allowed to select inmates on the approved transfer list who appear to be the most compatible with the inmate population at USP Allenwood. As a result, some inmates who had progressed to Level 3 and were approved for transfer had to wait an extended period of time prior to being transferred due to the selection process. The selection process appears to be in contrast with one of the primary goals of Levels 3 and 4, which is to prepare inmates to coexist in a general population setting with other individuals and groups.

The project team reviewed several inmate files at each of the three SMU programs. The purpose of the review was to assess the progression process and to determine whether inmates were advancing in the program as described in the SMU program statement. As a result of the review, it was determined that in most situations

[98] The Bureau reported that policy requires transfer applications be processed within 60 days.

inmates were progressing through the program in time frames consistent with their adjustment to the guidelines established for the program. Inmates who were in compliance with the guidelines were routinely advancing in levels. Inmates who were not completing assignments and/or were receiving disciplinary infractions were appropriately not progressing and in some cases regressing (i.e., going from Level 2 to 1 in the program. Overall, staff was consistently monitoring inmate behavior and the inmates' progression through the program. Personnel assigned to the unit teams were found to be very familiar with the criteria for advancement in the program and they appropriately documented the progress of each inmate on their caseload.

The most significant issue noted in the file review was that when an inmate completed a particular level, and the completion required a facility transfer, the timeliness of the transfer was not consistent with maintaining the integrity of the program. This practice was most prevalent at USP Lewisburg, although the delays occurred at all three SMU facilities. Although the inmate would advance to Level 3, they would remain at the facility and not receive similar conditions of confinement as those inmates in Level 3 housed at USP Florence or USP Allenwood. As a result, the inmates' consistent exposure to less restrictive conditions of confinement based on level completion was often delayed. For example, expanded out-of-cell time, access to larger recreation areas, increased interaction, access to indoor recreation and access to additional program activities did not always occur in a timely fashion.

During the course of our review at USP Lewisburg and USP Allenwood, we noted that delays in movement from Level 2 from Lewisburg to Level 3 at USP Allenwood were occurring. Inmates advancing to Level 3 and 4 from USP Lewisburg were considered for transfer to USP Allenwood or USP Florence. At the time of the site visit to Lewisburg only USP Allenwood was accepting Level 3 inmates from Lewisburg. The average time on the waiting list for transfer to USP Allenwood was 60 days according to the associate warden for programs. Similar information was obtained during the subsequent review of USP Allenwood.

Level 3 inmates awaiting transfer from USP Lewisburg are generally held in housing units E, F and I. Due to the limited space and separation issues, numerous inmates who have completed the program and have earned a transfer from the facility are on a transfer waiting list. Staff reported there were 112 inmates in Level 3 housed in the SMU. This backlog proves to be a concern and disrupts the smooth flow of inmates who should be progressing through the system. The waiting list for transfer is not managed chronologically. USP Allenwood personnel are allowed to select inmates who are most compatible with the population at that facility, based largely on separation issues.

Inmates in Level 3 housed at Lewisburg pending transfer or release do not receive the same programing opportunities as inmates in Level 3 at USP Allenwood. Inmates who advance to Level 3 at USP Lewisburg earn credit toward completion of Level 3 and are

afforded some of the Level 3 privileges to the extent possible. However, no group activities are allowed outside of the recreation that is being provided at Lewisburg. Long delays in advancement to USP Allenwood, are problematic and are somewhat self-defeating for the SMU program.

Staff at both USP Lewisburg and USP Allenwood reported that the backlog in the system was in part the result of the limited number of appropriate beds available in the Bureau. Staff indicated there are few beds available at USP Allenwood, which provides Level 3 and 4 housing.

FINDING: Current backlogs in inmates awaiting transfer to the next program level negate the intent of the program design and decrease the motivation to change behavior. Further, it is inconsistent with the program's objectives to hold graduates of Level 2 in a unit that operates with that level's restrictions rather than receiving the benefits of advancement to Level 3.

The project team visited each of the SMU programs and observed highly qualified and trained staff closely monitoring the progress of each inmate assigned to the SMU program. This monitoring process was reflected by staff's routine on-site presence in the units and a review of the inmate files where progression compliance was well documented. The design of the SMU program held the inmate accountable for his actions. The inmate was responsible for taking an active role in the program and through the successful application of self-study and individual participation he was able to advance through the levels. The program activities that have been established focus primarily on the development of positive behavior and values that are designed to assist the inmate in successfully residing in a general population setting.

The project team found that the SMU program was essentially a two phase program where in each phase there are currently two levels. The first major phase primarily is what the Bureau refers to as Level 1 and 2 which consists of in-cell programming. With the exception of recreation and individual access to an electronic law library kiosk almost all programming is provided to the inmate while he remains in the cell.

The Bureau *Program Statement, P5217.01, Special Management Unit,* states inmate interaction with other inmates at Levels 1 and 2 is designed to be "minimal". The project team found interaction was indeed minimal and that there was very little difference in the conditions of confinement between the two levels. The primary difference was the number of telephone calls allowed per month and the topics covered in the treatment curriculum.

The second major phase of the program includes Levels 3 and 4. This phase is designed to focus more on preparing the inmate for general population housing. Through expanded out-of-cell time, increased interaction with others and exposure to a revised treatment curriculum the inmate is being presented the opportunity to

experience conditions and treatment that will allow him to demonstrate "positive" community interaction skills. The program statement cites that during these two levels "frequent group counseling sessions" will be offered. The project team did not identify any frequent group counseling sessions occurring - either first hand through observation or through staff/inmate interviews. There was one reentry group that had recently started at USP Florence however most programming, outside of recreation, continued to be provided individually while the inmate remained in his cell. The primary difference in the conditions of confinement between Level 3 and Four was is in the treatment curriculum provided. The project team did find some minor differences between the two levels involving frequency of telephones calls or types of visits provided at an isolated facility, however, this was not the case at all three facilities.

The expanded focus on developing preparedness to enter the general population was the key difference observed between Levels 3 and 4. In reality, Level 4 has become an almost perfunctory step at USP Allenwood. When the inmate graduates from Level 3 and moves to Level 4, the re-designation request is immediately submitted. The completion of the Level 4 program is almost universally four months, except where major issues arise with the inmate's adjustment. In reality, once Level 3 is completed, the inmate is prepared to return to general population.

Based on other state practices and the observations of the SMU programs, the program should be consolidated into a three-phase program rather than the current four-phase program.

In order to achieve this, Level 3 and Level 4 as now constituted in the SMU would be consolidated into a single program phase. It would operate like the current Level 4. Level 1 and 2 would continue to operate as presently constituted.

RECOMMENDATION 4.7: Reexamine the SMU levels as they currently operate, their corresponding conditions of confinement, the length of time in each level, and their compliance with the SMU program statement. The program should be consolidated into a three-phase program rather than the current four-phase program and the minimum length of time to complete the program adjusted accordingly.

Additional concerns noted by the project team involved the delays in progression through the levels, specifically when the progression involves a facility transfer. Inmates requiring a facility transfer in order to continue to advance in the program were often delayed access to the full scope of conditions that came with the new level because of the delay. As a result of the delays, extensive backlogs in transfers develop and the opportunity for access to the full scope of less restricted conditions of confinement exist. This practice was most evident at USP Lewisburg.

As mentioned previously in this section of the report, the lack of frequent group counseling sessions being offered for Level 3 and 4 inmates was a concern identified by the review team. The Bureau program statement on SMUs clearly states that in Level 3 and 4 frequent group counseling sessions are to be included. Group counseling was limited and the continued practice of providing individual in-cell programming was primarily being offered to inmates in Level 3 and 4.

Lastly, the progression process identified by the project team raised concerns due to the inconsistency in conditions of confinement offered to inmates in the same level. For example, inmates in Level 3 of the SMU program housed at USP Allenwood are allowed up to 150 minutes in social telephone calls per month, two (2) one-hour noncontact social visits per month and indoor and outdoor recreation. The same inmate if housed at USP Lewisburg would be allowed twice the number of social telephone call minutes per month (up to 300 minutes), more than twice the amount of social visits per month (five (5) one-hour social visits) and outdoor recreation only.

FINDING: There is a lack of consistency in the conditions of confinement for an inmate classified at the same level in the same program when housed at a different facility. This presents concerns regarding the integrity and design of the level system.

Due process and ADX

In October 2012, a memorandum was issued by the assistant director of the Bureau's Correctional Programs Division, outlining a revised referral process for ADX general population placement.[99] The key provisions of the referral process are outlined in this memorandum and are summarized in the following paragraphs.

Placement of inmates in the ADX general population is at the discretion of the assistant director of the Correctional Programs Division (CPD). The Executive Panel (assistant director, North Central regional director, warden of Florence ADX) retains authority for placement of inmates into the ADX control unit.

Placement criteria: Referrals for placement at ADX-general population must meet one or both of the following:

[99] Memorandum from Assistant Director, Correctional Program Division, Oct 15, 2012, Administrative Maximum Facility General Population Referral Procedures.

- Inmate's placement at other facilities creates a risk to institutional security and good order or poses a risk to the safety of staff, inmates, others or to the public safety.
- Due to the inmate's status either before or after incarceration, the inmate may not be safely housed in the general population of another institution.

The memorandum outlines the factors that are sufficient to warrant consideration for placement:

- The inmate is subject to restrictive conditions of confinement as a result of a SAM or based on documented information from a government agency that the inmate was linked to terrorist activities and presents national security management concerns.
- The inmate is subject to restrictive conditions and the sentencing judge imposes restrictions on contacts by the inmate pursuant to 18 U.S.C. 3582(d) or a similar statute.
- The inmate engaged in any conduct that is prohibited by any federal or state law in the facility where the inmate was housed.
- The inmate has committed two 100 or 200 level prohibited acts within the last 60 months.
- After being validated as a member of a Disruptive Group the inmate committed any 100 level prohibited act.
- The inmate has been identified as participating in, organizing, or facilitating any group misconduct that adversely affected the operation of the facility.
- The inmate engaged in behavior that is of such severity that it is determined that the inmate would be unable to function in a less restrictive environment without being a threat.
- The notoriety of the inmate is such that his well-being would be jeopardized if placed in a less secure facility.
- The inmate has access to resources to the extent that housing in a less secure facility would pose a higher probability of escape.

There is a detailed outline of the referral and review process for inmates who were already designated, for inmates referred for initial designation after sentencing, and for referral of those within the witness security program. The process for review of these referrals is somewhat similar and requires the appointment of a hearing

administrator to conduct a due process hearing. The review process, similar to that for SMU placement, is a multi-tiered review process that includes reviews by the warden, regional director, the administrator of the Intelligence and Counter Terrorism Branch, the chief of DSCC and the assistant director of the Correctional Programs Division. The Office of Medical Designations and Transportation also performs a review of the case in relation to mental health and medical needs. The intent of this review is to exclude inmates from ADX placement if they have serious mental or medical illnesses. This review is cited in P5310.16. In addition, a requirement to include psychological testing in the mental health evaluation is incorporated in this policy along with more detailed guidance regarding the content of the mental health evaluation.

A hearing administrator will be designated by the national discipline hearing administrator to conduct a due process hearing for inmates who are referred for placement at ADX-general population. Notice is provided to the inmate at 24 hours prior to the hearing. The inmate has the right to be present for the hearing and have opportunity to make a statement and present evidence to the hearing administrator. At the conclusion of the hearing, the hearing administrator shall prepare a written recommendation on whether placement at ADX is warranted.

The report is submitted to the assistant director of the Correctional Programs Division for review and either acceptance or rejection of the placement. If accepted the Chief of DSCC is notified of the final decision to initiate the placement.

The process for admission to the ADX control unit is similar. However, the request is forwarded to the regional director for the North Central region (as the ADX falls within that region) and the final decision must be jointly approved by the assistant director for the Correctional Programs Division and the regional director for the North Central region.

After the adoption of the ADX referral and assignment process as outlined in the October 13, 2012 memorandum[100], all inmates already assigned to ADX were afforded a hearing, retroactively.[101]

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[100] The Bureau reported that they first implemented these procedures on January 1, 2008. They have since been updated and modified. In November 2009, the agency decided to provide this due process placement hearing, following the new procedures and criteria outlined in the guidance memorandums, to all inmates housed at the ADX who had not received such a hearing.

[101] In our interviews, one ADX inmate claimed that he was never afforded a hearing before or after his assignment to ADX. Along with ADX Florence staff, we reviewed the inmate's file and could find no documentation that the inmate was ever afforded a hearing. ADX Florence staff attempted

Through the file reviews, interviews with inmates, and review of the operations of ADX we confirmed that inmates are advancing through the ADX program into the step down program that can lead to assignment to general population outside of ADX. At the time of our visit to USP Florence, 18 inmates were in the final stage of the step down program, with several awaiting assignment to an appropriate unit in the general population of USPs.

The review of due process for ADX found general compliance with the referral and admission policies and procedures, including completion of appropriate documentation.

The review of ADX control unit inmate records revealed missing or incomplete documentation directly related to the ability to verify due process-type protections in four of the files reviewed. This is consistent with our review of SMU inmate records where we noted that due process-type documentation for SMU inmates was missing from some of those records.

As noted in the assessment of Bureau re-entry programs we found that there is little education or information sharing for inmates who are completing the lengthy ADX confinement process and preparing to be either released to the community or released to general population at a non-ADX facility. This is detailed further in the reentry section of this report.

Administrative remedy program

The policy and procedures of the Bureau Administrative Remedy program are outlined in *PS 1330.18* dated January 6, 2014.

The purpose of the Administrative Remedy Program as stated in *PS 1330.18* is to allow an inmate to seek formal review of an issue relating to any aspect of his/her own confinement. An inmate may not submit a Request or Appeal on behalf of another inmate. As stated in the policy document the objectives of the Administrative Remedy Program are as follows:

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to locate the documentation while we were on-site. Then, they were invited to locate the appropriate documentation of the hearing and to notify us when it was located. We never received such notification.

- Provides a procedure that is available to all inmates by which they will be able to have any issue related to their incarceration formally reviewed by high-level Bureau officials.
- Provides that each request for review, including appeals, will be responded to within the time frames specified in the policy.
- Provides for a process to ensure that a record of inmate administrative remedy requests and appeals will be maintained.
- Through the administrative remedy process, it is believed that Bureau policies will be more correctly interpreted and applied by staff.

The Bureau's Administrative Remedy Program contains no time or subject matter limits, thus allowing any inmate a separate and unrestricted avenue to raise issues or seek relief regardless of when the alleged incident occurred.

FINDING: The Administrative Remedy Program provides a redundant level of due process protection for all Bureau inmates, beyond that provided by many state departments of corrections.

Using the process, inmates can challenge any aspect of their confinement, including segregation placement and conditions at any time. For disciplinary segregation inmates, because their challenge is to the DHO decision, the challenge goes directly to the regional office via form *BP-10*. For SMU and ADX inmates the challenge goes directly to the Office of General Counsel in the Central Office via form *BP-11*.

The warden is required to appoint one staff member, ordinarily above the department head level, as the administrative remedy coordinator (coordinator) and one person to serve as administrative remedy clerk (clerk). The regional director and the national inmate appeals administrator, Office of General Counsel, is to be advised of these appointees and any subsequent changes.

To coordinate the regional office program, each regional director is required to appoint an administrative remedy coordinator of at least the regional administrator level, ordinarily the regional counsel, and an administrative remedy clerk.

PS 1330.18 establishes timelines for responses from the appropriate Bureau officials. Administrative Remedy fillings and responses are tracked via the Bureau central computer system. A listing of all remedy filings for the period from December 19, 2012 to December 19, 2013 for all inmates housed in SMU was provided. A total of 404 filings are listed for this time period for inmates housed in USP Lewisburg, USP Allenwood, and USP Florence. The report provides a status code for each remedy request filed. These codes (and their unedited language supplied by the Bureau) are as follows:

- ACC (Accepted)—The inmate has properly filed an administrative remedy at the appropriate level (i.e., the packet that the inmate submitted has all required documentation for the level that the inmate is filing at) and has properly exhausted at the lower levels.

- REJ (Rejected)—The inmate has not properly filed an administrative remedy at the level that the remedy was submitted at (i.e., the packet that the inmate submitted does not have all required documentation for the level that the inmate is filing at) and/or the inmate has not properly exhausted at the lower levels prior to submitting the remedy. We do not reject appeals because the nature of the issue is not valid for a remedy request. We respond to all appeals even though the inmate may have to use another avenue for their request (i.e., Tort Claims), but we do not reject an appeal based on a nonvalid issue.

- CLD (Closed Denied)—The inmate will NOT be granted the relief that they are requesting in their administrative remedy.

- CLG (Closed Granted)—The inmate WILL be granted the relief that they are requesting in their administrative remedy.

- CLO (Closed Other)—An appeal can be closed using CLO for various reason which will be reflected in the status reason code. For example, CLO ISJ - improper subject matter; CLO MOT request or appeal is moot; CLO REP request or appeal is denied as repetitive of previous filing; CLO WDN withdrawn at inmate's request; CLO XPL information or explanation for the inmate's request is only provided; or CLO OTH, this can be used when an inmate who filed an administrative remedy has died.

- VOID—An appeal can be voided out of the system when the information initially entered for the inmate is entered incorrectly and needs to be corrected for a proper record of the appeal submission.

The status of the 404 remedy filings by SMU inmates listed on the documents is noted in table 23.

Table 23. Remedy/SMU filings by reason, December 19, 2012 – December 19, 2013

Decision	Number	Percent
Accepted	118	29%
Closed—denied	89	22%
Closed—granted	0	0.%
Closed—other	71	18%
Rejected	122	30%
Void	4	1%
Granted	0	0%
Total	**404**	**100%**

Source: Bureau of Prisons.

The above analysis does not included filings that are informally resolved as provided by *PS 1330.18*, paragraph 542.13. The most obvious indicator from this review is the fact that none of the 404 filings are listed as granted.

Similarly, data on filings for SHU inmates for the same time period were obtained from the Bureau. For the time period from December 19, 2012 to December 19, 2013 a total of 285 requests were noted on the data sheet. The status of the 285 filings by SHU inmates are shown in table 24.

Table 24. Remedy SHU filings by disposition type, December 19, 2012 – December 19, 2013

Decision	Number	Percent
Accepted	101	35%
Closed—denied	15	5%
Closed—granted	0	0%
Closed—other	21	7%
Rejected	147	51%
Void (VOD)	1	<1%
Granted	0	0%
Total	**285**	**100.00%**

Source: Bureau of Prisons.

As noted with SMU filings, these data do not include filings that have been informally resolved per the policy. Also similar to the SMU the most obvious indicator is that none of the requests for relief have been granted.

Each facility AR clerk maintains a separate tracking and accountability system to track each filing from initiation of the remedy request to investigation and response,

through the appeals process. These systems are time sensitive so that reminders and flags are attached to ensure timely responses.[102]

The AR clerks also ensure that AR's are entered into the central Bureau system. Institutional staff reported that the local tracking systems (spreadsheets) are more detailed and helpful than reliance on the central tracking system.

Inmates can appeal UDC or DHO decision via the Administrative Remedy Program. UDC decision is appealed locally (form *BP-8*) and DHO decision is appealed to the region (form *BP-10*).

A 2013 study, "Procedural justice and prison: Examining complaints among federal inmates (2000-2007),"[103] which was conducted by David M. Bierie appears to validate the Bureau's grievance system. "Generally speaking, people feel a process is more 'just' when their voice is heard before decisions are made, decision makers treat everyone equally, outcomes are proportionate, and there is a process of appeal or challenge if they don't agree with an outcome." The opposite is also true if the system is perceived to be unfair; thus, the grievance process plays "a central role in generating compliance or defiance" by inmates.

The study found that the Bureau's grievance system is perceived by some inmates as overly formal and more concerned with procedural practices and deadlines than the substance of a complaint.

The study also reported that most complaints concerned issues related to discipline, medical care and staff, with food, housing and use of force at the bottom of the list.

The timelines for responses to *PS 1330.18* remedy requests were summarized by the national inmate appeals administrator during an interview on November 14, 2013. These timelines are as follows:

- Initial filing: 20 calendar days from the date on which the basis of the filing occurred
- Wardens review: Warden's review is to be completed within 30 calendar days with a possible 30 day extension with cause

[102] For example, PS 1330.18 requires that grievances to wardens must be answered within 30 days, appeals to the region must be responded to within 30 days and appeals to the central office must be responded to within 40 days, each with possible 30-day extensions.

[103] "Procedural justice and prison: Examining complaints among federal inmates (2000-2007)," by David M. Bierie. Psychology, Public Policy and Law, Vol. 19(1), Feb. 2013.

- Regional director: Inmate must appeal to the regional director within 20 calendar days of the date Warden signed the response. The regional director must respond within 30 calendar days with an additional 30 day possible extension
- Central office appeal: Appeals submitted to the central office are to be responded to within 40 days with a possible 30-day extension with cause

The national inmate appeals administrator reported that in November 2013 central office was 11 months behind in responding to appeals to central office. It was reported that this was due to the volume of complaints and the complexity of the appeals. However, the administrator reported that the office has made a concerted effort to process restrictive housing appeals in a more expeditious manner, resulting in less time to address these issues.

Chapter 5: Mental health assessment and treatment

One of key areas of concern in the use of restrictive housing and/or solitary confinement is the mental health status of the people who are assigned to such housing units. As suggested in the literature review, it has been found in other studies that large proportions of the segregated populations suffer from mental illnesses that either predate admission to restrictive housing and/or develop as a result of the restrictive housing experience. Regardless of the basis for the mental health illness, it is essential that inmates with a current mental health illness in restrictive housing be properly diagnosed and treated.

In this chapter, we review the Bureau's mental health population that is assigned to SHU, SMU or ADX facilities and units. As noted in the earlier chapter, only a small percent of the Bureau's restrictive inmate population has been identified with a significant mental illness of some kind. This figure likely represents an under identification of those inmates who are truly suffering from some form of a mental health illness.

The most recent mental health status data on state, local jails and the Bureau are based on a 2005 survey. As shown in table 25, large percentages of all three inmate populations were found to be diagnosed by the external researchers to have at least one recent history (past 12 months) of a mental health illness. In terms of current symptoms, the percentages are somewhat lower but still significant. For the Bureau the estimate was 31 percent of the inmates having current mental health illness . symptoms.

Also shown in table 25 are the November 2013 mental health care levels. Significantly, 93 percent of the population are in Care Level 1 which is the lowest care level available. This is not to say that some portion of these inmates have no mental health issues. The Bureau reported that under current policy, inmates assigned to Care Level 1 can and do have such symptoms but do not raise the level of elevated treatment beyond medication.

Table 25. Symptoms of a mental health disorder among prison and jail inmates

Symptoms in past 12 months or since admission	State prison	Federal prison	Local jail
Major depressive or mania symptoms	%	%	%
Persistent sad, numb, or empty mood	32.9	23.7	39.6
Loss of interest or pleasure in activities	35.4	30.8	36.4
Increased or decreased appetite	32.4	25.1	42.8
Insomnia or hypersomnia	39.8	32.8	49.2
Psychomotor agitation or retardation	39.6	31.4	46.2
Feelings of worthlessness or excessive guilt	35.0	25.3	43.0
Diminished ability to concentrate or think	28.4	21.3	34.1
Any attempted suicide	13.0	6.0	12.9
Persistent anger or irritability	37.8	30.5	49.4
Increased or decreased interest in sexual activities	34.4	29.0	29.5
Thoughts of revenge	28.4	21.3	34.1
Psychotic disorder symptoms			
Delusions	11.8	7.8	17.5
Hallucinations	7.9	4.8	13.7
Bureau mental health care levels			
Care level 1	N/A	93%	N/A
Care level 2	N/A	6%	N/A
Care level 3	N/A	<1%	N/A
Care level 4	N/A	<1%	N/A

Source: *Survey of Inmates in State and Federal Correctional Facilities, 2004, and the Survey of Inmates in Local Jails, 2002.*

Nationally, the Bureau of Justice Statistics estimates that at least 15 percent of the state inmate population has symptoms of psychotic disorders as compared with the Bureau's percentage of 13 percent.[104] A very small percentage of the Bureau inmates with serious mental illnesses are transferred to specialized mental health treatment facilities located at the Atlanta, Butner, Springfield, Carswell, Devens or Rochester facilities. In addition, residential mental treatment units addressing a range of mental health conditions are located at Atlanta, Coleman, Danbury, and Terre Haute.

[104] Bureau of Justice Statistics, *Mental Health Problems of Prison and Jail Inmates*, September 2006, NCJ 213600.

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The Bureau advised the project team that additional residential mental health treatment units are planned for activation in 2015 at Allenwood and Florence.

This assessment is intended to evaluate those inmates in the Bureau with a serious mental health problem to determine if the diagnosis and treatment plans prescribed by the Bureau are appropriate. Recommendations are made at the end of the chapter that would serve to improve the current mental health system within the Bureau.

Assessment process

Two board-certified psychiatrists (Dr. Pablo Stewart and Dr. Roberta Stellman) were retained to conduct independent mental health assessments of inmates assigned to the various restrictive housing units within the Bureau. Each psychiatrist was given a structured interview form to be completed on each sampled inmate. The assessment was based on: (1) a brief review of the existing BOP mental health record retained at the BOP facility and (2) a face-to-face confidential interview with the inmate.

For each inmate taking part in the review process the CNA retained psychiatrist was asked to make the following assessments and opinions:

- Did the CNA psychiatrist agree with the Bureau mental health diagnosis?
    - If no, what was diagnosis is recommended by the CNA psychiatrist?
- Did the CNA psychiatrist agree with the Bureau prescribed treatment including medication and out of cell treatment?
    - If no, what is the recommended treatment for the inmate?
- Did the CNA psychiatrist believe the inmate was appropriate for placement in restrictive housing?
    - If no, what form of housing is recommended?
- Were there any other comments that pertained to this inmate's mental health status or treatment appropriate for this person?

For each selected facility, a list of inmates housed in restrictive housing and scheduled to be assessed was provided by CNA several days in advance of each visit. Inmates that were sampled were predominantly assigned to Mental Health Care Levels 2 and higher. As noted in Chapter 3, the specific definitions provided by the Bureau for the four care levels are as follows:

- CARE Level 1-MH—no significant mental health care

- CARE Level 2-MH—routine outpatient mental health care or crisis oriented mental health care
- CARE Level 3-MH—enhanced outpatient mental health care or residential mental health care
- CARE Level 4-MH—inpatient psychiatric care

In addition to the level of mental health care, the Bureau also provided the date the inmate was admitted to either SHU, SMU or ADX status in order to calculate the length of stay in restrictive housing. In sampling the cases, efforts were made to ensure that people who had experienced lengthy periods of time in restrictive housing were included in the sample. As such the sample is not a pure random sample but rather a purposeful sample that was designed to ensure inmates with various lengths of stay were captured.

CNA also sampled a small number of inmates who were a) assigned to Mental Health Care Level 1 and b) who had been in restrictive housing for extensive periods of time. These cases were sampled to determine if some levels of de-compensation in their mental health status had occurred since being assigned to restrictive housing.

Due to the inmate refusals there were some instances where additional inmates were evaluated simply based on their willingness to be assessed. These "nonsampled" cases were included in the overall evaluation to ensure a sufficient number of inmates were evaluated at each facility.

It is recognized that there has been considerable debate about the reliability of psychiatric diagnosis between psychiatrists. Previous studies have shown low level of inter-reliability when two psychiatrists are asked to assess the same mental health patient.[105] However, in this situation the project psychiatrists were not being asked to develop a full psychiatric assessment to formulate a diagnosis. Rather the task was to review the current diagnosis and treatment plan to determine whether the two were consistent with one another. This type of review is commonly done by supervising psychiatrists who oversee mental treatment units. Both of the project psychiatrists who conducted these reviews have considerable experience in this area.

[105] Aboraya, Ahmed, Eric Rankin, Cheryl France, Ahmed El-Missiry, and Collin John. "The Reliability of Psychiatric Diagnosis Revisited: The Clinician's Guide to Improve the Reliability of Psychiatric Diagnosis." Psychiatry. January 2006; 3(1): 41-50.

Inmate interviews and case review trends

Table 26 summarizes the overall sampling results. The 12 facilities/housing units reviewed had a total of 2,683 inmates in restrictive housing shortly prior to each site visit. Of that population, only 297 (or 11 percent) were determined by the Bureau to have some mental health issue. Of these 297 inmates, 180 (or 61 percent) were interviewed and assessed. For some facilities, the number of cases evaluated exceeded the number of mental health care inmates at the facility. These higher numbers reflect inmates who were not designated with a significant mental health issue but were evaluated to assess the accuracy of the Level 1 mental health status.

Table 26. Cases interviewed and assessed

Facility	Population in restricted housing at time of site visit	Mental health care level 2 or higher	Inmates interviewed and assessed
Allenwood SHU	116	20	20
Atlanta SMU MH	7	7	7
Butner SHU	70	4	9
Coleman SHU	171	21	14
Florence ADX	368	36	23
Florence SMU	493	41	22
Florence SHU	13	5	2
Hazelton SHU	24	6	11
Lewisburg SMU	779	47	25
Terre Haute SHU	200	32	16
Tucson SHU	221	39	13
Victorville SHU	221	39	18
Total	**2,683**	**297**	**180**

Source: Bureau/JFA

Table 27 shows the medical and mental health care levels for the interviewed inmates. The most frequent level of mental health care is Level 2 followed by Care Level 3. The 35 Care Level 1 inmates were those that had been assessed by the Bureau as not having a substantial mental health problem. However, the CNA psychiatrists concluded that 7 (or 20 percent) of the 35 cases had a significant mental health problem.

While the sample size is quite small and may not be completely representative of the entire Care Level 1 population, it raises the possibility that a proportion (20 percent) of the entire Care Level 1 population may have a significant mental health issue that

has been missed by the Bureau mental health system. This conclusion is supported by the non-mental health interviews where a significant proportion of the inmates reported being depressed and/or having medical symptoms related to depression and anxiety (e.g., loss of weight, inability to sleep).

The Medical Care Levels are also noteworthy with almost half of the sample having significant medical problems, which placed them in Care Levels 2 and 3. In terms of their time in restrictive housing at the time of the site reviews, the average overall time was 242 days. The ADX inmates had the longest average number of days in restrictive housing at 959 days.

Table 27. Key health care attributes of assessed inmates

Attribute	Frequency	% of Total
Total cases	180	100%
Mental health care status		
Mental health care 1	35	19%
Assessed as care level 1	27	77%*
Assessed as care level 2	4	11%*
Assessed as care level 3	3	9%*
Mental health care 2	114	63%
Mental health care 3	31	17%
Restrictive housing status		
SHU	49	27%
SMU	108	60%
ADX	23	13%
Medical care status		
Care level 1	84	47%
Care level 2	69	38%
Care level 3	12	7%
Unknown	15	8%
Average time in restrictive housing	242 days	
SHU	107 days	
SMU	144 days	
ADX	959 days	

* Percentages based on the 34 care level 1 inmates. For one case there was no CNA assessment.

Finally, in general terms, the independent psychiatric review found considerable disagreement in the core areas of a mental health program. These include: initial mental health diagnosis, adequate psychiatric staff coverage and coordination with other mental health staff, provision of adequate out-of-cell treatment services based on individualized treatment needs, review/modification of prescribed medication, and the capacity to quickly remove an individual from a segregated environment and place them in a health services treatment unit for residential treatment.

FINDING: Based on the review of the inmate mental health records and the inmate interviews, the reviewers disagreed with the BOP diagnosis in nearly two thirds of the cases reviewed. The review further indicated that the treatment being offered by the BOP was insufficient or inappropriate in over half of the cases reviewed.

CNA believes that approximately one-third of the cases reviewed should not be assigned to restrictive housing and about 30 percent should be placed in a specialized mental health program or residential treatment unit similar to the one implemented at USP Atlanta and found in many state prison systems. These units are structured clinical environments that provide daily programming and a therapeutic milieu for individuals who cannot function in general population due to their mental illness and frequently receive disciplinary reports as a consequence. It is noted that the Bureau has indicated that, in 2015, the Atlanta program will be expanded with the establishment of a similar treatment program at USP Allenwood.

Table 28. Key conclusions of independent psychiatric review

Assessment item	Inmates	%
Total sample	180	100%
Disagree with bureau diagnosis	114	63%
Inappropriate treatment	95	53%
Does not require restrictive housing	65	36%
Needs mental health program	53	29%

Clinical analysis and observations

The following section provides a more in-depth assessment of the current BOP mental health system as it is operating in the SHU, SMU and ADX restrictive housing environments. The intent is to better understand the statistical data presented earlier in this chapter and to identify problems that are restricting the delivery of effective mental health services to inmates in the SHU, SMU and ADX housing units.

Mental health diagnostic process

As noted above, there was considerable diagnostic disagreement between the Bureau mental health staff (which is comprised mostly of psychologists) and the CNA psychiatrists. Some of the reasons for this level of disagreement are outlined in the following.

Infrequent updates of initial mental health assessments. The Bureau does complete a comprehensive psychological assessment at the time of admission to the Bureau. However, there is not a similarly comprehensive re-evaluation during the course of

their incarceration within the restrictive housing units other than monthly progress notes – and these are completed only for those on the Bureau mental health caseload. These assessments are usually based on brief, cell-front visits[106], which are part of the mandatory rounds mental health and medical staff must make on at least a weekly basis. At USP Hazelton when private interviews occurred, they were performed by psychology interns rotating through the psychology service as part of their graduate training. Although the use of interns can be beneficial to both the interns and the agency in terms of service, the use of such interns can lead to a lack of continuity in programming when the interns rotate off the service, as was reported by the staff at USP Hazelton.

RECOMMENDATION 5.1: All inmates should be seen in a private setting for a comprehensive mental health evaluation prior to placement in any restrictive housing environment.

The initial evaluations should assess the presence of a mental illness and the determination of whether the inmate can tolerate the conditions of restrictive confinement. They should also assess the presence of the potential for self-injury and active signs or vulnerabilities for significant mental health de-compensation.

It is acknowledged that a pre-screening procedure is in place at all Bureau facilities. Per 5324.08 Suicide Prevention Program, the Suicide Prevention Program Coordinator is to provide SHU staff with a list of inmates with mental health conditions who may become dangerous, self-destructive, or suicidal when placed into SHU. The Correctional Services Supervisor is to immediately notify Psychology Services if one of these inmates is placed in SHU. In addition P5310.16 mandates a comprehensive mental health evaluation, to include psychological testing, prior to placement at the ADX.

Many of the mental health inmates interviewed were in need of and were receiving psychotropic medications. However, the notes in the case file did not follow a differential diagnosis pathway. Rather it appears that the inmate receives a diagnosis, most often by a practitioner without specialty training in psychiatry, and is treated for that diagnosis alone without consideration that they may actually have another condition that manifests with similar symptoms but for which the treatment differs. There is little, if any, consideration of more than one diagnosis or evolving

[106] The revised Treatment and Care of Inmates with Mental Illness policy, issued May 1, 2014, now mandates private meetings with inmates classified as CARE2-MH and above. This policy change was aimed at addressing an identified concern with cell-front sessions. The policy was not in effect at the time of the site visits and thus was not assessed by the team.

consideration that the initial diagnosis was incorrect and perhaps the person suffers from another disorder ~~entity~~ requiring alterations in the treatment plan.

The concern is that modification to the initial set of prescribed medications and treatment plan may be needed due to (1) a comprehensive follow-up diagnoses, (2) consideration that the initial diagnosis was incorrect, and/or (3) that the person has developed an illness requiring alterations in the initial treatment plan.

FINDING: The lack of on-going assessments can lead to the absence of a proper mental health status evaluation.

For example, at USP Tucson there had been a recent suicide in the special housing unit. The inmate in the adjoining cell (diagnosed with depression and traumatic brain injury) was interviewed. He expressed significant difficulty in adjusting the death of his neighbor, which increased his own depression and suicidal ideation. After the loss, he requested to be put in the restraint cell and have the staff keep his medications. He was identified as being on the mental health caseload but, at the time of the site visit, was not being considered for transfer to a treatment unit or receiving additional mental health services.

RECOMMENDATION 5.2: A complete re-evaluation of the mental health record should be performed by psychology and psychiatry staff every 30 days. Included in this review should be a face-to-face interview by a member of the mental health team in a private setting and the results of this interview included in the re-evaluation record.

The re-evaluations should assess the presence of a mental illness and the determination of whether the inmate can tolerate the conditions for segregated confinement. They should also assess the presence of the potential for self-injury and active signs or vulnerabilities for significant mental health de-compensation.

It should be noted that after the completion of the site visits the Bureau issued a revised *Program Statement 5310.16, Treatment and Care of Inmates with Mental Illness.* The provisions of this modified program statement address in policy some of the issues observed during this review. Specifically, the policy states the following in Section 8a, Restrictive Housing:

Ordinarily, all critical contacts, regardless of an inmate's mental health care level, will, to the extent possible, be conducted in a private area. These include the following:

- Diagnostic assessments
- Suicide risk assessments

- Crisis intervention contacts
- Protective custody reviews
- Sexual assault prevention intervention
- Mental health treatment contacts as indicated by the treatment plan
- Any other service that addresses potentially sensitive issues or high-risk behaviors

Additionally, all inmates with mental illness in restrictive housing units (e.g., SHU, SMU, ADX) will receive, at a minimum, face-to-face mental health contacts consistent with the type and frequency indicated by their care level, to the extent feasible. These contacts take place in a manner that protects an inmate's privacy to the extent that safety and security of staff are not compromised. Contacts should be consistent with the goals of the treatment plan, and are in addition to any critical contacts or contacts required by policy (e.g., SHU Review).[107]

Due to the timing of the issuance of this program statement, the CNA team was unable to assess the impact of the requirements on the actual delivery of services to those in restrictive housing.

Lack of close coordination between psychology and psychiatric staff. Much of the treatment being provided to the inmates takes the form of psychiatric medications that can only be prescribed by a psychiatrist or a psychiatric nurse practitioner who are very familiar with the patient's symptoms and prior mental health history.

In the majority of the facilities inspected, the prescribing physician was not a psychiatrist, which further added to the problems of coordination with the psychology staff. The electronic medical record system also contributed to the diagnostic difficulties encountered. Psychology and medical services document in different electronic records so one must exit one software system and enter another to try and integrate the treatment for those with mental illness[108].

FINDING: A number inmates in restrictive housing demonstrated significant symptomatology compatible with the presence of a serious mental illness, which was undetected by the psychology staff. This is based not only on the cases

[107] Program Statement 5310.16, Treatment and Care of Inmates with Mental Illness.

[108] The Bureau has reported that as of April 2014, the electronic medical and mental health records have been integrated and all providers document in BEMR. Due to the date of implementation this was not verified.

interviewed by the CNA psychiatrists but also the larger number of Mental Health Level Care Level 1 inmates who were reporting symptoms of depression, lack of sleep and loss of weight, and anxiety.

RECOMMENDATION 5.3: A vigorous quality improvement program should be established.

The Bureau should ensure that the psychologists are adequately identifying all of the inmates who suffer from mental illness. The existing quality assurance measures in place, to include remote reviews of the mental health record conducted by the Psychology Services Branch should be included in an internal evaluation of the quality assurance programs.

Assessments and contacts are not completed in private confidential settings. A major system-wide deficiency is the practice of providing the vast majority of clinical mental health contacts in a nonprivate, cell-side rounds format. According to Bureau policy, the psychology staff is expected to complete a direct contact with every inmate in restrictive housing on the mental health caseload at least monthly and conduct weekly rounds on all inmates in restrictive housing[109].

FINDING: Very few of the monthly mental health assessments occur in private settings on a face-to-face basis.

Instead, these contacts typically occur through the cell door within the presence of a cellmate and within earshot of the inmates housed in adjacent cells. In this nonconfidential environment it is unlikely that an inmate will confide vulnerabilities including suicidality. Therefore, inmates with worsening mental illnesses or the onset of new symptoms can remain under-identified throughout the course of their restrictive housing incarceration.

An example of this situation was a young man interviewed at the USP Florence facility. He was actively delusional, isolative, and demonstrated a full complement of symptoms compatible with chronic paranoid schizophrenia. Psychology staff suspected he had a mental illness because of his poor hygiene; yet he had not been adequately interviewed in a private confidential setting for sufficient time to reveal his psychopathology.

[109] The Bureau noted that P5310.16 Treatment and Care of Inmates with Mental Illness issued May 1, 2014 mandates private, at least monthly sessions with CARE2-MH inmates and private, at least weekly sessions with CARE3-MH inmates. In addition, critical contacts, such as suicide risk assessments, are also to be conducted in a private setting.

Another example was encountered at USP Lewisburg, where an overtly psychotic inmate was assessed by the psychology staff as being antisocial and was not offered any mental health services.

Lack of psychiatric staff. Inmates who are identified as having a mental health issue treated by pharmacological methods are most frequently evaluated and followed by a general health practitioner (sometimes a physician but more often a physician's assistant) and not a board certified psychiatrist. There is a clear shortage of psychiatric physicians throughout the facilities that were visited.

FINDING: The shortage of psychiatric staff in Bureau facilities leads to numerous problems in both diagnosis and treatment, particularly for the seriously mentally ill inmates.

Recommendation 5.4: Given the level of disagreement in the assessment and treatment plan formulation, the Bureau should conduct an inter-reliability test for its mental health staff to better determine the accuracy of the diagnosis and treatment plan process.

Most facilities have limited psychiatry hours that are insufficient to assess and treat those inmates with mental disorders in the system, not just restricted to the SHU or SMU. Psychologists must prioritize psychiatric review to only a handful of the least stable mentally ill inmates on their caseloads. Table 29 summarizes current and vacant mental health treatment positions at reviewed Bureau facilities.

Table 29. Mental health treatment staff at reviewed facilities

Facility	Doctoral-level psychologist	Psychology interns/ postdoctoral residents	Treatment specialists	Social workers	Psychiatrists	Psychiatric nurse practitioners	Contract psychiatry or tele-psychiatry	Vacant positions as of October 30, 2014
FCC Allenwood	12	0	15	1	1	0	Tele-psychiatry	1 psychiatrist* 2 psychologists 1 social worker*
FCC Butner	27	7	14	4	6	0	N/A	3 psychiatrists 2 psychologists* 1 treatment specialist
FCC Coleman	18	0	26	1	1	0	Tele-psychiatry	1 psychiatrist 1 psychologist 3 treatment specialists
FCC Florence	15	0	12	1	0	1	Contract and tele-psychiatry	1 psychiatric nurse practitioner 1 psychologist* 1 social worker
USP/SFF Hazelton	14	0	13	1	0	0	Tele-psychiatry	3 psychologists
USP Lewisburg	8	1	11	0	0	0	Tele-psychiatry	1 postdoctoral resident 1 psychologist 2 treatment specialists
FCC Terre Haute	12	4	11	0	0	0	Tele-psychiatry	3 psychologists
FCC Tucson	9	0	8	0	1	0	N/A	2 psychologists 2 treatment specialists
FCC Victorville	10	0	6	0	0	0	Tele-psychiatry	2 treatment specialists

FCC = Federal Correctional Complex.
* Vacant position is newly allocated.

Psychiatric medications were observed in several cases to be prescribed in subtherapeutic or inadequate doses to treat the identified condition. At USP Terre Haute, a mid-level provider prescribed a tricyclic antidepressant to an inmate with serious depression despite this family of antidepressants being potentially lethal in an overdose situation. When medications were prescribed, inmates were not seen for review in a timely manner compatible with community and correctional standards of practice. One inmate at USP Florence had not been seen by any medical provider regarding his medications since 2012. Some sites, including USP Florence and USP Atlanta, had no psychiatric presence within the prison whatsoever. All psychiatric services were provided by tele-psychiatry at those facilities.

Wardens expressed their frustration with their (and the Bureau's) inability to recruit and retain psychiatrists. Tele-psychiatry is available at sites without a psychiatrist, but the hours provided are so limited that the referral system is delayed and insufficient to meet the health needs of the inmates.

For example, USP Florence has four hours per month of tele-psychiatry time available for 128 SMU inmates. Time is split between two psychiatrists, one of which has refused to staff cases with the psychology staff. On average, no more than six to eight inmates can be seen per tele-psychiatry session. The on-site physician assistant and nurse practitioner will not follow psychiatric patients. The facility physician sees inmates on psychiatric medications but frequently will not start medication if the inmate is not deemed to be "a perfect match for a DSM criteria" or put patients on drug holidays, a practice that is discouraged because of the likely risk of a relapse. The assessment team was told that the Bureau brought in their chief psychiatrist several months ago to try and catch up with inmate care. One inmate summed the situation up by saying that access to psychiatry at USP Florence was "impossible."

Similarly, USP Terre Haute has four hours of tele-psychiatry available every 4-6 weeks and only 23 percent of their SHU mentally ill have been seen by the psychiatrist.

At USP Hazelton, 16 hours of psychiatry services are available per month for 600 female inmates. Given the traditionally high degree of expressed psychopathology in female incarcerated populations, this amount of dedicated psychiatry time is insufficient to meet the needs of the population. Understaffing in this area leads to potential under diagnosis, inadequate treatment, and delayed referral because the psychiatrist only has time to see the most severely mentally ill inmates.

Tele-psychiatry should be a resource of last resort when there is no psychiatrist present in a facility. It should not be routinely relied upon for day-to-day psychiatric care.

For example, in one case at USP Terre Haute, the psychology staff noted there was a significant delay in the receipt of a progress note by the tele-psychiatrist. In that one case, no note has yet been received despite the inmate being seen six weeks ago.

At USP Florence, the sick call system was reported to be unreliable and not confidential - both of which are requirements by any national accrediting body and federal standards that require reliable access to care. This observation was also reported by inmates at USP Terre Haute.

While on site, the assessment team was notified that USP Tucson had hired a full time psychiatrist.

RECOMMENDATION 5.5: Psychiatrists need to be more actively involved in the diagnostic and treatment process.

Currently, the psychiatrists only get involved if a patient is brought to them for evaluation. The psychiatric staff needs to work more closely with the psychologists to ensure that all of the mentally ill inmates are properly identified and referred to treatment. The psychiatrist should also meet with the psychology staff on a monthly basis to review the medication and case management plan for each Mental Care Level 2 and 3 inmates housed in restrictive housing.

Mental health treatment

Lack of out of cell treatment. Inmates in restrictive confinement rarely receive out of cell mental health programming within the Bureau. Instead, the primary form of treatment consists of written materials, such as cognitive behavioral handouts, delivered to the cell by psychologists.

For example, written homework assignments are passed out to the inmates who are expected to complete them in their cells and turn them within a few days. These assignments are then graded by the psychologist and the results are used to determine whether the inmate can progress to the next level in the SMU or ADX progressive programs. These workbooks do not constitute mental health treatment.

Efforts to provide out of cell group activities at the expanding USP Florence SMU were curtailed because of the timing of such activities had to conform to the Bureau's approved evidence based plan of approved group therapies. Psychologists at the site level have not been encouraged to implement innovative group services to fit the mental health needs of their inmate populations.

There are some notable exceptions that were positive in nature. For example, at USP Florence, one psychologist was conducting a weekly out of cell group in the SMU. Psychologists at the ADX Florence have recently begun seeing some of their patients

in out-of-cell settings.[110] USP Allenwood is another facility where the psychologists attempt to see their patients in out-of-cell settings. Another exception is the Level-III treatment program at the USP Atlanta. A very conscientious lead psychologist directed this program and saw to it that her patients participated in out of cell treatment activities.

FINDING: Overall most restrictive housing units had no mental health programing and especially no out of cell programming for any inmates with or without mental illness.

Some interviewed inmates reported little or no response by psychology to their requests for individual counseling. Exceptions to this practice were noted at the United States penitentiaries at Allenwood and Atlanta, as well as at the ADX. As noted above, facility staff reported they do not have adequate staffing in the facility to provide more than the minimum required weekly rounds and monthly cell front checks.

RECOMMENDATION 5.6: A program of regular out-of-cell mental health treatment should be implemented.

Specifically, it is generally accepted that inmates with serious mental illnesses in restrictive housing should receive a minimum of 10 hours of unstructured out-of-cell time and at least 10 hours of structured therapeutic activities. They also should receive weekly, out-of-cell clinical interviews by their assigned psychologist.

Some interviewed inmates with serious mental illnesses in restrictive housing, with the noted exception of USP Florence, described their conditions as worsening in confinement or not improving. These reports by inmates were especially prevalent at USP Lewisburg which houses the largest number of SMU inmates (almost 800) of whom approximately 50 are assigned to Mental Health Levels 2 and 3.

Lack of sufficiently trained mental health staff to provide treatment to the segregated housing units. A consistent finding of the assessment team was that access to mental health services is directly related to the level of professional expertise by the chief psychologist as well as the number of mental health staff available at each site. In several of the facilities reviewed, the project psychiatrist opined that the chief psychologist did not possess adequate experience or clinical skills to run a comprehensive mental health program. This is especially problematic in that the facility psychologists act as gatekeepers to psychiatric and mental health treatment.

[110] CNA was informed by the Bureau that this change has come about due to the ongoing litigation about mental health system inadequacies.

FINDING: Almost all facilities reported a lack of mental health staff required to provide treatment services.

USP Hazelton was down five psychology positions with no psychologist assigned to the SHU. USP Florence had only three psychologists and one psych tech for a 700-inmate population with no dedicated psychologist for the segregation unit. This duty was split among the psychologists on the staff. In most facilities, providing treatment services to the restrictive housing units was not the primary focus of the mental health staff, which has to provide care to the larger general population inmates with mental health needs.

It is acknowledged that in comparison the Bureau's mental health staffing levels exceed that found in many state correctional facilities. As noted previously, the Bureau employs a large number of doctoral level psychologists - more than 600, a higher doctoral level psychologist staffing rate than many state systems.

RECOMMENDATION 5.7: The Bureau should complete a clinical staffing needs analysis.

Based on the results of this clinical staffing needs analysis, the Bureau should then recruit and retain a sufficient number of psychiatrists to meet agency demands. No specific number for psychiatrists can be offered until the staffing analysis is completed. It is acknowledged that there are significant challenges associated with the recruitment and retention of psychiatrists. It is a fact that there are a decreasing number of training programs in psychiatry, a decreasing number of applicants for existing programs, and a decreasing number of graduates from programs - all at the time of a national shortage of psychiatrists.

Improper assignment to restrictive housing. As noted earlier, there were a number of interviewed inmates who had demonstrated serious and unstable psychiatric symptomatology, which should have excluded them from a restrictive housing setting.

FINDING: This review identified inmates in restrictive housing whose mental conditions should have precluded them from assignment to these units.

In some cases, the facility's lack of mental health treatment warranted a transfer to a specialized treatment program that did not require the level of security that was operating at the SHU, SMU or ADX units. It is acknowledges that legitimate security needs can be associated with a small, violent segment of the mental health population. A heightened level of security may be required for these inmates, even within a specialized treatment program. This complicates placement options for these inmates.

RECOMMENDATION 5.8: A protocol needs to be established that identifies those inmates with serious mental illness who should be excluded from SHU, SMU or ADX housing.

A similar review and re-assessment protocol should be implemented that facilitates the identification of those inmates who decompensate while in SHU, SMU or ADX housing.

Other site-specific observations

SMU programming. Psychology contacts with SMU inmates are primarily a self-guided activity based on the delivery of written handouts and homework assignments. This does not constitute a treatment program driven by an individualized mental health treatment plan. This behavioral approach for inmates with only disciplinary problems might be adequate, but is insufficient for individuals with significant mental health conditions.

The SMU program does not take into account the inmate's mental illness in evaluating the inmate's progress or lack thereof with the four SMU program levels.

For example, one inmate (who would benefit from residential mental health treatment) had been assigned to the SMU for three years. He has an SMI diagnosis and a history of repeated self-injury and persistent suicidal ideation. He was almost to Level 3 in SMU when he overdosed on a potentially fatal antidepressant and was regressed back to Level 1. This exemplifies a case of someone with a serious mental illness/personality disorder being punished for his psychopathology, rather than treated for it. He reported to the CNA psychiatrist that he is only seen during the weekly rounds despite requesting more intensive counseling for over three years.

Long-term segregation effects at ADX. ADX Florence presented an interesting mix of mentally ill patients. While there were a significant number of seriously mentally ill individuals who required care at ADX, there were also a significant number of non-mentally ill inmates housed at ADX.

A majority of these inmates made it very clear that they wanted to remain in the ADX Florence and would commit a serious offense to ensure their ongoing housing in the facility. Several of the inmates interviewed said they would assault someone if they were told that they were going to be transferred to another Bureau facility. The reason given was their belief that the yards at the various USP's were exceedingly more dangerous and they knew that they would likely have to kill someone on the yard if transferred out of the ADX.

Among the interviewed inmates, none stated that they wanted to be transferred from the ADX, which was a tribute to the level of care the inmates are receiving.

It should be noted that part of the desire for these inmates to remain at ADX is the unique and often close relationship these men have with the staff. It was clear from our observations that ADX staff knew the inmates very well in terms of the basis for their placement in ADX but also they individual needs and interests.

FINDING: The assessment team encountered no cases where an inmate's serious mental illness was due to their prolonged placement in the ADX.

This reluctance to leave ADX Florence may be related to privileges such as reading materials, television, and recreation activities afforded inmates at ADX and the professionalism of the security and program staff assigned there. As noted above, the quality and quantity of the mental health care at ADX has recently improved.

Delays in transferring inmates out of SHUs. Inmates in SHUs can wait for many months for an opening in a program at another prison. During this time no additional mental health services are offered which potentially can have significant adverse effects while the inmate remains under segregation conditions.

RECOMMENDATION 5.9: All inmates who are found to be decompensating from the effects of restrictive housing should be transferred to the most appropriate unit for treatment and observation.

RECOMMENDATION 5.10: Inmates with serious mental illness who are not excluded from restrictive housing should start participating in a treatment program.

Such programming should consist of a minimum of ten hours of out-of-cell structured therapeutic activities and an additional ten hours of out-of-cell unstructured activities should as yard and dayroom time. Within these standards the treatment programming should be individualized to the inmate's specific condition and treatment needs.

Large numbers of protective custody inmates who require mental health treatment but are not receiving it. As indicated earlier in this report, these inmates are supposed to be receiving protection from other inmates by the Bureau. However, the restrictive nature of the SHUs makes it very difficult to afford any form of meaningful mental health treatment to these inmates. For example, at USP Coleman, there was an overrepresentation of protective custody inmates being housed in the SHU with only five hours per week of out-of-cell time.

RECOMMENDATION 5.11: Inmates should not be housed in a SHU for protective custody but rather, should be in sheltered general population housing.

Innovation at Hazelton to enhance mental health services. At USP Hazelton, the psychology staff has a "Hot List" which is a binder kept in the officers' station updated monthly that lists the inmate's name, diagnosis and the psychology staff's

concerns regarding the inmate's risk of behavioral disturbances. The staff there was also very active in a multidisciplinary meeting with security and classification to aid in expediting women being progressed out of the SHU. This best practice approach should be expanded to the other SHUs. It is our understanding that the Bureau has done so.

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Chapter 6: Reentry

Federal and state corrections facilities held over 1.6 million inmates at the end of 2010 — approximately one of every 201 U.S. residents.[111] According to the National Reentry Resource Center, 708,677 individuals are released to the community annually from state and Federal prisons and another 9 million are released from local jails each year.[112] Persons involved in the criminal justice system often cycle in and out of various correctional agencies throughout their lives. The reentry of an individual into the community without appropriate support and resources is a major public safety concern. This is a particular concern for those inmates being released directly from the highly controlled environment of restrictive housing.

As noted in chapter 3, within a year over 2,000 inmates currently in ADX, SMU or SHU status will be released from the Bureau to the community. A small but visible number of SMU and ADX inmates (approximately 80) were released directly from segregation to the community. A higher but unknown number of SHU inmates were are also directly released to the community from SHU housing units. For these reasons alone it is important that the Bureau have effective re-entry programs for the restrictive populations.

Since the passage of the Second Chance Act in 2008, reentry has become a major policy emphasis for corrections professionals. Hundreds of millions of dollars in Second Chance and Justice Reinvestment monies have been dedicated to expanding and improving reentry programs with the goal of reducing recidivism. While researchers are evaluating the effects of these programs, the Urban Institute has developed a "What Works in Reentry" clearinghouse to inform the field about promising and best practices. Four of these guiding principles are as follows:

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111 Guerino, P.M., P.M. Harrison, and W. Sabol. Inmates in 2010. NCJ 236096. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, 2011. http://www.bjs.gov/content/pub/pdf/p10.pdf

112 Beck, A.J. The Importance of Successful Reentry to Jail Population Growth. Presented at the Urban Institute's Jail Reentry Roundtable, June 27, 2006. www.urban.org/projects/Reentry-roundtable/upload/beck.PPT

1. *Focus on individuals most likely to reoffend.* Research clearly indicates that successful programs begin with carefully sorting offenders according to their risk --separating those likely to reoffend from those less likely.

2. *Base programs on science and ensure quality.* Researchers are very clear that resources must be invested in program models that have the promise of reducing recidivism.

3. *Implement effective community supervision practices.* Policies and practices must provide supervision officers with a broad range of options for swift and certain sanctions that are proportionate to the violation and appropriate for the individual under supervision.

4. *Apply place-based strategies.* Place matters. Ensuring that resources are available to offenders - where they live - is particularly critical to reducing recidivism. For individuals to change their behavior, services and supports crucial to their success must be nearby.

In order to place the Bureau's approach to reentry planning for inmates in restrictive housing in context, the project team first conducted a general review of reentry services for general population inmates as well as the overall delivery of program services to inmates in restrictive housing. However, the scope of this project limits this review to the evaluation of the content and delivery of reentry programming to the restrictive housing population and the findings and recommendations do not apply to the overall reentry approach for general population inmates.

Reentry programs for inmates in the general population

The Bureau's website states that release preparation begins the first day of incarceration; however, the focus on release preparation intensifies at least 18 months prior to release. The Bureau's Release Preparation Program includes classes in résumé writing, job search, and job retention while incorporating presentations by community-based organizations that help ex-inmates find jobs and training opportunities after release. In planning for release, the Bureau works with the United States Probation System providing all pertinent information to the probation officer that may bear on the safe and effective supervision of the released offender. This information includes any record of medical, psychiatric, psychological, sex offender, or substance abuse treatment.

All inmates have the responsibility to develop and submit a suitable release plan for investigation and verification by the probation office in the district of supervision. Release plans may include placement in a residential reentry center (also known as

community correctional center), normally for a period of up to 180 days, to afford the inmate a reasonable opportunity to complete development of a suitable release plan. When no adequate release plan is developed and an inmate will be released to supervised release directly from an institution, U.S. probation officers may seek modification of the conditions of release to include a special condition that the inmate reside at a residential reentry center (RRC) or halfway house, a contracted facility that provides assistance to inmates nearing release.[113]

The Bureau typically places appropriate inmates in RRCs prior to release to help them adjust to life in the community and find employment. RRCs provide inmates with a structured and supervised environment along with employment counseling, job placement services, financial management assistance, and other community-based social services and programs.[114] RRCs facilitate inmates' efforts at reestablishing ties to the community while allowing staff at the RRC to supervise inmates' activities.[115]

RRCs provide suitable residence, structured programs, job placement, while the inmates' activities are closely monitored. The Bureau ensures the provision of mental health, substance abuse, and sex offender treatment for offenders in RRCs and Home Confinement through contracts with community-based treatment providers. The Community Treatment Services section of the Psychology Services Branch is responsible for establishing and overseeing these contracts, and the associated care provided.

There are two program components: the Community Corrections Component and the Prerelease Component.

The Community Corrections Component is designed as the most restrictive option. Except for employment and other structured program activities, an inmate in this component is restricted to the RRC. An inmate shall ordinarily be placed in the Community Corrections Component upon arrival at the RRC. This orientation period normally lasts for two weeks or until the inmate has demonstrated the responsibility necessary to function in the community. Based on their professional judgment, the RRC staff shall determine when an inmate is prepared to advance to the Prerelease Component.

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[113] U.S. Department of Justice, Bureau of Prisons, Community Corrections, http://www.bop.gov/locations/cc/index.jsp.

[114] Ibid.

[115] Ibid.

The Prerelease Component is designed to assist inmates making the transition from an institution setting to the community. These inmates have more access to the community and family members through weekend and evening passes. Participating in community-based transitional services may reduce the likelihood of an inmate with limited resources recidivating, whereas an inmate who is released directly from the institution to the community may return to a criminal lifestyle.[116]

The Bureau provides a comprehensive array of programs that directly or indirectly support reentry preparation for general population inmates. This programming includes:

Education. All institutions offer literacy classes, English as a Second Language, parenting classes, wellness education, adult continuing education, library services, and instruction in leisure-time activities. Inmates who do not have a high school diploma or a GED certificate are required to participate in the literacy program for a minimum of 240 hours or until they obtain the GED. Non-English-speaking inmates must take English as a Second Language.

Vocational training. Programs are based on the needs of the inmates, general labor market conditions, and institutional labor force needs. An important component is on-the-job training, which inmates receive through institution job assignments and Federal Prison Industries. The Bureau also facilitates post-secondary education in vocational and occupationally oriented areas.

Behavioral skill building. Parenting classes help inmates develop appropriate skills during incarceration. Recreation and wellness activities encourage healthy life styles and habits.

Substance abuse treatment. The Bureau offers four different levels of substance abuse treatment: (1) education regarding substance abuse and its effects; (2) the Residential Drug Abuse Program, which is a cognitive-behavioral program delivered within a modified therapeutic community model where offenders experience living in a prosocial community; (3) nonresidential drug treatment for offenders who have short sentences; may not meet the criteria for, or are awaiting an opening in, the Residential Drug Abuse Program; are transitioning to the community; or have had a positive urinalysis test; and (4) community treatment services, which as a part of reentry provides continuity of care for offenders placed in RRCs and on Home Confinement.

Mental health. The Bureau provides formal counseling and treatment on an individual or group basis with institutional psychologists, psychiatrists, social

[116] Bureau Program Statement Change Notice #7310.04.

workers, and treatment specialists. The Bureau operates a series of residential psychology treatment programs to provide more intensive care for inmates with serious mental illness. In addition, medical referral centers provide inpatient psychiatric care for acutely ill inmates.

Sex offender programs. The Bureau offers both residential and nonresidential programs for inmates with a current or prior conviction for a sex crime (including sex involving consenting adults such as prostitution or pimping). Inmates may also be eligible if there was a sexual element in the crime.

Religion. Chaplains facilitate religious worship and sacred scriptural studies across faith lines in addition to providing pastoral care, spiritual guidance, and counseling. Religious programming is led by agency chaplains, contracted spiritual leaders, and trained community volunteers. The Life Connections Program (LCP) and Threshold Programs offer inmates the opportunity to improve critical life areas within the context of their personal faith or value system. The LCP utilizes various faith communities nationwide who serve as support group facilitators or mentors at program sites and release destinations to enhance community reintegration. Reentry preparation for inmates not eligible for the residential LCP is also offered through the Threshold program that also seeks to strengthen inmate community reentry. Threshold is a nonresidential condensed version of LCP that is active in institutions throughout the agency.

Programs directly supporting reentry include:

Release planning. Inmates released under federal supervision (i.e., Supervised Release Parole) must submit release plans for review and approved by the U.S. Probation Office. Release plans have two primary components: residence and employment. These plans must be submitted 90-days prior to a release.

Residential reentry centers. RRC placement provides an opportunity to establish/solidify sound release plans (i.e., residence and employment) prior to release to the community and to allow a readjustment to community life prior to release. Consideration and referral for RRC placement should occur well before a release date.

Release preparation program. The RPP assists inmates in developing plans for their personal lives and future employment. The program offers six modules concerning the personal, social, and legal responsibilities of civilian life: (1) Continuity of Care and Infectious Disease; (2) Resume Writing; Money Management; (3) USPO and Supervision Requirements; (4) Veterans Outreach (only for veterans); (5) Release Requirements; and (6) Psychology of Release. Staff indicated that they encourage inmates who are within 30 months of release to complete the RPP.

Reentry affairs coordinators. Reentry affairs coordinators (RACs) are assigned to an institution or region and are responsible for preparing release readiness materials. RACs perform orientation for inmates related to the various aspects of reentry, which includes informing inmates of the requirements and benefits of the Affordable Care Act, as well as other reentry topics, to include job placement, housing, benefits, requiring identification, job skills, veteran benefits, Social Security benefits, etc. The also develop partnerships to foster reentry efforts and continuity of care; serve as the point of contact for outside agencies - providing training and information; help identify areas that need to be addressed for the inmate population specific to each institution and develop resources to address those needs; manage the volunteer program; and compile data and information to assess reentry efforts.

Regional reentry affairs administrators. The regional reentry affairs administrators provide direct supervision to the RACs; providing training and oversight, as well as direct authority, monitoring and tracking for skill development and reentry initiatives, including volunteer program activities throughout the region. They serve as liaison with state and regional governmental agencies and organizations to foster partnerships and develop resources to assist institutions in reentry efforts. Additionally, they serve as the liaison with the NRB in Central Office.

In addition to these specific programs the Bureau also provides staff training on reentry services both to new officers and on an in-service basis to current staff.

Reentry program evaluation

There have been very few rigorous studies of the impact of re-entry programs. Those that have been completed have shown either negative or no effects on recidivism. Project Greenlight was designed to provide reentry services for New York state inmates. It was evaluated using a rigorous experimental design with random assignment. One year follow-up results showed that the experimental group (reentry) performed worse than inmates who were not exposed to the re-entry program.[117]

More recently, an initial national evaluation of 12 reentry sites funded by the U.S. Bureau of Justice Assistance reported that although there was an increase in the number and type of services provided to soon-to-be-released inmates, the services did not produce significant differences between the experimental reentry inmates

[117] Wilson, J. A., and R. C. Davis. 2006. "Good Intentions Meet Hard Realities: An Evaluation of the Project Greenlight Reentry Program." Criminology and Public Policy 5:303–38.

and the control group. The researchers believe the lack of an impact can be traced to insufficient "dosage" of services and the exposure of services to the control group.[118]

To date, the Bureau has not conducted a formal evaluation of its reentry programs or a formal recidivism study since 1994.[119] This is surprising given the large number of such studies that were conducted in the 1970s and 1980s which were used to developed risk instruments and evaluate core treatment programs throughout the field of corrections. The 1994 study showed that Bureau inmates released in 1987 had a re-arrest rate of 41 percent, which was well below the rate reported in studies of recidivism among state inmates. This 3-year re-arrest rate was consistent with previous studies conducted on Bureau inmates.

The lower Bureau re-arrest rate is consistent with the profile of the federal prison population. In aggregate, Bureau inmates tend to be older, not convicted of violent crimes and have modest prior criminal histories, and lower rates of mental illness as compared to state inmates. Collectively these data suggest a large low risk population that would require minimal reentry services.

Program services in restrictive housing

Program services in restrictive housing units are generally delivered by psychologists and treatment specialists providing routine mental health services, crisis intervention, and cognitive-behavioral interventions targeted to inmates' specific needs. Cognitive-behavioral interventions offered include anger management, basic cognitive skills, criminal thinking, values, and the nonresidential drug abuse program.

The physical design of most restrictive housing units as well as the severe limits on inmate interaction makes meaningful program delivery difficult. Inmates are generally not allowed to congregate in a classroom setting and space limitations in most restrictive housing areas do not provide suitable areas for program delivery. As a result, program staff services are provided on an individual basis via interactive journals, books, audio presentations, cell-side visits, and private counseling sessions. Specific types of restrictive housing programming include:

Bibliotherapy. Psychologists provide inmates with specific self-help books and articles that target the inmate's expressed interest/need. The staff defines

[118] Lattimore, Pamela V and Christy A. Visher. 2013. "Prison Reentry Services on Short-Term Outcomes: Evidence From a Multisite Evaluation. *Evaluation Review*, 37(3-4) 274-313.

[119] Harer, Miles D. 1994. "Recidivism Among Federal Inmates Released in 1987." Washington, DC: Federal Bureau of Prisons, Office of Research and Evaluation.

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"bibliotherapy" as "using books to aid people in solving the issues that they may be facing at a particular time." Examples include Dialectic Behavior Therapy, Rational Emotive Therapy, and Chicken Soup for the Soul, etc. Inmates receive a certificate for participation in the program.

ESL/GED. Small congregate education classes are provided on a very limited basis, with inmates confined in individual cages or secured to chairs that are bolted into the floor. For example at USP Allenwood, a new schedule has been introduced which allows for inmates enrolled in ESL/GED classes to participate in a congregate educational class for one hour per week. The maximum number of students in a class at any one time is nine.

Self-study packets. A variety of educational, vocational, mental health, behavioral and substance abuse treatment programs are provided through self-study packets (workbooks to complete and be reviewed by staff). These workbooks are distributed to inmates, collected upon completion, and then evaluated by staff. The SMU programs at USP Allenwood and USP Lewisburg also use audio programs (referred to as "radio" programming) with paper tests to verify successful completion of specific courses.

Life Skills. The psychologists and treatment specialists distribute word games, puzzles, and workbooks on stress management, communications, anger management and other related topics. Other self-help programs include Anger Management, Coping, Drug and Alcohol Abuse. These are booklet-driven programs that require homework by the inmate. Written feedback is provided cell side. Completion of this work is documented in the inmate's electronic medical/mental health record.

The specific programs offered and mode of delivery in restrictive housing varied by facility. Examples of the different approaches to programming at specific facilities include:

- *ADX*. The majority of the programming is provided in-cell on an individual self-study basis through closed circuit TV's located within each cell. Within the past six months, five "therapeutic enclosures" were built in the gymnasium so five inmates at a time can receive congregate or group programming. Currently, the psychology department is using the therapeutic enclosures to conduct a reentry preparation program. One 90-minute group is meeting once a week.

- USP Hazelton. Staff reported that their philosophy is that programming is suspended while inmates are in the SHU because they believe inmates should lose privileges when they are sent to restrictive housing. Staff also reported that their practice is to minimize an inmate's time in the SHU so that they can resume programming as soon as possible. There are no congregate programs provided to the inmates housed in SHU.

- *FCI Butner*. Education courses are offered in six categories: Math (7 classes); Science (3); Reading (4); Social Studies (4); Writing (4); and Miscellaneous classes (4). Inmates can only enroll in one class at a time; coursework is provided on paper and collected when completed. Inmates are expected to complete each course in two weeks. If assistance is required, education staff will provide assistance cell side.

- *USP Coleman*. All programming in the SHU is in-cell and voluntary. There are no structured programs. Staff will speak with the inmates one-on-one through the solid steel cell door. Upon request, staff will provide a variety of written materials. SHU inmates are not allowed to officially enroll in an education program and are not allowed to take the GED exam.

The methods used to deliver programming in restrictive housing necessarily limit the type and level of programming offered. For example at USP Allenwood, a Vocational Trades Instructor offers two Adult Continuing Education courses to the SMU inmates; a computer course and a heating, ventilating, and air conditioning (HVAC) course, both of which are in-cell, self-study programs. Each course takes four to six months to complete. The staff member stated she goes to the SMU for two hours, twice a week and will go cell to cell or speak to the inmates during their recreation time while out on the range. The staff member provides a test for each module that must be completed prior to advancing to the next module. At this point in time, no inmate has successfully completed either course. While this type of vocational programming is important for preparing inmates to be productive in the community, this program may be too difficult to complete by self-study.

Reentry program services in restrictive housing

The need for reentry programming in restrictive housing is predicated on the likelihood of an inmate's direct release to the community from restrictive housing, or imminent release after transfer back to general population. The transition from the high level of control and restrictions on behavior present in restrictive housing units to the comparative freedom and lack of structure that inmates face upon release can be highly disorienting. Appropriate reentry programming can assist inmates in coping with this huge change in their living circumstances.

FINDING: There was no data available at any of the facilities visited that identified the number of inmates released directly to the community from restrictive housing.

However, staff at each facility acknowledged that inmates are being released directly from restrictive housing. Data on the number of offenders being released would be valuable to inform facility and Bureau leadership in making policy decisions regarding the need to provide reentry programming to inmates in restrictive housing.

RECOMMENDATION 6.1: The Bureau should routinely track and monitor the actual numbers of inmates releasing directly from restrictive housing at each facility monthly.

The issue of inmates releasing from restrictive housing with little or no preparation is significant. The magnitude of the issue is not fully known since no data was available on the frequency of this practice. One staff member reported that they do not need to track that information since their goal is to minimize the time an inmate spends in restrictive housing. While the goal of shortening the time in restrictive housing is correct and will help this situation, it ignores the fact that inmates are still releasing from restrictive housing.

FINDING: Facilities do not provide step-down planning to transition an inmate from restrictive housing to general population and subsequently to their eventual release. The prevailing practice is to keep inmates in restrictive housing until such time as they discharge to an RRC or directly to the community.

With the exception of assigned completion of self-study activities related to reentry, inmates often abruptly transition from extended stays in restrictive housing to general population or the community without any meaningful step down programming. Many of the staff interviewed indicated that this was acceptable and suggested that it was preferable to release inmates from the SHU, SMU or ADX rather than first transitioning to general population due to the risk of violence to the general population. While this may be a sound decision for institutional security, it is not in the interests of the communities where these inmates are being released. Inmates spending extended periods of time in confinement with little social interaction or skill-building programming are seriously unprepared for reentry and re-socialization.

RECOMMENDATION 6.2: Establish a policy whereby only under extraordinary circumstances would an inmate discharge directly from a SHU, SMU or the ADX.

To support this policy, the Bureau should require monthly reports from each facility on all inmates releasing from restrictive housing. This 'exception' report should include the length of time in restrictive housing, specific reentry programming and preparation provided, and documentation of the reasons why the inmate was released from restrictive housing as opposed to step down or general population and other relevant information. Requiring facility staff to provide this information will help raise awareness of the problem and assist staff in finding ways to make better decisions about moving inmates to less restrictive settings prior to release. Requiring this type of report would force facility administration and Bureau leadership to regularly examine these occurrences and take steps as appropriate to minimize this occurrence.

RECOMMENDATION 6.3: Develop a step-down program with increasing incentives, more out of cell opportunities and increasing opportunities for congregate programming.

When inmates in SMU Level 4 go to general population, they are going from restrictive housing to general population all at once, without any step-down or transition. Providing a step-down from Level 4 before general population would provide more meaningful programming and increase inmates' social skills by interactions with others, and would also provide incentives for inmates to work harder on the programs and be less disruptive. The step-down process would also make it possible for more inmates in Level 4 to try to be tested in more of a congregate setting but with much less risk or exposure.

The following is a representative summary of reentry programming provided in Bureau restrictive housing units. The common characteristic across all facilities visited was the absence of any actual programming of consequence provided to inmates.

USP Lewisburg. The facility is designed to house only SMU Level 1 and 2 inmates and offers a Release Preparation Program (RPP) through self-study booklets and audio programs. Inmates progressing to Levels 3 and 4 are transferred to USP Allenwood. Staff indicated that inmates are released from USP Lewisburg to the community from the SMU Level 1 or 2 if they are unable to progress to Levels 3 and 4 due to behavior issues. Staff reported that some inmates do not want to be moved to Level 3 or Four and act out just prior to advancing to ensure they will remain in Level 1 or Two until release. One staff person described it as a way of keeping safe and away from general population without showing weakness or fear.

For inmates who are to be released from the SMU, case managers begin informally providing them with reentry services at about 18 months before release. This includes more phone time to talk with family and their probation officer to prepare for return to the community. Case managers also begin planning for home placement and transfer to a RRC or "Public Law" placements in halfway houses. If a Public Law placement is denied, the probation officer finds a shelter for the inmate to live in when released. The RAC provides information for inmates related to the requirements and benefits of the Affordable Care Act, as well as other reentry topics such as job placement, housing, benefits, requiring identification, job skills, veteran benefits, Social Security benefits, etc.

USP Allenwood. RPP programming for Level 3 and 4 inmates in the SMU at USP Allenwood is individualized and consists of six modules: (1) Continuity of Care and Infectious Disease; (2) Resume Writing; Money Management; (3) USPO and Supervision Requirements; (4) Veterans Outreach (only for veterans); (5) Release Requirements; and (6) Psychology of Release. All programs are offered through self-study packets or audio program. The RPP is voluntary and completion is not required

for Level progression. Staff indicated that they encourage inmates who are within 30 months of release to complete the RPP. In addition to the self-study packets, psychologists work with inmates that have significant mental health needs to facilitate linkage to community resources. This facilitation can include telephone consultations with community resources, providing written materials from the support services agencies, and release planning with family by telephone. In some cases, inmates releasing to a metropolitan area such as Washington, DC can be linked with advocacy agencies that have a specific mission to assist mentally ill inmates releasing to the community.

USP Florence SHU. There is no coordinated, targeted reentry programming. Case managers, counselors, psychology staff and education staff provide materials for self-study upon request.

ADX Florence. Inmates confined to the ADX typically serve extended periods of time there. All inmates at the ADX are provided release programming and there are no exclusions due to risk or classification level. The staff reported that they try not to have inmates release directly from the ADX, however, due to the nature of charges or institutional adjustment, some inmates do release directly to the street. The case manager and unit manager complete supervised release plans for inmates. The staff that works with the ADX inmates noted that because of the nature of the inmates they are supervising, they would ensure they have contact with the releasing inmate's probation officer. For those inmates within 18-24 months of release, halfway house applications may be submitted to residential reentry managers for review/approval. Due to the nature of the inmates at the ADX, many are denied placement in residential release centers. As a result, staff has a lot of communication with the probation officer in the inmate's home location. Staff aims to transfer inmates to a facility closer to their home prior to release however this was characterized by staff as a significant challenge.

USP Terre Haute. A reentry affairs coordinator prepares release readiness materials, including Affordable Care Act benefits, job placement, housing, benefits, personal identification, job skills, veteran's benefits, Social Security benefits etc. The coordinator is also responsible for training institutional staff regarding reentry concepts and procedures. Case managers work with the inmates as they prepare for release.

USP Hazelton. Although there is no coordinated, comprehensive, targeted reentry programming available for SHU inmates, case managers work with the SHU inmates who are within 90 days of release to assist SHU inmates in obtaining a social security card, birth certificate and driver's licenses if appropriate and to develop home plans which may consist of confirming a home address. The case manager sends the notes on the inmate and the home plan to the probation officer in the home area. The probation officer will investigate the home location and either approve or disapprove of the plan. If disapproved, an alternative release and home plan is developed by the

case manager working with the inmate. The case managers also provide inmates releasing to a halfway house or to the street, informational pamphlets including information on "one stop centers" which are in most large cities that assist reentering offenders with employment, disability employment, job seeker resources and veteran resources.

General population inmates at Hazelton are often released to the Court Services and Offender Supervision Agency and Hope Village in Washington, DC. The Court Services and Offender Supervision Agency provides video conferences with general population inmates and their children prior to release as a part of reentry programming. However this program is not provided to inmates in restrictive housing.

FCI Butner. Facility case managers develop home plans for each inmate to be released from restrictive housing. This consists of identifying a home address so the probation officer can check the residence out for suitability. Halfway house referrals are completed and sent to residential reentry managers for review/approval although some inmates releasing from restrictive housing are not eligible for a halfway house due to the nature of their offenses. Inmates are not enrolled in any community services until they are in a halfway house or back in the community. The case manager also assists the inmate in obtaining a social security card, birth certificate and driver's license if appropriate.

There is no coordinated, comprehensive, targeted reentry programming otherwise available. The reentry affairs coordinator assists case managers with reentry preparation as needed. The unit manager may provide informational pamphlets on "one stop centers" located in most large cities that assist reentering offenders with employment, disability employment, job seeker resources and veteran resources. As in other Bureau facilities, there are no educational classes in restrictive housing with the exception that if an inmate was previously enrolled in education or requests programming, 'push packets,' self-administered course work, are provided.

USP Coleman. Inmates must request information regarding reentry programs. There are no structured programs. Once an inmate is within 18 months of discharge, the case manager will begin release planning, which consists of verifying an address upon release and ensuring the inmate has appropriate identification to include a social security card, birth certificate and driver's license if appropriate. A reentry affairs coordinator is available to staff and inmates as a resource to help with reentry services and provides the training to the staff on the topic of reentry during annual refresher training.

As can be seen from these examples, inmates in Bureau restrictive housing have very limited access to reentry programming. Services are generally limited to providing basic information on identification and benefit issues, and referrals to community programs and services. This stands in stark contrast to range and depth of reentry

programming provided to Bureau general population inmates. Ironically, it is the restrictive housing population that is in the most need of programs and poses the greatest potential risk in their transition back to the community.

Reentry program observations

Access to program data. Currently, the record of inmates who complete psychology self-help programs such as Anger Management, Coping, Drug and Alcohol Abuse this work is documented in the Psychology Data System (PDS) and in the Bureau Electronic Medical Records System, but neither of these systems are accessible by case managers and case managers need to be aware of all course work being completed by inmates[120]. Inmates are provided with completion certificates and Psychology Services staff provide feedback to the unit team at the time of the inmate's Progress Review.

RECOMMENDATION 6.4: Ensure that when inmates complete psychology self-help programs such as Anger Management, Coping, Drug and Alcohol Abuse that completion of these activities are documented in support of reentry planning so that case managers and counselors are aware of these activities.

Lack of program strategy. Although inmates in restrictive housing receive information about reentry, there is no formal coordinated, comprehensive, targeted, specialized reentry program inmates Bureau wide who are unable to participate in general population reentry programming due to their restrictive housing status. Some facilities visited had small rooms within the restrictive housing unit that would enable several inmates to be safely secured at tables to participate in small group classroom training or even individualized training for the highest risk inmates.

RECOMMENDATION 6.5: Develop and provide a coordinated, comprehensive, targeted, specialized cognitive reentry programming specifically designed for inmates in restrictive housing.

While there needs to be a loss of privileges for inmates in disciplinary segregation, there are many administrative segregation inmates and some disciplinary segregation inmates who will spend long periods of time in restrictive housing. Currently, those inmates will not return to general population and therefore not receive any meaningful reentry preparation programming.

[120] Bureau has advised the project team that since April 2014, PDS has been a part of BEMR. The system is now integrated. Since site visits were complete we were unable to verify this improvement.

The Bureau should design instructor led cognitive programming to support reentry similar to what is being provided to general population inmates. This programming could be designed as the "Cliff's Notes" version of reentry services in order to provide at least the most critical reentry related programming to those inmates at least 6 - 12 months prior to their release. Such programming does not have to be as comprehensive as that provided to the general population, however it should be meaningful.

Such a program could easily be designed by the Reentry Services Division staff to include both instructor led classes with self-study and homework provided to these offenders whose risk levels and disciplinary status would enable such controlled group programming. Direct interaction with the inmate by the instructor would help prevent cheating where the inmate's cellmates complete homework assignments. Considering the types of inmates being released from these units, and often after extensive periods of time in restrictive housing, this should be a priority.

No substantive programming is provided in restrictive housing units at any level. Some of the Bureau's program descriptions refer to self-help reading materials as 'program' or 'therapy' however they are barely more than reading activities. Additionally, there is currently no way to ensure an inmate actually did the work if they are double-celled. Some inmates interviewed reported cheating by having other inmates do the work so they could get credit for completing the assignments.

Program communication. Most contact with inmates housed in SHUs, SMUs, and the ADX is cell side. This limits the ability for any meaningful or confidential dialogue. Inmates are not likely to discuss sensitive or private issues shouting through a cell door with other inmates and staff present.

RECOMMENDATION 6.6: Provide inmates the opportunity to participate in more out of cell individual interviews.

Congregate programming. Interaction with a service provider, psychologist etc. is essential for meaningful learning and aids in preparation for reentry by engaging in discussion and social interaction. With the exception of the ADX Florence, no other facilities visited provided any congregate programming. The ADX at USP Florence has begun using specially constructed "Therapy Enclosures," on a very limited basis. While this may not be possible in every facility due to space constraints, it may be feasible in some facilities.

RECOMMENDATION 6.7: Provide appropriately screened inmates with the opportunity to participate in small group programs facilitated by a counselor, case manager, psychologist, education instructor or other treatment provider.

Such programming should only be provided to those inmates the Bureau staff feel are appropriate based on their disciplinary status, security risks etc. However, there

are a significant number of inmates who could be safely programmed in very small groups secured to tables separated a safe distance from other inmates.

Program design. Research shows that programs for high-risk offenders should focus on evidence-based practices that target their individual criminogenic needs. Inmates in restrictive housing are unable to receive the programming available to general population inmates.

RECOMMENDATION 6.8: Provide programming that identifies and addresses most significant areas of need for high-risk offenders in order to assist the offender to successfully reintegration into the community.

If limited programming is made available for selected inmates in restrictive housing who are not likely to return to general population, the programming provided should be designed to meet their most significant areas of need based on their risk needs assessments and other relevant factors.

Training. Staff (including civilian and contractor staff working within the institution) should receive additional training that reinforces the fact that reentry is not a program, but rather a philosophy. Staff do currently receive information as part of annual refresher training (ART) from the Reentry Affairs Coordinator and a brief module in the in-service training however, in order to ensure a more comprehensive and successful approach to reentry, particularly in restrictive units, all staff need to be trained and expected to work collaboratively with each other, understand they model and reinforce pro-social behavior as a way to encourage inmates to change.

RECOMMENDATION 6.9: Educate staff about the need for inmates in restrictive housing to receive formal reentry programming if being released from restrictive housing.

Reentry culture/philosophy. There is no formal Bureau-wide reentry preparedness program specific to restrictive housing. Each facility visited seemed to have their own unique programming that they tried to offer within the confines of the restrictive housing unit. Most staff interviewed did not appear to recognize the need for programming beyond self-help packet programs and no facility was able to provide data on the number of inmates actually being released from restrictive housing. The mindset that it is okay and preferable to discharge from a SHU needs to change.

RECOMMENDATION 6.10: Establish and maintain a culture among all BOP staff, employees and contractors that recognizes the need for meaningful reentry programs for "all" inmates in the Bureau of Prisons, including those in restrictive housing, beginning at new officer/staff training and continuing in every annual in-service training.

The Bureau of Prisons has made reentry a priority and has taken significant steps to emphasize the importance and impact of a comprehensive reentry program. The

mission statement of the Bureau of Prisons (that is prominently displayed in all agency communications including the BOP's internal and external website, or internal newsletter, and many ad hoc memorandums and publications) is to operate safe, secure, humane prisons, and to prepare inmates for release. Bureau of Prisons staff interviewed understand their responsibility to prevent inmates who are released from returning to criminal activities in the community. Bureau staff (and inmates) have been told that, "Preparation for release begins on the first day of incarceration". In the past few years the focus on reentry has been especially pronounced through the creation of the Reentry Services Division, an organizational change in the agency that required support from the attorney general and final approval from Congress.

In addition to establishing this division to coordinate and amplify the agency's reentry efforts and message, the director communicates continuously with staff about this critical aspect of the mission, and he has also communicated directly with the inmates. Specifically, the director wrote an open letter to inmates on June 19, 2013, expressing hopes that they embrace the opportunities provided to them to pursue the education, training and treatment needed to succeed when they return to the community.

While we salute the director and BOP leadership for making reentry a priority, the reality is that inmates in restrictive housing are not afforded reentry services in any significant way due to their housing restrictions and because in disciplinary situations, loss of programs is a consequence of their placement.

Psychology and education staff in the facilities visited were making individual efforts to provide more program services to this population. It is understood that the challenges that restrictive housing creates and the associated security concerns are a priority over programming. However, more effort should be made to provide meaningful reentry services to inmates in restrictive housing while still maintaining appropriate security.

Because of the risks that many of these individuals pose, it is essential that the Bureau do more where possible to improve the reentry into the community in order to protect the public's safety.

The project team did observe and interview staff that believed reentry programming is not possible or appropriate for those inmates in restrictive housing. It is appropriate to not provide programming to inmates who are in restrictive housing for short periods who will likely return to the general population where they can resume programming. This recommendation is aimed at establishing a culture [and policy] that recognizes the need for inmates in restrictive housing to receive more meaningful reentry programming if they will likely never return to the general population and will eventually be released to the community.

ADX Releases. Inmates are spending a significant period of time at the ADX and then placed directly to a halfway house or released directly to the community. Some inmates interviewed have spent from eight to fifteen years at the ADX and will be releasing to a halfway house or to the community. The Bureau needs to develop a step-down or transitional program to prepare inmates for this adjustment.

RECOMMENDATION 6.11: Review of the practice of keeping inmates at the ADX until halfway house placement or direct release to the community on the inmate's release date.

Chapter 7: Restrictive housing operations and conditions of confinement

The section of the report addresses the Bureau's approach to management of restrictive housing units. This analysis includes assessment of organization, staffing, training, security operations, and conditions of confinement. The Bureau management approach is relatively uniform from one facility to another; however, there are some unique characteristics to each facility's management structure; a number of which are described in the following chapter.

Organizational structure

Special housing unit management

The organizational structure governing the SHUs is similar across facilities in structure and management approach. To a degree, the management structure is bifurcated with security managed by the Bureau's Correctional Services department and issues pertaining to classification, programming, minor disciplinary matters and case management assigned to the unit management teams.

Institutions with SHUs are generally but not always part of a larger complex of facilities managed by a single complex warden. The complex warden is supported by additional management staff that may include other wardens of a lower grade reporting to him or her, as well as associate wardens that are deployed in facilities throughout the complex. In the facilities that were assessed for this project, the complex warden was managing a USP.

Within the USP a SHU is managed by the facility's correctional services division and overseen by an associate warden. These associate wardens are responsible for supervising all uniformed staff in the correctional services division.

Direct oversight of the SHUs is the responsibility of the SHU lieutenant, who is the uniform commander of the restrictive housing unit. These lieutenants supervise day-

to-day operations five days per week, and also are designated as the SRO, that conducts the segregation reviews of the inmates assigned to the unit as required by *Program Statement 5270.10, Special Housing Units.*

Only the USP Hazelton Secure Female Facility did not have an SHU lieutenant assigned to manage unit operations. At Hazelton, the shift or operations lieutenant supervised the SHU, in addition to his/her other duties, and on occasion an extra lieutenant was assigned to the unit to supervise operations.

Correctional officers are not selected by management for their posts, but are awarded their post assignments based on a seniority bidding process that takes place each quarter of the calendar year. Therefore, SHU staff can turnover once every three months, depending on bidding for the various posts and the officer's status in the seniority system. Lieutenants are assigned by the warden and his/her staff, based on management prerogative. As outlined above, unit chain of command shifts when the SHU lieutenant is off duty and the shift commander or operations lieutenant for the facility takes over supervision of the SHU and the unit officer in charge (SHU#1 post).

The Bureau is invested in a decentralized management program known as Unit Management. The theory behind unit management is to decentralize operations by dividing large correctional institutions into more manageable units, where staff work in close proximity to the inmates they manage. With respect to the SHUs, unit teams are not specifically assigned to the unit to manage the unit and inmate activity. Instead the unit team assigned to the inmate prior to placement in SHU will retain management of the inmate's case, and will see the inmate in the SHU. Day to day responsibility rests with the SHU lieutenant or in the cases where there is no SHU lieutenant on duty, the operations lieutenant.

Other departments of the institution provide services to inmates and regularly visit the unit. Medical staff enter the unit a minimum of two times per day to administer medications and conduct triage on inmate medical concerns. Facility chaplains, educational staff, caseworkers, and counselors provide services at least on a weekly basis. The shift supervisor or operations lieutenant visits the unit each shift that a SHU lieutenant isn't present. At least weekly, a captain will visit the unit as well as a member of the top administration, such as a warden or associate warden. A mental health clinician visits the unit at least weekly and is further required to conduct a mental health review including a personal interview after every 30 days of continuous placement in the SHU.

In a number of facilities assessed, the warden conducts rounds of the SHU with members of his/her management staff. The assessment team observed this practice at a number of facilities. Each member of the management team accompanies the warden on the tour and observes each inmate's cell, stopping to respond to questions or concerns that the inmates may have.

Special management unit management

Administrative oversight of SMU programs is similar to what is found with oversight of SHU programs. As noted earlier in this report, SMU programs at USP Lewisburg, USP Florence, and USP Allenwood were assessed as part of this review. Generally, each facility is managed by a warden and there are associate wardens assigned to manage correctional services or custody operations, as well as associate wardens responsible for programming. The special management unit custody and security is overseen by the facility captain, or in some cases by a deputy captain. Lieutenants are assigned, either directly to the units, as was the case at USP Allenwood, or covering a geographical sector of the facility that includes multiple units, as was the case at USP Lewisburg. Correctional officers are assigned to posts inside the housing units supervising the inmate population on the various ranges.

Unit management personnel perform a prominent role in the SMU programs. Unit managers, caseworkers, counselors and unit secretaries provide services to the inmate population that includes classification, casework, disciplinary and programming. Unit team members work cooperatively with correctional services staff to manage each unit. It is important to note that correctional officers and lieutenants report in a parallel chain of command to the facility captain/deputy captain. Unit managers report to associate warden than the captain, although that is not always the case. Regardless, there is a different chain of command for correctional services staff and unit management staff.

ADX Florence unit management

The ADX Florence is managed directly by the complex warden, who is based physically at the ADX. Three associate wardens, also based at the ADX, are responsible for correctional services, programming, human resources, and a number of other ancillary functions. ADX custody operations fall under the associate warden for correctional services. A correctional captain manages security for the unit and all custody personnel. This position is supported by a deputy, a position that was vacant the time of the assessment. Each tour of duty is managed by a shift commander, who is the operations lieutenant that oversees shift operations. There are additional lieutenants that supervise "facility activities," the SHU, the control unit, and the special security unit. SHU, control unit, and special security unit lieutenant posts are filled 16 hours per day on day and swing shift. An administrative lieutenant manages staff scheduling and administrative duties.

Unit teams provide services to the inmate population and work cooperatively with correctional services personnel. There are three unit teams that provide unit management services e.g., inmate classification, minor discipline, casework. The SHU does not have a separate unit team assigned to it and the facility unit teams follow

their inmates and continue to monitor them while they are housed in the SHU, similar to the process described above for SHUs throughout the Bureau.

Restrictive housing management structure observations

FINDING: The management structure of the Bureau facilities is staffed with sufficient personnel to provide management and oversight of its restrictive housing units.

Each complex is managed by a warden, who is further supported by subordinate level wardens and associate wardens. Associate wardens supervise department heads of the various departments throughout the correctional complex. These department heads provide direct oversight of functional areas and provide support to the segregated units depending on their function and responsibilities.

Department heads that have particular responsibility for the segregated units include facility captains and unit managers. The captain provides oversight over lieutenants who are the key figures in managing the segregated units, as first line supervisors of the staff assigned there. The SHU and SMU lieutenants are the officers in charge of operations and are tasked with the responsibility of ensuring that all aspects of policy and procedure are complied with. These policies and procedures include program statements, federal regulations, procedures and post orders.

The Bureau utilizes a bifurcated management structure in which the Correctional Services Division oversees the uniformed staff and a unit team with a separate command structure provides direct service to the inmate population.

Correctional services is responsible for most of the conditions of confinement an inmate is subjected to, as well as ensuring discipline and order is maintained in the units. As specified before, correctional services report to an associate warden, and in a parallel chain of command, unit teams report to an associate warden as well, providing casework, classification, minor discipline, and services to the inmate population. In the SHUs, unit teams provide support; whereas, in the SMU the unit teams provide direct service to the inmate population in the units they oversee. Although a bifurcated chain of command is somewhat unusual, unit management is a long-standing and successful management strategy that is used not only in the Bureau, but also in correctional departments throughout the nation.

Correctional officers are the main providers of service and the staff that maintain security, order, and discipline in the restrictive housing units. Officers self-select

their assignments to restrictive housing units on the basis of seniority: the exception being the lieutenant who is assigned by the facility/complex warden[121].

This is a practice mandated by the labor contract and is not the most ideal method of staff assignment. Best practice dictates that staff assigned to restrictive housing units are selected on the basis of their performance and competencies. Furthermore, in many jurisdictions, they are rotated out of these units after a period of time because of the high stress nature of the assignments and the potential for 'burnout.' This cannot be accomplished in a system where staff select their assignments.

Correctional operations staffing levels and approach

This section of the report addresses the approach and methodology of staffing restrictive housing units in the Bureau, which includes special housing units (SHU), special management units (SMU), ADX, ADX general population and step-down units, and special security unit. In assessing staffing in these units, the following documents were reviewed to determine if staffing levels and approaches were consistent with Bureau policy, statutes, and nationally recognized best practices, to include conformance with American Correctional Association Standards.

Special housing unit staffing

The staffing of SHUs is consistent throughout the Bureau of Prisons facilities assessed. With the exception of the female unit at USP Hazelton, each of the SHUs was managed by the lieutenant that was designated as the SHU lieutenant, responsible for management and oversight of the unit. In most facilities, particularly the larger USPs, there was a SHU lieutenant on the day shift and a SHU lieutenant assigned to swing shift. Typically, a lieutenant was present at the facility from 6 AM to 10 PM. When the SHU lieutenant is not on duty, the operations lieutenant or shift commander is responsible for managing SHU operations. The SHU lieutenant is assigned by the warden to the post and may rotate out of the unit based on the warden's decision. The SHU lieutenants report to the facility captain and are part of

[121] Work rosters are created in accordance with Article 18 of the collective bargaining agreement called the Master Agreement. The Master Agreement provides that staff can bid on certain posts by seniority, and preference requests are considered based on seniority. Management is required to make reasonable efforts to honor the requests (i.e. not deny request arbitrarily).

the Correctional Services Division of the facility, which consists of uniformed correctional staff. In all units assessed, the facility captain reports to one of the associate wardens, who reports directly to a warden.

The SHU lieutenant is responsible for supervising all staff assigned to the unit. The lieutenant is responsible for all security related matters in the unit to include the training of personnel; maintenance of inmate records; such as form *BP-292*, which is a record of inmate activity; census counts; ensuring inmates receive services and conditions of confinement are maintained at an acceptable level; movement procedures; overseeing use of force incidents; management of emergencies; searches of inmates; conducting supervision rounds; conducting segregation reviews as the SRO; and other security functions.

The number of correctional officer positions assigned to the SHU varies from facility to facility depending on the size of the unit. In all facilities assessed, the SHU #1 post is designated as the officer in charge of floor operations. SHU #1 reports to the SHU lieutenant or, in that person's absence, to the operations lieutenant for the facility. SHU #1 is normally the officer that carries the key to the inmate living areas, known as "ranges". SHU #1 oversees the activities and performance of other line officers working in the unit, although he/she is not formally a supervisor. Specific duties may include maintaining the equipment inventory; conducting census counts; maintaining records, such as form *BP-292*, which tracks individual conditions of confinement; ensuring that officer's conduct and record 30 minute rounds, which consist of wellness checks of inmates in their cells; ensuring meals are provided to inmates; controlling all inmate movement, ensuring that the application of restraints meets procedural requirements; conducting searches; and other security related duties.

Additional officers assigned to the unit, specifically SHU #2 through SHU #6, (the number of officers assigned depends on the size of the unit), are range officers, who perform most of their security duties on the ranges supervising inmates, controlling their movements, conducting wellness checks, and providing them with meals and services. In units with a secure control center, SHU #2 is the control room officer, who manages access though electronically controlled doors and keeps unit records in logbooks and a computerized record-keeping program.

In the larger USPs, a recreation officer is assigned to the day shift, and in some cases, swing shift to supervise inmate recreation. Inmates are normally ask~~ed~~ at the beginning of the day shift they are interested in attending outdoor recreation. The recreation is conducted in secure recreation cages located adjacent to the cellblocks. The recreation officers are responsible for supervising the inmates while they recreate. In the smaller units, the post is a day shift post, as the recreation can be completed during the eight-hour tour of duty. In the larger units, recreation may continue into second or swing shift. Our assessment also revealed the assignment of a property officer in the USP SHUs. The property officer is responsible for

inventorying, distributing and maintaining inmate property, while the inmates are housed in the SHUs.

SHU seniority bidding for post assignments. With the exception of the SHU lieutenant all correctional officers working in the SHUs select their assignments on the basis of a seniority bidding system. Already stated above, The Master Agreement between the American Federation of Government Employees and the Bureau mandates that officers are allowed to bid based on seniority for their shift and post assignments each quarter of the year. This process ensures that the most senior bidder is awarded the post. The only exception is that after one year the officer must bid to a different shift, but not necessarily to a different assignment/post. There are some exceptions to this rule, but as it relates to the SHU assignments, officers select their post and shift assignment. As a result, seniority plays a prominent role in these assignments.

Program Statement 5500.14, Correctional Services Procedures Manual provides further guidance as it relates to post assignments. Chapter 1, Section 101 requires that wardens develop a quarterly assignment roster that is prepared at 13-week intervals. This policy further requires that officers are subject to post rotation in accordance with the contract.

SHU management and program staff. Staffing of the SHU consists of unit lieutenants and correctional officers. There are typically no other staff assigned directly to work in these units. Bureau facilities have an established practice of assigning staff from the facility to make periodic visits to the unit to meet with inmates and provide service. This includes case managers, medical and mental health staff, etc.

There is no separate unit team assigned and housed in the SHUs. However, the unit team members continue to work with inmates that were residing in their units prior to being placed in segregation/special housing. In practice, unit team members are expected to make periodic rounds of the SHU (least once per day) to ensure that members of a unit team make regular tours of the ranges. The presence of unit team members is documented on the sign in sheet. Members of the assessment team reviewed sign in sheets for a minimum of a three-month period at each of the sites assessed. This review revealed that unit team members, including the unit manager, made regular visits to the SHU in accordance with procedural requirements.

Similarly, other staff members are also required to conduct rounds and meet with inmates providing service. A review of the sign in logs reveals that staff such as chaplains, mental health clinicians, captains, associate wardens, the warden, and other staff make periodic visits to the SHUs as well.

Special management unit staffing

The history and background of the inmates housed in the SMU dictates a need for close supervision and a high level of security services.

The SMU programs have a bifurcated management structure. Correctional officers working the unit are supervised by lieutenants that are specifically assigned to the day shift or swing shift. When a lieutenant is not present in the unit, correctional officers report to the operations lieutenant for the facility. All lieutenants report to the facility captain and are members of the Correctional Services Division. The facility captain reports to an associate warden at the facility. As is the case with SHU staffing and chain of command, housing unit post SMU #1 is designated as the unit officer in charge on each shift, and is considered second in command with regards to security in the SMU.

Additional officers are assigned to each shift and provide correctional services, security and supervision to the inmates in the SMUs. SMU officers have similar functions and responsibilities as SHU officers and conduct census counts, maintain records of inmate activity, conduct periodic wellness checks and rounds, conduct searches, supervise inmate movement, and other security-related duties.

The SMU's are also managed, in part, by the unit team. The unit team is comprised of a unit manager, case managers, counselors, and a unit secretary. The unit team is primarily involved in classification matters that determine the inmate's SMU phase status and subsequent placement. The unit manager also reports to an associate warden. Typically, the unit manager and facility captain report to a different associate warden. In this arrangement, it is expected that the unit manager and captain work closely with one another on operations and procedural issues. As evidence of this, Program Statement 5500.14, Correctional Services Procedures Manual requires that the captain and unit manager jointly sign and approve correctional officer post orders. This approach suggests that the two staff are operating in a united fashion to avoid divisiveness in this bifurcated management structure.

SMU seniority bidding for post assignments. SMU line staff bid each quarter for a post assignment and are granted assignments on the basis of seniority. Therefore, a rotation occurs four times per year. The most senior person bidding for a post is awarded the post assignment. There is a four quarter limit on shift assignments to the same shift. In the case of an officer with significant seniority, he can only bid a particular shift four times in a row, and then must bid to a different shift for at least one quarter, before returning to the previous shift. This rotation requirement prevents an officer from bidding to the day shift more than four quarters in a row. According to lieutenants interviewed, a staff member can be removed from special management assignments for disciplinary reasons, although none of the lieutenants

could recall an instance where an officer was removed for disciplinary reasons. As described above, shift rotation takes place on a quarterly basis affecting correctional officers only and there is no selection process for line staff, only the shift bidding process, where officers choose their assignments on the basis of seniority. The lieutenant's assignments, on the other hand, are selected by management and seniority does not officially play a part in those assignments.

SMU program staffing. Staffing for two of the SMU programs is described in more detail below. These two facilities were selected because they provide programming for all four levels of the SMU, with USP Lewisburg housing mainly Level 1 and Level 2, while USP Allenwood provides housing and programming for Level 3 and Level 4 inmates.

USP Lewisburg

USP Lewisburg is the largest SMU in the Bureau, whose program is designed to house disruptive inmates in Level 1 and Two of the SMU program. Supervisory staffing includes a captain and a subordinate deputy captain, as well as a number of lieutenants assigned to manage the daily operations of the facility. Each shift has an operations lieutenant that operates as the shift commander and an East and West lieutenant who manage security operations in a sector of the facility. D and G units house inmates who are disruptive, or who pose special management challenges. Each of these units has a lieutenant present on the day shift. The east lieutenant is responsible for B, C, and X units. The west lieutenant is responsible for E, F, J, and I units. Officers are assigned to units based upon a quarterly seniority bid system as discussed previously. Based upon a review of 30 days of rosters and an interview with the captain, security staffing in the facility is sufficient and consistent with the roster and master schedule.

In addition to the officers assigned to each unit there are also a number of correctional program staff assigned. Three unit managers are assigned to the eleven units in the facility (a fourth unit manager is assigned to the camp). In each unit there is an assigned case manager and a counselor. Additional assigned program staff provide reentry services, psychology services, religious services, and educational services, and casework services to the inmate population. Staffing at this facility is appropriate given the mission of the facility, and the size of the population in the assessment team's judgment.

USP Allenwood

USP Allenwood is a step-down facility from USP Lewisburg that houses those inmates who have progressed to Level 3 and Level 4 of the SMU program. There are two SMU housing units at USP Allenwood. Each of the two units have staff assigned and there are two lieutenants that supervise the program five days per week . The lieutenants are assigned to the Correctional Services Division of the facility. In addition, the unit

management team provide services to both housing units. Shift rosters were examined for a 14-day period in the months of January and February 2014. SMU staffing on each unit was typically four officers on day shift (not including a shared property officer); three officers on afternoon shift; and one officer on the night shift. On Saturday and Sunday, the day shift complement is often reduced to three officers, as there is less activity to supervise on those days.

Of the 14 shift rosters examined, there were no instances when the staffing complement was lower than described above. Occasionally, on third shift a second officer is added to the SMU. This officer is also listed as a floater and can be utilized in other areas of the facility based upon need.

There is a lieutenant assigned to unit 4A SMU and a lieutenant assigned to unit 4B SMU on the day shift only. Supervision on afternoon and night shifts is provided by the shift or operations lieutenant. One of the four officers on the day shift is designated as the recreation officer, who manages and supervises inmate recreation. A property officer is added to the complement and is shared between units 4A and 4B five days a week on the day shift.

A review of the rosters for the 14-day period reveals that staff are deployed consistently and the units did not run short of personnel at any time. The lieutenants queried on this issue also indicated that the posts are consistently manned per the staffing plan. During the course of an interview with the union's representative it was confirmed that this was in fact the facility's staffing practices.

Control unit staffing at Florence ADX

The Florence ADX is designated as a control unit within the Bureau. According to *Program Statement 5212.07, Control Unit Programs*, placement in the control unit is reserved for inmates who are unable to function in a less restrictive environment without being a threat to others or to the orderly operation of the institution. Inmates are referred to the control unit by facility wardens and approval for placement is made by an assistant director within the Bureau, with input from a regional director. Although inmates are frequently reviewed as described in other sections of this report, length of stay in ADX Florence can be substantial.

The ADX is managed by a warden, who is based at the ADX. There is a correctional complex warden, who is the warden of one of the three Florence facilities and is responsible for all the facilities on the correctional complex. Three associate wardens, based at the ADX, are responsible for correctional services, psychology services, human resources and a number of other functions. ADX custody operations

fall under the associate warden for correctional services. A correctional captain manages security for the unit and all custody personnel. This position is supported by a deputy captain, a position that was vacant at the time of the assessment[122].

Each tour of duty is managed by a shift commander, who is a lieutenant and who oversees shift operations. Correctional officers working throughout the facility are supervised by a lieutenant, who is either the shift supervisor or one of the area lieutenants. There are area lieutenants assigned to the Activities position (two shifts, 16 hours, seven days), the SHU (two shifts, 16 hours, five days), and the special security unit, and the control unit (two shifts, 16 hours, five days). There are specialty lieutenant positions that include an administrative lieutenant, and other five-day post lieutenants including EPO, Special Investigative Service (SIS), and SIA lieutenants. All lieutenants report to the captain.

Unit teams provide services to the inmate population. There are three unit teams that provide unit management services throughout the facility. These teams are responsible for inmate classification, discipline, casework and to some extent programming. Unit teams are assigned to geographic sectors of the facility and service those inmates living within the sector cellblocks. The SHU within the ADX does not have a separate unit team assigned to it, and the facility unit teams follow their inmates and continue to monitor them while they are housed in SHU. The assignment of unit teams to SHUs has been described above and there is no difference as to how they are utilized at the ADX than was described for other SHUs. Centralized management is practiced with regard to management of the SHU. The lieutenant works with the operations lieutenant, who reports to the facility deputy captain, who reports to the complex captain.

ADX seniority bidding for post assignments. As with all Bureau facilities assessed, correctional officer personnel are assigned on the basis of seniority. Each quarter of the calendar year, post bidding takes place and staff select their assignments, days off and shift on the basis of seniority. This was confirmed with the administrative lieutenant. Staff may continually bid posts, days off, and shifts they are interested in each quarter. Staff must rotate to a different shift periodically. If they bid on sick and annual relief positions, changing of the shifts as indicated above is not required. Lieutenants are assigned by management to their positions. Seniority may be taken into account for those assignments. Also, SIS personnel, tool room personnel, and security officers are assigned by management to their posts.

Unit management staff are assigned by management to their positions. Unit managers, unit counselors, and caseworkers are members of the unit teams. The unit

[122] The Bureau reported that the position was filled in April, 2014 and assumed duties after the completion of the project site visit.

teams manage classification and casework related functions, as well as providing other services to the inmate population. The unit teams report to an associate warden. In a parallel fashion, security staff report to their lieutenants and the facility captain, who also reports to an associate warden.

Staffing observations

Program Statement 5500.14, Correctional Services Procedures Manual, dated October 19, 2012, outlines procedures relating to correctional services and staffing. Chapter 1 entitled management of correctional services describes methodology for computing the correctional staff complement and the preparation requirements for the quarterly and daily staff roster assignment. The policy further describes correctional officer rotation requirements, referencing the Labor Contract Master Agreement. The procedures include requirements relating to the preparation, use, and distribution of post orders. Post orders are documents that describe in detail the requirements of the job and the schedule of duties for a particular post. The procedures outlined a format for post orders describing procedures and special instructions regarding a particular post.

The Bureau has an organized and comprehensive process for determining staffing levels based upon post assignment needs. This process is reviewed on a regular basis. The application of post assignments is quite consistent in segregation units throughout the agency. Post orders are comprehensive and detailed, outlining duties and responsibilities of the officers assigned. Our analysis also determined that once staffing levels are set utilizing a formula to compute the correctional complement needed, there is little variation in staffing levels from what is prescribed in the daily roster and master schedule. When there are vacancies, staff are normally reassigned to work in the various restrictive housing units. If there are no staff available, overtime expenditures are typically authorized. This analysis also is in agreement with the Commission on Accreditation of the American Correctional Association that routinely reviews Bureau facilities for accreditation. ACA has accredited all of the Bureau facilities assessed. The accreditation process includes a review of staffing methodology, consistent with staffing standards. Those staffing standards were referenced earlier in this document.

When staff were questioned regarding removing a poor performing staff member from the assignment, they believed that an individual could be removed for disciplinary purposes, but there were no instances when staff could recall this taking place.

Staffing of these SHUs was found to be consistent throughout the assessed facilities. Post orders and job requirements are similar from one facility to another and focus attention on uniformity and consistency in its facilities. In addition to the consistency of staffing levels, the assessment team examined facility rosters

carefully to determine if staffing levels were maintained on a regular basis. In our experience, due to budget difficulties in many jurisdictions, as well as correctional officer vacancies, it is not unusual to see posts left vacant, from time to time, when there are insufficient personnel available to man the posts. This review revealed that there were few occasions identified where a post was left vacant in a SHU for any reason.

FINDING: Each facility reviewed had sufficient staff to perform the functions of managing the restrictive housing units.

FINDING: The presence of a correctional services team working alongside a unit management team appears to be an effective management approach and provides sufficient personnel to conduct the work as required by the Bureau.

Staff training, curriculum, and approach

This section addresses the approach, policy requirements and training provided to staff working in segregation units in the Bureau of Prisons, which includes SHUs and SMUs. There are a number of training mandates that the Bureau adheres to, and nationally accepted practices that will be reviewed as part of this analysis. The following documents were reviewed as part of the assessment of Bureau restrictive housing unit staff training. In addition, nationally recognized best practices including American Correctional Association Standards were also examined.

- *Program Statement 3906.20, Employee Development Manual,* dated January 24, 2007.
- Bureau of Prisons ART curriculum and lesson plans.
- Bureau of Prisons quarterly SHU training curriculum and PowerPoint presentations.
- ACA Standard 4 – 4075 - The training plan is developed, and updated based on an annual assessment that identifies current job related training needs.
- ACA Standard 4 – 4084 – 1- Written policy, procedure, and practice provide that all correctional officers receive at least 40 hours of annual training. This training shall include at a minimum the following areas:
    - Standards of conduct/ethics
    - Security/safety/fire/medical/emergency procedures

- Supervision of offenders including training on sexual abuse and assault; and use of force
- Additional topics shall be included based upon the needs assessment of staff and institution requirements

- ACA Standard 4-4090 - All security custody personnel are trained in approved methods of self-defense and the use of force as a last resort to control inmates.
- ACA Standard 4-4092 - All personnel authorized to use chemical agents receive thorough training in their use and in the treatment of individuals exposed to a chemical agent.
- ACA Standard 4-4220 - All institution personnel are trained in the implementation of written emergency plans. Work stoppage and riot/disturbance plans are communicated only to appropriate supervisory or other personnel directly involved in the implementation of those plans.
- ACA Standard 4-4373 - There is a written suicide prevention plan that is approved by the health authority and reviewed by the facility or program administrator. The plan includes staff and offender critical incident debriefing that covers the management of suicidal incidents, suicide watch, assaults, prolonged threats, and death of an offender or staff member. It ensures a review of critical incidents by administration, security, and health services. All staff with responsibility for offender supervision are trained on an annual basis in the implementation of the program. Training should include but not being limited to:
    - identifying the warning signs and symptoms of impending suicidal behavior;
    - understanding the demographic and cultural parameters of suicidal behavior, including incidence and variations in precipitating factors;
    - responding to suicidal and depressed offenders;
    - communication between correctional and healthcare personnel;
    - referral procedures;
    - housing observation and suicide watch level procedures; and
    - follow-up monitoring of offenders who make a suicide attempt.

Bureau of Prisons employee development manual

Program Statement 3906.20 establishes comprehensive training procedures, specify training management responsibilities, and provide employees with access to training. This policy and manual requires that the agency develop an annual training plan that addresses the needs of the employees that is approved by a Training Committee with employee representation. This requirement also conforms to ACA standards. The training plan is the basis for the annual refresher training that is conducted each year and is discussed below. New employees are required to attend a three-week *Introduction to Correctional Techniques* program, which is considered basic training for new correctional employees and is conducted at the training academy in Glynco, GA. There is another component that is completed at the assigned institution.

Annual refresher training

All staff that work in Bureau facilities are required to participate in an annual 40-hour in-service training program, commonly known as annual refresher training (ART). ART training is conducted and provided during the first quarter of the calendar year. The ART program is designed to comply with ACA standard 4-4084-1 relating to recommended annual training. The assessment team met with facility administrators, human resource representatives, training staff, and supervisory staff to determine the content and quality of the training programs provided. Each facility develops a curriculum that contains Bureau required core curriculum and adds content that is applicable to local training needs. The following curriculum is presented as an example of the training content for a typical Bureau facility.

The curriculum offerings represent a comprehensive in-service training program that is offered in Bureau facilities with some variation depending on the site. The CNA team met with administrative, human resources, and training staff during the facility assessments. At each site, a minimum of 15 randomly selected training records were reviewed of staff assigned to the facility and a maximum of 25 records, mainly those staff assigned to work in restrictive housing units, such as the SHU, SMU, and control unit. The records revealed that ART training is a high priority in the Bureau and is conducted in the first quarter of the calendar year. With few exceptions, staff records reviewed revealed that staff completed the required training in 2013.

FINDING: The Bureau's commitment to staff training is outstanding and consistent with best practices in corrections.

Specialized training

The assessment team examined a number of high risk and high liability areas where specialized training is offered and also recommended by the ACA to determine if Bureau training covers these important topics. Training areas chosen for review included the following:

Suicide prevention. Each of the facilities assessed provided a training program on suicide prevention and recognition of the signs of suicidal behavior. Most often this training was conducted as part of Annual Refresher Training, but also was a topic of training in all of the SHU training programs offered quarterly in facilities that operate SHUs. *PS 5324.08* states that supplemental training will be conducted approximately 6 months after the conclusion of institution ART. A review of selected training records indicated that the vast majority of Bureau staff receive the annual training and are familiarized (annually) in the recognition of the signs of suicidal behavior.

Administration of oleo capsicum chemical agent. Oleo capsicum (OC) is a chemical irritant dispensed from aerosol containers or via projectiles to disable an inmate who is threatening or acting violent in a correctional institution. The administration of any chemical agent, such as OC is considered a use of force. There are specific manufacturer's guidelines for the use of the chemical agent and staff need to be trained regarding the proper method to deploy, the amount to deploy, the type of reaction an inmate may have to the agent, and methods for decontamination after the use of the chemical agent. Bureau policy requires that those individuals authorized to administer chemical agents must be trained annually and also receive a quarterly refresher training. Our findings were that annual OC training is conducted at all facilities, and in a number of facilities, quarterly refresher training is mandated.

Use of force. Use of force training is provided to guide staff on under what circumstances the use force may be used, levels of force allowed, and reporting procedures following use of force incidents. Each of the facilities assessed provided instruction on use of force as part of the Annual Refresher Training, as well as SHU specific training.

Emergency plan training. Staff are regularly trained on an annual basis regarding emergency plans and the management of emergencies. This topic is included in the Annual Refresher Training program. Additional training in the Incident Command System is also provided as part of the ART training. Management of emergencies is also a training topic in a number of SHU training programs reviewed.

Self defense. This training is provided to enhance officer safety by instructing them on self-protection against violent attacks. Self-defense training is a topic of instruction in ART at all facilities subject to our assessment.

Special housing unit specific training

The Bureau requires that facilities that have SHUs provide a specialized curriculum of instruction for staff that work in SHUs. The requirement calls for an eight-hour program to be delivered on a quarterly basis for staff assigned to the units[123]. Beyond the requirement that training must be provided, no guidance is provided with regard to content or curriculum. Training content is determined locally by the facility warden and his/her staff. The assessment team inquired about this training at each facility in order to determine the content of training being provided, the length of the program, the training delivery methods, who was required to complete the training, as well as compliance with Bureau requirements and mandates. The following is a summary of that analysis.

Training methodology/hours of instruction. Ten facilities were visited and assessed as part of this process. Eight of the ten facilities have a training program for staff that are assigned to the SHU that is an eight-hour program. USP Victorville, USP Hazelton, USP Florence, USP Allenwood, USP Coleman, USP Terre Haute, USP Lewisburg, and the Florence ADX all provide an eight-hour program. The delivery method and attendance requirements do vary from facility to facility.

For example, at USP Victorville the warden has mandated that all staff at the facility regardless of their assignment participate in the quarterly training. Records reviewed indicated that over 300 staff have been provided with this training during the past year. The program is an eight-hour course of instruction provided in a classroom setting.

Similarly, an eight-hour classroom session is provided quarterly at USP Hazelton, USP Florence, USP Terre Haute, USP Coleman, USP Lewisburg, and the ADX for staff assigned to the SHU as a regular assignment or on a temporary basis. An alternative method of delivering the required training is provided at USP Allenwood, where no classroom instruction is provided, but the SHU lieutenant has created a training binder with written content that staff assigned to the SHU must review each quarter of the year. The lieutenant indicated he verifies that staff review the content by questioning them on various aspects of the training and has the staff sign a training log that indicates they have reviewed the material.

[123] The Bureau reported that in November 2014, a standardized SHU Training lesson plan and slide show were completed. SHU staff will be required to participate in this training four hours per quarter. Additionally, a CENTRA training for captains regarding the presentation of this training is being routed for approval.

At USP Hazelton, the quarterly SHU training is offered only three quarters of the year. During the first quarter of the calendar year, because Annual Refresher Training is taking place, there is no SHU training. The captain explained that at this facility there is no requirement for SHU training during the first quarter, and ART participation satisfies the SHU training requirement for that quarter.

The SHU training at USP Tucson and FCI Butner consists of a four-hour block of training provided on a quarterly basis for SHU staff as it is the policy at those facilities that SHU training consists of a four-hour program.

Level of staff participation. At USP Victorville, over 300 staff received the required training in the past year. At a number of the facilities, records indicated that the majority of staff assigned to work in the SHU received the SHU training. There were instances where staff who were assigned to SHU per the roster did not receive the training when it was offered during the quarter. This was especially true for those staff assigned as sick and annual leave replacements for staff who are regularly assigned SHU employees. The only facility where 100 percent of the staff assigned to the SHU participated in the training was at USP Allenwood, where the training was not conducted in a classroom setting.

At USP Victorville, the strategy of training all staff ensures that staff assigned to work in the SHU either on a permanent or temporary assignment are trained. In each of the other facilities, there were staff assigned to work in the SHU at various times that did not complete the training program. The frequency of the training (quarterly) and the significant number of staff who may work in the SHU one or two days a week, or in some cases, less frequently makes it challenging to achieve 100 percent compliance with the training requirement. This issue is further exacerbated by the fact that staff bid their posts on the basis of seniority quarterly, which can result in high turnover in the SHUs every three months, creating a new cohort of personnel that need to be trained four times per year.

Special housing unit training curriculum

Based upon staff interviews, there is no standardized curriculum for the SHU training. It was determined that the SHU training content varies from facility to facility. However, there appear to be similarities in the training content provided with respect to inmate management and security procedures. Examples of the training content found in the various training programs are noted below.

- USP Hazelton: Hunger Strike Management; SHU Strategies; Prison Rape Elimination Act; and Suicide Prevention.
- USP Allenwood: Use of Batons; Searches; Supervision of ; Cell rotation (21 days); Meal Service; Completing 292 Forms; Inmate Movement; Levels of

Supervision; Food Slot Operations; Food Trays; Recreation; Privileges; Cell Assignments; and Use of Force.

- FCI Butner: Application of Restraints; Suicide Risk Assessment and Prevention; Conducting Rounds; Searches; and Emergency Response.
- USP Coleman: Application of Restraints; Use of Batons; Inmate Discipline; Sanitation; Searches; Razor Procedure; Key Control; Cell Rotation(21 days); Completing 292 Forms; Food Service; Suicide Prevention; Inmate Supervision; Recreation; Privileges; Escorts; Programs; and Unit Evacuation.
- USP Terre Haute: Use of Force; Suicide Prevention; Prison Rape Elimination Act; SHU Operations (includes Escorts, Law Library, Haircuts, Recreation, Safety and Security).
- ADX: Use of Force; Interpersonal Communications; Conducting Rounds: Meal Service; Searches; Psychology/Suicide Prevention; Admissions and Releases; Escorts; and Searches.

In the six examples provided, close attention is paid to unit operating procedures, proper record-keeping (*BP-292* Forms, which note if inmates accepted meals, participated in recreation etc.), inmate escort and supervision practices, use of force, suicide prevention and recognition of signs of suicidal behavior, privileges and security procedures.

Staff training observations

The Bureau is heavily invested in both in-service training and preparing staff to carry out their duties efficiently and effectively. On an annual basis, a training plan is developed consistent with the requirements of Employee Development Manual, which is also in accordance with ACA standards previously referenced. From the training plan, a national curriculum is developed for the coming year's Annual Refresher Training. The training curriculum includes all topics recommended by the ACA, including those high-risk areas that are addressed in the standards, where training is recommended. The Bureau also adds content to address identified training needs.

During the first quarter of each calendar year, staff are scheduled to participate in ART training at each site and, as noted, the vast majority of personnel complete the training during the first quarter of the calendar year. This includes all staff assigned to the facility, such as correctional officers, supervisors, unit management, professional and support staff. The amount of training provided and the number of staff receiving ART training is impressive and, as previously stated, is a best practice. Many other correctional agencies are unable to provide this level of training, either for budgetary reasons or logistical reasons that can not be overcome. The Bureau is

seems to be deeply committed to the annual training and makes it a high priority mandate that all facility leaders must and do adhere to.

FINDING: The training curriculum used by Bureau facilities is consistent with best practices, providing a range of topics that meet industry standards and ACA standards.

High liability training areas, such as the use of force (to include OC training), providing first aid/medical attention, security procedures, emergency procedures, sexual misconduct, inmate mental health issues and suicide prevention are training topics addressed.

The SHU training is also provided at each of the sites the assessment team reviewed. There are inconsistencies on how the SHU training is conducted, as some sites train four hours per quarter while others eight hours per quarter. The majority of the facilities provide classroom instruction and one facility requires staff to read a binder that contains training content outside of the classroom. Inconsistency was also found with the mandatory nature of the training, as the majority of the facilities were unable to train 100 percent of those staff assigned to work in the SHUs. USP Victorville, however, exceeded Bureau standards by training all staff, regardless of whether they were assigned to a SHU post or not.

It is difficult to train all staff members that work in the unit on a quarterly basis, especially those who are temporarily assigned to fill a post to backfill for a regular SHU officer that is absent on a particular day. The quarterly rotation of staff resulting in turnover also contributes to the problem of ensuring SHU staff receive the training.

FINDING: SHU training is not consistent throughout the Bureau in terms of delivery, content, hours of instruction, schedule, and mandatory attendance.

Security systems and practices

This section of the report addresses Bureau security systems and practices as described in policy and procedures, as well as observed during the assessment process at facilities reviewed. Team observations contributed to the summary and findings, as well as numerous documents that were also reviewed during the assessment process. The report does not document any practices or procedures that were observed by the project team that if reported would compromise the safety and security of the institutions. The following documents were reviewed during the assessment process and contributed to this section of the report.

- Statutory requirements

- Bureau program statements relating to control units #5212.07, dated 2/20/2001; special housing units #5290.10, dated 7/29/2011; special management units #P5217.01, dated 11/19/2008, and use of force and application of restraints #P5566.06, dated 11/30/2005
- Correctional officer post orders[124]
- Bureau performance review reports
- American Correctional Association standards[125]
- Bureau Operations Memorandum 004-2013 (5500) Oleoresin Capsicum (OC) Aerosol Spray Pilot Program
- Bureau Memorandum, Conducting 30 minute Checks, authored by Assistant Director for the Correctional Programs Division, April 26, 2012
- On-site observations of operational practices
- Staff interviews
- Inmate interviews

Physical plant characteristics

The physical plants of the Bureau segregated units are typically cellblock style units with a controlled entry point from a sally port[126] leading from a main corridor into

[124] Post Orders are detailed descriptions of the duties and responsibilities of a correctional officer. They include the schedule of daily events and activities, as well as procedural requirements that an officer must comply with. Post Orders often include excerpts from policies and procedures that an officer must be familiar with. It is required that an officer review their post orders on a periodic basis, usually when they assume a new post, and sign and date the post order signature sheet.

[125] The American Correctional Association (ACA) is a nationally recognized private, nonprofit organization whose mission includes the development and promotion of effective standards for the care, custody, training, and treatment of offenders. As part of its accreditation process, a visiting committee of ACA auditors audits the correctional facility against standards and expected practices documentation and evaluates the quality of life or conditions of confinement. An acceptable quality of life rating is necessary for a facility to be eligible for accreditation. The quality of life in a facility includes cell size and time inmates spend outside the cells, adequacy of medical services, offender programs, recreation, food service, sanitation, use of segregation, crowding, and reported and/or documentation of incidents of violence.

[126] A sally port is a secure, controlled entryway in a correctional facility, which normally includes the use of two doors to control access to an area. Sally port doors are not opened at

the unit. The majority of the units viewed are linear style, with cells located on either side of the cellblock corridor. The cellblock area is protected by a "range" gate that leads from the cellblock common area, usually near the control room. Access through the range gate is carefully controlled by an officer, who controls entry into the cellblock area. At the opposite end of the corridor, there is typically an emergency exit as a secondary means of egress for fire evacuation purposes. All cells viewed were of solid steel construction with a tamper resistant security glazing vision panel to allow visibility inside the cell.

All cells in SHU and SMU housing are occupied by two inmates, except security cells used to monitor inmates that require close monitoring due to security or mental health issues. All the cells at the ADX have one bunk and are occupied by one inmate.

Each cell door is also equipped with a small panel that can be unlocked by the correctional officer to deliver food (also known as the "food slot") that serves as a protected method of handcuffing inmates before the cell door is opened. The cells themselves are equipped with sleeping bunks, which are secured 12 inches off the floor, one on top of another; a toilet/sink combination unit; one or two shelves; a writing surface; one or two seats, property storage units; and, in many cases with the exception of the older facilities, a shower unit inside the cell. In the older units, showers are located at one end of the range and inmates must be escorted from their cells to the showers, one at a time. Most of the cellblocks viewed have cameras installed at either end of the range to record inmate and staff movement, with footage digitally recorded.

Each unit has at least one cell that is of a modified design to house disruptive inmates and/or suicidal inmates that need to be controlled more closely. These cells often have a secure bunk constructed of concrete or steel and have the capability of securing inmates to the bunk with restraints if they are violent or a significant threat to security. These cells were positioned in the unit in such a way to allow for close staff observation of the inmate. Suicide Watch cells are not ordinarily contained in the physical plan of the restrictive housing unit. Rather, per policy they are generally located in the Health Services area or another similarly private location. A policy waiver is required in order for a Suicide Watch cell to be placed in SHU.

Inmate recreation is conducted in secure recreation areas constructed of chain-link or expanded metal. Inmates recreate either one at a time or in small groups. Entry into the recreation areas is through a locked gate, equipped with a handcuff port to allow an officer to secure the inmate in handcuffs before opening the gate.

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the same time so the control officer can control entry and prevent someone from breeching the inner door.

The common area is located between the unit entrance door and the cellblock area. It typically consists of a control room or officer station, holding cells, interview rooms, staff offices, multipurpose rooms, storage areas and a room where inmates can access computerized law library materials. The multipurpose rooms are used for interviews, barbering services, and programming, where appropriate.

Patrol requirements

In April 2012, the assistant director for the Correctional Programs Division issued a memorandum, which requires correctional staff that work in SHUs to observe all inmates confined in continuous lockdown status, such as administrative detention or disciplinary segregation every 30 minutes on an irregular schedule, but with rounds that are not to take place less than 40 minutes apart. These observations are documented in a logbook maintained for that purpose.

The purpose of these observations is to ensure that inmate activity is carefully supervised and the health/mental health of each inmate is monitored. This practice was observed at all facilities assessed. The Post Orders of SHU staff included a description of this requirement and it is a mandated practice throughout the assessed facilities. The 30-minute rounds are documented by the officer conducting the rounds and the logbook containing this information is reviewed and signed off by a supervisor at the end of the shift.

The April 2012 memorandum and the practice of observing inmates in SHU every 30 minutes complies with the ACA standard. The standard also provides guidance in the management of violent, mentally disordered inmates, or suicidal inmates. Bureau officials at each site assessed have an established practice of removing suicidal inmates and placing them in a cell specially designed to provide for direct observation of inmates that are at risk. Bureau either assigns an inmate companion[127] or staff member to directly observe the inmate in crisis and keep an ongoing log of the inmate's activity and movements.

Bureau policy[128] and post orders also require that a lieutenant, typically the SHU/SMU lieutenant if on duty, must visit the unit and conduct a tour of the cellblock area once per shift. This practice ensures that supervisory staff are conducting inmate wellness checks and verifying that line staff are following approved procedures.

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[127] Inmate companions are trained to provide direct observation of inmates housed in suicide resistant cells. The companions receive special training from the Bureau staff and also keep a log of the inmate's activity while being observed on suicide watch status.

[128] *Program Statement 5290.10, Special Housing Units*, dated August 1, 2011, Section 12 (m) - Staff Monitoring.

Patrol requirements observations. The assessment team found a meticulous level of compliance with the monitoring and supervisor tour requirement as 30 minute logs are typically up-to-date and entries are initialed by the recording officer and subsequently reviewed by a supervising officer, who also signs the document. Lieutenant rounds also take place each shift, as required. We would estimate a better than 95 percent compliance rate with these log entries, and found few cases where staff failed to make an entry or write their initials. There certainly were cases where noncompliance was detected, but these were anomalies. The log entry sheets are archived and maintained for future reference.

FINDING: The observation of inmates in special housing and those that are being monitored as having suicidal tendencies in specially designed cells under direct supervision is consistent with best practices and in compliance with ACA standards.

Inmate movement practices

All inmates residing in SHUs, regardless of the reason for that placement, are transported in restraints whenever they leave their cells. Post orders require that an inmate be handcuffed from behind through the food slot before the cell door is opened to remove the inmate. In cases where there are two inmates residing in a cell, both inmates must be handcuffed before the cell door is opened. In these cases, two officers are present when the cell door is opened. The inmate may be transported by a single officer, once the cell door is closed and the second inmate is secured. Special circumstances may require a second officer be present at all times during an escort.

For example, the handcuffing procedure at USP Lewisburg requires that the inmate be restrained from behind utilizing hand restraints, with palms up and thumbs out. The handcuffs are double locked, which helps prevent the inmate from tampering with the handcuffs. Inmates are also scanned with a hand-held metal detector and pat searched prior to any movement taking place. The double locking of handcuffs is not a universal practice throughout the Bureau for internal inmate movement, except when the inmate is being transported outside of the unit. A device, known as the "black box" (a cover for the handcuff key slot that prevents an inmate from tampering with the key slot) is often used for transportation outside of the facility, or if the inmate poses a substantial risk to security. Internal movement of inmates mostly takes place when the inmate is being moved to recreation, unit showers, law library, or for staff interviews.

Movement within the unit is recorded when the inmate is transported to the law library, recreation, and to receive a haircut. Movement out of cell for interviews for example, is not recorded. Movement outside of the unit is noted in the unit log.

Special movement circumstances. In cases where staff safety dictates that inmates need more supervision than described above, additional precautions can be taken. These include the following:

- **Two-man hold**: The two-man hold is one method utilized by the Bureau. The two-man hold requires that two staff be present the entire time the inmate is out of his cell or secure area. This requires one staff member will remain in direct physical contact with the inmate at all times and both staff members are directly responsible for the control of the inmate.
- **Three-man hold**: Again, in cases where staff safety is a concern, the supervising officer may require that three staff be present the entire time the inmate is out of his cell or secure area. In a three-man hold situation, two staff members remain in direct physical contact with the inmate at all times, and all three staff are directly responsible for the control of the inmate.
- **Lieutenant hold**: The lieutenant hold technique calls for a lieutenant to be present the entire time the inmate is out of the cell and the lieutenant is required to provide supervisory oversight during the inmate movement.
- **Other hold**: In circumstances where an additional security is needed, staff may be required to wear protective gear and additional personnel may be dispatched to supervise inmate movement.

Program Statement P5566.06 Use of Force and Application of Restraints, dated November 30, 2005 also allows for "...staff to place an inmate temporarily in restraints to prevent an inmate from hurting self, staff, or others, and/or to prevent serious property damage. When the temporary application of restraints is determined necessary, and after staff have gained control of the inmate, the warden or designee is to be notified immediately on whether use of restraints should continue." The policy states that restraints should only be used when other effective means of control had failed, or are impractical, and that restraints can remain on the inmate until self-control is regained.

Special management and control unit movement practices. Inmates residing in SMU programs at Level 1 and Level 2 are subject to restrictive movement as described above. As inmates are moved to Level 3 and Level 4, they earn additional privileges and are allowed to participate in small group congregate activity unrestrained. However, movement outside of the unit to medical and other locations, are conducted while the inmate is in restraints.

Inmates housed in the ADX are subject to restraint conditions consistent with the conditions noted above for SHU inmates, except two officer escorts are the norm. Movement outside the unit requires utilization of the Martin chain, handcuffs

attached to the chain, with a black box covering handcuffs. Additional protective equipment is provided at the ADX for officer safety and to better control the inmate population, such as rapid rotation batons in defensive position.

Progressive and ambulatory restraints. Program Statement 5566.06, Use of Force and Application of Restraints allows for the placement of inmates in restrictive and secure restraints to control behavior and protect staff and property. Use of ambulatory restraints is authorized when the inmate is acting aggressively and/or lacks self-control. This is allowed until the inmate establishes a pattern of self-control and is no longer acting out. The policy refers to this as a "pattern of nondisruptive behavior over a period of time."

The placement of inmates in four-point restraints is authorized per policy when placement is "the only means available to obtain and maintain control over an inmate."

Each of these procedures requires regular observation of the inmate, examinations by medical personnel, regular reporting of activity, and review as to whether the placement in restraints is still necessary. The assessment team did not have an opportunity to review this process in great detail; however, our use of force analysis did include cases where inmates were placed in ambulatory and/or four-point restraints.

ACA Standard 4-4190 regarding the use of restraints reads: "Written policy, procedure, and practice provide that instruments of restraint, such as handcuffs, irons, and straitjackets, are never applied as punishment and are applied only with the approval of the warden/superintendent or designee."

ACA Standard 4-4191 regarding restraints reads: "Written policy, procedure, and practice provide that the unit is placed in a four/five point restraint (arms, head and legs secured), advanced approval must be obtained from the warden/superintendent or designee. Subsequently, the health authority or designee must be notified to assess the inmate's medical and mental health condition, and to advise whether, on the basis of serious danger to self or others, the inmate should be placed in a medical/mental health unit for emergency and involuntary treatment with sedation and/or other medical management, as appropriate. If the offender is not transferred to a medical/mental health unit and is restrained in a four/five point position, the following minimum procedures will be followed:

- Direct visual observation by staff must be continuous prior to obtaining approval from the health authority or designee;
- Subsequent visual observation must be made at least every 15 minutes; and,

- Restraint procedures are in accordance with guidelines endorsed by the designated health authority."

Inmate movement practices/observations. Assessment of off-site transportation was beyond the scope of this review. However, the team did examine internal inmate movement, the use of restraints to safely facilitate inmate movement, and post orders that guide and direct officers in the performance of their duties. In visiting the selected facilities, there was only one instance observed where a staff member was observed opening a cell door without having two officers present, in apparent violation of operational procedures. This was at the female facility at USP Hazelton and staffing levels in that SHU may have contributed to this violation, as there were few officers available to conduct the movements. Otherwise, our observations found that Bureau staff and supervisors carry out their duties consistent with the post orders and in compliance with movement procedures as described above. Across the board, post orders are well drafted documents that include comprehensive content that act as a guide to ensure staff perform in accordance with procedures.

Procedures and policy for the use of restraints describe the use of restraints as a method to control inmates and not to administer punishment. Bureau policy is in compliance with ACA standard 4-4190, which states restraints shall not be used as punishment. In the Use of Force section of this report, inmates interviewed at one facility claimed that the application of ambulatory restraints is managed improperly as the restraints are at times applied tightly, and cause minor injury to wrists. This assessment was unable to verify or confirm this alleged practice, but it should be reviewed to determine if there is any validity to the claim.

A review of *Program Statement P5566.06, Use of Force and Application of Restraints* describes procedures for the use of four-point restraints. This policy is in compliance with ACA standard 4-4191. However, the assessment team did not examine in detail situations where four-point restraints were utilized as part of this study as no cases where four-point restraints were applied were taking place during the site visits. The policy does require that inmates be checked every 15 minutes and that qualified health personnel evaluate the inmate and ensure that the placement is appropriate. Subsequently, a lieutenant is charged with reviewing the placement in four-point restraints to determine if a period of calming effect has occurred, which will allow staff to remove the inmate from four-point restraints. Extensive reporting requirements are also outlined in the policy.

Impact of gang issues and separation practices

One of the most difficult security issues facing the Bureau staff is the management of gang activity of the various gangs in the system. As is the case in many state correctional facilities, this issue plagues the general population of the Bureau's USPs, which carries over to its segregated units. This assessment revealed that it is common practice for inmates in the USPs to associate themselves with a particular gang or what is termed "cars." A car is a group of inmates who develop a close association as protection against other established inmate groups, such as gangs. The prevalence of inmate grouping and gangs places pressure on administrators to carefully place inmates in housing units throughout the agency, as placement of a gang member in a cellblock housing a high concentration of rival gang members can result in violence.

In the case of the SHUs, administrators and staff exercise caution when making bed placements, as certain gang members cannot be housed with one another or violence will likely ensue. Given that all of the SHUs are double celled, an evaluation of each inmate's record and associations has to be conducted by SHU and unit management staff prior to cell assignment.

The SHU situation is complicated by the fact that a high percentage of inmates residing in SHUs have requested protection from other inmates, often due to gang related issues. Many inmates in the system have what is termed as "separatees." A separatee is an inmate, who due to safety and security concerns cannot be placed in housing units with other specific individuals. As noted in chapter 3, the number of inmates that have separatee issues is significant and impacts inmate management in the agency. For example, the warden at USP Lewisburg advised the assessment team that of 748 inmates at that facility, 334 had separatee issues.[129] Some inmates had as many as 14 separatees. Keeping in mind that these inmates cannot congregate with one another, bed management in the general population and in restrictive housing units is very complicated.

In the SMU at USP Allenwood, where inmates in Level 3~~Three~~ and 4 ~~Level 4~~ are allowed to congregate, the lieutenants and unit management staff have to carefully place inmates according to their gang or group designation. For example, on one unit of the Allenwood SMU, one range can only house Caucasian inmates, Southern California Mexican Mafia, or African-American inmates. On another range, Southern

[129] Interview briefing with Warden on January 21, 2014.

California Mexican Mafia, Caucasian protective custody and African-American inmates are housed. On yet another range, Texas Mexican Mafia, inmates from the District of Columbia, and nonaffiliated African-American inmates are housed; and on Range 4 Latin King, NETA, Northeast region inmates, and Caucasian Cars are housed.

Staff indicated that the mixing of rival groups in the same housing unit can affect the security of the unit. This unit allows congregate group activity and only one range at a time is allowed out for recreation. The mixing of ranges is such a concern that the keys to the nonrecreating range are kept outside the unit to ensure that the nonrecreating range doesn't mix with the range that is out on recreation.[130]

The issue of gang separation and taking a cautious approach with inmate housing to prevent violence, is less of a concern at the ADX because most of the recreation is in individualized areas and there is no double bunking of inmates. It does, however, become a concern when congregate activity takes place in the step-down unit, where limited congregate activity is allowed.

Special Investigative Service. The Bureau assigns personnel at each USP and FCI the team visited to investigate criminal activity and gather intelligence to aid in the safe operation of the correctional facilities. The SIS investigates separatee issues and validates inmate protective custody requests. One of their most critical responsibilities is gathering gang intelligence to assist facility supervisors in managing the inmate population. SIS personnel also investigate and validate inmate gang membership and keep ongoing records of gang membership, as well as determining who the gang leaders are. The SIS performs a valuable security function to aid in the management of the inmate population that has a heavy concentration of gang and car membership, all of which complicates inmate management and placement practices.

The gang issue in the USPs that was assessed impacts the management of the SHU as it creates separatee issues and likely increases the number of inmates requesting protective custody. This, in turn, results in these inmates being housed in restrictive housing. This was confirmed through interviews with staff and inmates who indicated that many of the segregated inmates were unable to live in general population because of the influence, harassment, intimidation, and threats of violence from members of gangs and cars in the facilities.

FINDING: Difficulties in the management of the gang problem exacerbates the protective custody problem, thus causing a high incidence of inmates leaving general population by their own request and being placed in segregation units, after being threatened in general population.

[130] Interview with Lieutenants on March 4, 2014.

Post orders

Post Orders are detailed descriptions of the duties and responsibilities of a correctional officer. They include the schedule of daily events and activities, as well as procedural requirements that an officer must adhere to. Post Orders often include excerpts from policies and procedures that an officer must be familiar with to assist them in performing their duties. It is required that an officer review their post orders on a periodic basis, usually when they assume a new post, and sign and date the post order signature sheet. ACA Standard 4-4178 requires that there be written orders for every correctional officer post and that the orders should be reviewed annually and updated if necessary. ACA standard 4-4179 requires that policy, procedure, and practice provide for personnel to read the appropriate post order each time they assume a new post and sign and date the post order.

Post orders were provided to the assessment team at each site for all posts in SHU, SMU, and at the various programs at the ADX. The post orders, as a general rule, include numerous procedures and instructions on important topics, which assist correctional officers in performing their jobs.

The content of post orders, which are relatively consistent from one facility to another, reflects that a high priority is placed on utilizing post orders to provide procedural and job performance guidance to correctional staff. The post orders reviewed address the majority of the areas of security procedure that a correctional officer needs to be familiar with in the performance of their duties.

Compliance with ACA standards is noted and each of the facilities visited had passed an accreditation audit within the past three years, and the above-referenced Post Order ACA standards were also complied with.

FINDING: Bureau post orders are extremely comprehensive documents that meet national standard requirements and are considered a best practice.

The Bureau utilizes post orders as working documents to guide the job performance of correctional staff.

Use of force and critical incidents

The focus of this section of the report addresses the project team's findings regarding the use of force and critical incidents within the Bureau's restrictive housing units. An assessment of the Bureau policies, operational practices and compliance levels were examined throughout the review process.

According to federal regulations and associated program statements, the Bureau of Prisons can authorize staff to use force only as a last alternative after all other reasonable efforts to resolve a situation have failed. When authorized, staff must use only that amount of force necessary to gain control of the inmate, to protect and ensure the safety of inmates, staff, and others, to prevent serious property damage and to ensure institution security and good order. Based on our review there was no supported evidence presented that policy or routine staff practice included operating outside the federal regulations.

Program statements and facility supplemental statements (referred to as Institutional Supplements) related to the use of force in restrictive housing have all been developed in line with the requirements identified in the federal regulations. In addition to the regulatory requirements the Bureau program statements and facility supplemental statements also identify policies, procedures and objectives regarding when the use of force can be authorized, the type of force to be used, required documentation, the review process and staff training.

For the most part, the Bureau's program statements serve as core documents personnel use to reference the appropriate procedures to follow when applying restraints, when being involved in a critical incident, or when involved in a use of force incident. At each facility visited, the project team reviewed multiple Use of Force incident reports, associated documents, inmate files, staff training files and videos of incidents that occurred. At several of the facilities team members were also present to observe after action reviews conducted by the facility management team. The *After Action Review* team by Bureau policy consists of the warden, associate warden, captain and health services administrator or designee. The team is responsible in part for reviewing all use of force incidents at the facility.

FINDING: The Bureau has established a comprehensive and extensive program statement that clearly identifies the step-by-step requirements associated with managing potential use of force and critical incidents consistent with nationally recognized standards.

The Bureau's *Program Statement 5566.06* requires that a report be prepared by staff on all incidents involving the use of force, chemical agents, progressive restraints, and nonlethal weaponry. The report must describe the incident, establish the identity of all individuals involved and include appropriate mental health/medical reports. These reports must be submitted to the warden or his/her designee no later than the end of the tour of duty. The program statement further requires that use of force incidents be videotaped if time and circumstances permit. All calculated use of force incidents should be videotaped.

All the required documentation that has been prepared is reviewed for completeness and maintained by the facility captain or deputy captain and becomes available for subsequent reviews including the required after action review. By policy, the after

action review team consists of the warden, associate warden, captain and health services administrator or designee. The warden must provide the appropriate documentation to the regional director within two days after the inmate has been released from restraints.

Based upon a review of documentation and information provided, the assessment team found that generally appropriate procedures consistent with policy are routinely being followed. In cases where deficiencies are noted, corrective action is applied. In the project team's review of documentation and video footage, there were deficiencies noted. Some of the deficiencies included: equipment failure, (video camera battery goes out), lack of proper staff identification, inappropriate application of restraints, and submittal of incomplete documentation. These were all considered deficiencies that required corrective action – however, these instances were considered the exception to practice rather than the norm. In each case, corrective action steps were initiated by management personnel. An overall review of these reports did not reveal any consistent issues with meeting the reporting requirements.

Types of force

The Bureau's applicable *Program Statement (P5566.06)* and associated federal regulation (28 CFR 552.21) identify the primary types of force: *Immediate Use of Force; Calculated Use of Force and/or Application of Restraints; Use of Force Team Technique.* The following descriptions as provided in the federal regulations and program statement identify when each type of force may be considered appropriate.

Immediate use of force. Staff may immediately use force and/or apply restraints when the behavior constitutes an immediate, serious threat to the inmate, staff, others, property, or to institution security and good order.

Calculated use of force and/or application of restraint. This occurs in situations where an inmate is in an area that can be isolated (e.g., a locked cell, a range, recreation yard) and where there is no immediate, direct threat to the inmate or others. When there is time for the calculated use of force or application of restraints, staff must first determine if the situation can be resolved without resorting to force.

Use of force team technique. If use of force is determined to be necessary, and other means of gaining control of an inmate are deemed inappropriate or ineffective, then the Use of Force Team Technique shall be used to control the inmate and to apply soft restraints, to include ambulatory leg restraints. The Use of Force Team Technique ordinarily involves trained staff, clothed in protective gear, who enter the inmate's area in tandem, each with a coordinated responsibility for helping achieve immediate control of the inmate.

Any exception to this rule is prohibited, except where the facts and circumstances known to the staff member would warrant a person using sound correctional judgment to reasonably believe other action is necessary (as a last resort) to prevent serious physical injury, or serious property damage which would immediately endanger the safety of staff, inmates, or others.

A review of the use of force incidents revealed that the majority of incidents involved the application of physical restraints (use of hand restraints). The policy on the application of restraints does not restrict the use of restraints in situations requiring precautionary restraints, particularly in the movement or transfer of inmates (e.g., the use of handcuffs in moving inmates to and from a cell in detention, escorting an inmate to an SHU, pending investigation). Staff routinely place inmates in restraints when moving the inmate to and from a cell/recreation/shower in most segregation units. This is a recognized practice that is consistent with national standards, with the exception of applying restraints for verified protective custody inmates. Most agencies have separate internal movement procedures for inmates verified as requiring protection which does not require the application of physical restraints each time the inmate is moved out of their cell. Inmates assigned to the SMU program in Level 3 and 4 or for inmates in the Transitional and Pre-Transfer steps of the ADX-general population and Step-Down Program are routinely moved outside the cell however within the unit without restraints.

In addition to the established routine movement procedures, personnel are also authorized by policy to apply physical restraints necessary to gain control of an inmate who appears to be dangerous for one of the following reasons:

- Assaulted another individual.
- Destroyed government property.
- Attempted suicide.
- Inflicted injury upon self.
- Becomes violent or displays signs of imminent violence.

This is consistent with national standards. In reviewing incident reports the use of ambulatory restraints was normally the result of staff attempting to control escalating inmate disruptive behavior or to prevent inmate self-injury. It was noted that a number of force incidents applied by staff were related to either resolving conflicts between cell mates, inmates refusing to submit to being restrained before movement or during a recreation incident. Overall, based on observation, video and document review, staff appeared to routinely follow established policy.

Use of chemical agents. In some circumstances, the use of chemical agents may be required. By policy the use of chemical agents is used only after approval and a

review of the inmate's medical file, unless such a delay would endanger the safety of the inmate, other inmates, staff and the community or result in severe property damage or escape. Only staff that have been trained in confrontation avoidance, use of force team technique and use of chemical agents are authorized to apply chemical agents.

A review of incident reports revealed that the use of force incidents resulting in chemical agents being used primarily fell into one of three categories:

1. To gain control of inmates fighting or participating in assaults on the recreation yard. As many as six inmates can be placed in one recreation yard depending on the size of the yard. A pre-screening is normally conducted by staff prior to placement on a specific yard however the recreation period appeared to be a time when many of the reported assaults/fighting took place. A review of videotapes of incidents related to recreation revealed staff normally responded in a timely manner, ordered inmates to cease, followed protocol and if necessary administered chemical agent from hand-held canisters and/or a pepper ball launcher to gain control over the situation.

2. A second category in which the use of force and the application of chemical agents appeared to occur was when two cellmates were fighting in the cell and ceased to stop after several direct orders. A pre-screening is conducted prior to housing two inmates together, however staff report that occasionally fights between cell mates occur and they fail to stop after several direct orders.

3. A third type of use of force case that often involves the use of chemical agents occurs when an inmate is unwilling to have restraints applied in order to be removed from the cell/shower/recreation yard, and staff must respond to gain control over the inmate(s). If conflict avoidance techniques do not work, then a five-man team is assembled wearing protective gear, the inmate is provided repeated direct orders to comply with the application of restraints and the inmate continues to refuse. Chemical agent is occasionally applied to gain control over the inmate's extremities in order to apply the restraints. If the chemical agent is unsuccessful and the inmate remains noncompliant, this may result in the five-member team entering the area and gaining control over the inmate applying force to contain the inmate(s). Based on a review of documentation and available video operational practices appear to be consistent with policy.

Overall, the requirement for staff to follow the step-by-step procedures seems to be a part of routine practices and the application of confrontational avoidance techniques is an established part of the use of force protocol.

Chemical agent use (oleoresin capsicum). In 2013, Bureau Director Charles E. Samuels, Jr. issued *Operations Memorandum # 004-2013 (5500),* authorizing the use of oleoresin capsicum (OC), an aerosol chemical agent pepper spray for use by authorized personnel to incapacitate or disable disruptive, assaultive, or armed inmates posing a threat to the safety of others or to institution security and good order.

The OC product is designed primarily for an immediate use of force or a calculated use of force, where an inmate needs to be brought under control to avoid injuries to others. OC is particularly effective in disabling assaultive inmates without causing significant or long-term injury to the inmate. This less than lethal technology has become widely used in corrections to prevent violence, control disruptive inmates, and avoid staff injury.

The Bureau memorandum directs that only trained staff shall use OC and detailed reporting requirements follow the use of OC, consistent with the Use of Force and Application of Restraints policy referenced above.

The Bureau memorandum also identifies which staff members occupying certain posts are authorized to carry the OC aerosol dispenser and that Post Orders be revised providing specific instructions and direction for the use of OC. It is also required that instructions be consistent with the Use of Force and Application of Restraints policy. To ensure consistent application in compliance with the memorandum, post orders are required to be submitted to the regional correctional services administrator for signature and approval.

The memorandum and policy outlines requirements for decontamination of the inmate and area where OC has been applied. Typically, fresh air and rinsing with water will reduce the effects of the chemical agent. Policy dictates that decontamination take place approximately 15 minutes after application of OC. Additional procedures are outlined in the document and in post orders at each facility where the use of OC is authorized.

OC training is emphasized in the Bureau memorandum, which requires that staff be thoroughly trained in the use of OC, decontamination procedures, and reporting procedures. Each officer authorized to carry OC must receive a four-hour block of training, as well as a quarterly re-familiarization training. The facility captain is responsible to maintain records of training and personnel authorized to carry OC.

ACA Standard 4-4199, reads: "Written policy and procedure govern the availability, control, and use of chemical agents, electrical disablers, and related security devices and specify the level of authority required for their access and use. Chemical agents and electrical disablers are used only with the authorization of the warden/superintendent or designee." A review of the policy documents and practices observed found overall compliance with ACA standards.

The assessment team had occasion to review post orders at the facilities visited and found that post order special instructions are contained in those post orders that are considered "OC Carry" posts. Post order special instructions are thorough and consistent with the Operations Memorandum issued by Director Samuels. These procedures outline the allowed use of OC, which posts may use or carry OC, the purpose for using the product, reporting procedures, decontamination procedures and training requirements.

Spot checks were conducted at each facility and initial training was taking place and quarterly refresher training was also occurring at most sites. For example at the ADX, the captain delegates the quarterly refresher training to a lieutenant at that facility. The lieutenant ensures that OC authorized staff review a PowerPoint presentation and sign a log, which indicates they had completed the training. That document is forwarded to the regional office for review by regional staff. Each site handles the quarterly training differently, however the assessment team's spot checks revealed that some form of quarterly training was taking place at all sites.

The application of OC chemical agent constitutes a use of force when used on an inmate. Use of force cases are analyzed as a separate section of this report. With regard to the procedures and training concerning the administration of the OC program, the assessment team found overall compliance with the policy. We did view cases where OC was dispensed on inmates either through the use of the aerosol spray or from a pepper ball launcher. The video recordings of the use of force cases we reviewed did not reveal any abuse with respect to OC use.

Calculated use of force. This type of force occurs in situations where an inmate is in an area that can be isolated (e.g., a locked cell, a range) and there is no immediate, direct threat to the inmate or others. When there is time for the calculated use of force, staff must first determine if the situation can be resolved without resorting to force.

All of the calculated use of force incidents reviewed by the project team were due to inmates refusing to obey orders. Overall in most instances the inmate complied with the verbal order of the team leader without further resistance; in these cases the reported use of force consisted of putting an inmate in restraints and removing him from the cell/recreation yard/shower.

In another few instances where inmate(s) continued to refuse the orders, the team had to enter the cell and force was used. A review of documentation and videos revealed that occasionally inmates would repeatedly refuse to "cuff up" after one of them had broken a sprinkler head in the cell; chemical agent was authorized but not deployed and the inmates were subdued and seen by medical personal for examination of any injuries. The videos were reviewed and the level of force used appeared appropriate.

The project team reviewed several videos at each facility to observe operational practices and to ensure there were efforts made by staff to de-escalate and achieve compliance before any force was used. In most cases staff followed standard procedures. In cases where procedures were not followed facility management personnel, the after action review team or regional team ensured corrective action would be applied.

Use of force observations

The code of federal regulations clearly identifies the requirements as to when force can be applied. The regulations authorize the Bureau to use force only as a last alternative after all other reasonable efforts have failed. Programs Statements, facility supplemental statements and staff training are aligned with the federal regulations and are used by staff to clearly identify policy, procedures and expected practices. Based on the project team's review there was no indication that there is an ongoing practice by management to operate outside the federal regulations or program statements.

The project team did review documentation from isolated incidents where an individual staff member may not have followed policy and corrective action was taken.

The program statement includes the requirements for an extensive review process including several layers of management review to ensure incidents involving the use of force are examined by multiple staff. These requirements appeared to be met on a regular basis.

The project team reviewed over one hundred incident reports, policies were examined, videos were assessed and both staff and inmates were interviewed. As noted above, one concern was expressed by some inmates at USP Lewisburg or inmates who had previously been at USP Lewisburg. Several inmates referenced the operational practice of some staff to apply restraints in a manner inconsistent with policy. This practice was described as applying the restraints excessively tight often times after a previous incident.

Use of force at USP Lewisburg

As indicated above, our review of uses of force and critical incidents at each facility showed few cases that were inconsistent with policy. However, as noted before, there was a concern shared by a significant percentage of the interviewed inmates, especially those housed at USP Allenwood who had previously been assigned to SMU Levels 1 and 2 at USP Lewisburg.

Several inmates reported that some of the staff at USP Lewisburg have a tendency to apply physical restraints tighter than necessary or tighter than normal. Inmates shared that this was often the practice by some staff either after an earlier challenging interaction with an inmate, previous experiences an inmate may have had with staff, a combination of the overall nature of events occurring throughout the day or for no apparent reason. In addition, several inmates at USP Allenwood reported that staff at USP Lewisburg used verbal and physical intimidation techniques against inmates routinely. No supportive evidence was presented to indicate this was the routine staff practice, however the high number of reported incidents were mentioned during inmate interviews suggests the need for further investigation by the Bureau.

The project team did not observe this practice directly, However, based on (1) the number of individuals that had expressed this concern and (2) the fact that many of the inmates were not currently at USP Lewisburg however had previously been there and shared this information was an issue that deserves mention and further review and evaluation by the Bureau.

Conditions of confinement

The focus of this section of the report addresses the findings and recommendations related to the housing, services and activity levels provided to individuals housed in the three main types of restrictive housing units being analyzed: SHUs, SMUs, and ADX (with general population, step-down, control, and special security units). This section addresses the conditions of confinement rather than placement and procedural issues which will be discussed in another section as well as an assessment of educational programs.

To determine these conditions we examined several key factors:

- Regulatory requirements[131]
- Bureau program statements
- Facility supplemental statements
- Bureau program review reports

[131] Title 28 CFR Part 541.

- American Correctional Association standards and most recent facility reports
- Housing unit activity schedules
- Manual and electronic systems designed to document conditions of confinement
- On-site observations of operational practices;
- Staff interviews
- Inmate interviews

According to federal regulations and Bureau program statements, all three of the restrictive housing units are designed to help ensure the safety, security, and orderly operation of the Bureau facilities. The conditions of confinement are generally considered more restrictive than those found in the general population. Specific conditions of confinement for each type of segregation vary based on the unit and the inmates' classification level within each unit.

Program statements and facility supplemental statements related to conditions of confinement in segregation units have all been developed in-line with the statutory requirements identified in the federal regulations. In addition to the statutory requirements, the program statements and facility supplemental statements also identify policies, procedures and objectives regarding a specific area, including conditions of confinement.

These program statements for the most part serve as the core documents staff use to reference the minimum required conditions of confinement for individuals housed in each of the forms of restrictive housing units. To be in compliance with the program statements, housing unit activity schedules have been developed, staff post responsibilities have been established, staffing patterns have been designed, staff training implemented and personnel and performance oversight is currently provided.

The review team found that personnel were generally familiar with the program statements and the condition of confinement requirements. Activity schedules were in place, appropriately trained personnel were assigned to adhere to these requirements and oversight was being made. A general review is described in more detail below. Applicable federal regulations and Bureau program statements are referenced as well as the associated American Correctional Association standards. These references have all been italicized. In addition to the references the project team's general assessments are provided.

The conditions of the living quarters are the result of an ongoing physical plant maintenance program that evaluates and addresses issues related to maintaining nationally accepted environmental conditions for living quarters. Overall, the preventive and ongoing maintenance program appears to be a priority at the facilities visited. Most facilities maintained a high level of sanitation. Some of the facilities housing units were air conditioned while others were not. At USP Lewisburg, the most recent ACA accreditation review completed in 2011 indicated there was inadequate lighting (low) in the SMU cells.[132] This issue had since been corrected as reported in documentation provided and based on observation of the units. In October 2011, the Bureau Program Review Division reported that the sanitation condition of the SHU at USP Florence was below average and corrective action was required.[133] Again, based on supported documentation and on-site observations, an ongoing practice has been established to maintain appropriate sanitation conditions at USP Florence on a regular basis[134].

FINDING: Overall the sanitation and physical plant maintenance programs in Bureau facilities are considered consistent with nationally recognized best practices.

Cell occupancy.

Living quarters ordinarily house inmates according to the design of the unit. The number of inmates assigned to a cell should not exceed the number for which the space was designated. Conditions may be altered by the warden as long as it meets applicable standards. *(28 CFR 541.31, P5217.01, P5270.10, ACA 4-4134, 4-4140, 4-4141.)*

Inmates are generally housed based on their status and level within each restrictive housing unit. At the ADX, all inmates were housed in single cells in the same housing unit as other inmates assigned to the same level of the program. All cells are designed for one inmate and include one bed, toilet, wash basin and a shower. The size of the cell is consistent with nationally recognized standards.

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[132] Commission on Accreditation for Corrections Standards Compliance Intensive Reaccreditation Process Audit Federal Bureau of Prisons Lewisburg, Pennsylvania, August 2011.

[133] Bureau Program Review Division Memorandum dated October 27, 2011, Subject: Correctional Services Program Review FCC Florence.

[134] A Correctional Services program review conducted in October 2014 after the completion of the site visits of this project, the Bureau Program Review Division reported the condition of both SHU units were at a "high level of sanitation in common areas and cells."

The design of the SMU program is to have inmates housed according to their level within the program. Inmates assigned to Level 1 are either housed alone or with one other Level 1 inmate, inmates in Level 2 may be housed with one other Level 2 inmate and inmates assigned to Level 3 and four are designed to be housed with an inmate in the same level. At USP Florence and USP Allenwood, this policy appeared to be in practice. At USP Lewisburg, the operational practice observed was that inmates in Level 1 and Two may be housed together. In addition, at USP Lewisburg, the program was designed to house only inmates in Level 1 and Two at the time of the site visit. However, staff reported that - in part because of limited space at other sites including USP Allenwood - some Level 3 and 4 inmates were being housed at USP Lewisburg on the same ranges as Level 1 and 2 inmates. There were approximately 100 inmates in Level 3 or 4 housed at USP Lewisburg during the project team's site visit. The number of inmates assigned to the cells in SMU's did not exceed the number of beds in the cell. Most cells contained two beds. USP Lewisburg did have a few four-person cells containing four beds and the size of the cells were consistent with nationally recognized housing standards.

FINDING: The size and furnishings provided in the cells in the SMUs were consistent with nationally accepted practices.

In a SHU, inmates are assigned to either administrative detention or disciplinary segregation status. Administrative detention status inmates are generally not housed in the same cell as inmates assigned to disciplinary segregation status, however they are assigned to the same housing unit. Administrative detention is a nonpunitive status and disciplinary segregation is a punitive status.[135] Some facilities house disciplinary segregation inmates on a separate range (housing floor) from administrative segregation inmates, while others have both types of inmates on the same range however in different cells.

The average cell in a SHU contains two beds and the size of the cell is approximately 85 square feet with approximately 35 square feet of unencumbered space. The exact cell sizes vary to the physical plant configuration even within the same facility. In each SHU and SMU there are also a few cells designed to house one inmate. Some of

[135] 28 CFR 541.22 (a) Administrative detention is an administrative status which removes the inmate from the general population when necessary to ensure the safety, security and orderly operation of correctional facilities, or to protect the public. Administrative detention status is nonpunitive, and can occur for a variety of reasons. (b) Disciplinary segregation is a punitive status imposed only by a disciplinary hearing officer (DHO) as a sanction for committing a prohibited act(s).

these cells are normally used on a temporary basis to more closely observe an inmate.

FINDING: The size and furnishings provided in the SHUs is consistent with nationally accepted practices when providing housing for the designed number of inmates. The fact that most cells in the SHUs contained showers exceeded national standards. However in one facility, the number of inmates housed in a cell exceeded the design capacity.

At USP Victorville, the SHU consists of 120 cells of which 118 are designed for two inmates and two cells are designed for one inmate. Based on the overall SHU population level, facility staff reported they routinely found it necessary to house three inmates in a cell designed for two (contains two beds). This housing practice was confirmed by the warden, administrative personnel, housing unit staff and inmates. The third inmate is provided a mattress accompanied by appropriate bedding and is required to sleep on the floor of the cell.

The frequency in which this practice occurs was reported as routine when the population level exceeds or comes close to capacity. The length of time an individual is housed on the floor was not being tracked and staff interviewed were not aware of the average length of time an inmate is housed in a cell with two other inmates. The warden reported this most often occurs when issues arise with the transportation systems ability to move inmates. On those occasions inmates get backlogged awaiting movement.

On the second day of the on-site review, there were 35 USP inmates classified for SHU placement housed in the SHU at FCI Victorville I and 42 USP inmates housed at FCI Victorville II. There were no inmates being tripled-celled in the SHU at USP Victorville at the time of the on-site review.

It was reported by supervisory staff that five days prior to the review team's arrival, a number of inmates were transferred from the USP Victorville SHU to either the FCI I SHU or FCI II SHU. The warden reported there was no written policy or written procedure in place that identified the protocol to follow to determine when three individuals can be housed in a two-person cell, who can be assigned three to a cell, how long they can be assigned or when the FCI I or FCI II special housing units can be used to house USP SHU inmates. Once three individuals are assigned to a cell containing two beds and one individual is required to sleep on a mattress on the floor, unencumbered space is reduced and nationally recognized housing standards are no longer maintained.

Clothing. Inmates should receive adequate institution clothing, including footwear. Inmates have opportunities to exchange clothing or have it washed. *(28 CFR 541, P5580.08, P5217.01, P5270.10, ACA 4-4263.)*

Based on observation, interviews and policies reviewed appropriate clothing, footwear and the opportunity to exchange the clothing and/or have it washed is available on a regular basis. Additional limited clothing items may be purchased from the commissary for inmates in specific levels within each restrictive housing unit.

Bedding. Inmates should receive a mattress, blankets, a pillow, and linens for sleeping. Inmates have necessary opportunities to exchange linens. *(28 CFR 541, P5217.01, P5270.10, ACA 4-4263).*

Based on site observation, interviews and policies reviewed inmates generally receive a mattress with a built-in pillow, sheets, blanket and a towel. The sheets can be exchanged at least once per week.

Food. Inmates receive nutritionally adequate meals and may be required to eat all meals in their living quarters. *(28 CFR 541, P5217.01, P5270.10, ACA 4-4264, 4-4316, 4-4318, 4-4319, 4-4320).*

The Bureau provides a standard menu that applies to most facilities and is approved by a dietician and nutritionist. Inmates may receive medical and religious diets when considered appropriate and may request heart healthy meals. Substitutions may be made in segregation units when meat or poultry items containing bones are being served to the general population. Inmates receive three meals per day and all meals are consumed in the cell. The timing of the meals at some of the facilities reflected the breakfast meal was occasionally being served approximately 14 or more hours after the last meal of the previous day. Although this feeding schedule was not observed at every facility the scheduling and time of delivery of meals should be closely monitored to avoid extensive periods with no food services.

Personal hygiene. Inmates should have access to a wash basin and toilet. Inmates receive necessary personal hygiene items. *(28 CFR 541, P5270.10, P5217.01 ACA 4-4261).* Inmates should have the opportunity to shower and shave at least three times per week *(P5270.10, P5217.01, ACA 4-4262).* Inmates should have access to necessary hair care services *(28 CFR 541.21, P5270.10, P5217.01; ACA 4-4263).*

All cells contained a wash basin and toilet. Most of the cells in the SHU and control unit contained a shower within the cell. Those facilities where a shower was not located within the cell, staff provided the inmate with access to a shower at least three times per week. The cells located in the SMUs at USP Lewisburg, USP Florence, and USP Allenwood did not contain a shower, however multiple showers were located within the housing unit. Documentation over a period of several months was reviewed and reflected showers and the opportunity to shave were being provided in a manner consistent with federal regulations. Hair care services are also available at least once per month. Personal hygiene items are available to the inmate in the housing unit as well as through the commissary.

Exercise. SHU and SMU inmates have the opportunity to exercise outside their individual quarters for five hours per week, ordinarily in one-hour periods on different days. The warden may deny these exercise periods for up to one week at a time if it is determined that an inmate's recreation itself jeopardizes the safety, security, or orderly operation of the institution. However, recreation conditions specified here may not otherwise be limited, even as part of a disciplinary sanction imposed under P5217.01, P5370.11; ACA 4-4270. 28 CFR 541, P5270.10.

Exercise and Recreation The frequency of exercise outside the cell varies based on the type of segregation/program assigned and the inmates' level within the program.

SHU exercise and recreation. Inmates assigned to a SHU are generally provided the opportunity to exercise outside their cells five hours per week, ordinarily in one-hour periods five days per week. One facility scheduled recreation four days per week and provided inmates between one and one quarter and one and one half hours of recreation per day. The five hours provided is consistent with the minimum requirements cited in the federal regulations. Inmates in administrative detention status are generally not placed in the same recreation cage as an inmate in disciplinary segregation status; however, inmates in both statuses are provided the same amount of recreation time per week. Outdoor recreation is provided in individual recreation cages located adjacent to the unit. Each individual recreation cage may contain between one and four inmates based on the size of the cage and the number and type of inmates requesting access. No indoor recreation is provided.

The procedure for gaining access to recreation was found to be similar at most SHUs. Inmates are asked by an officer on each scheduled recreation day whether they are interested in recreation for that day. The request is generally made either before the breakfast meal or after the meal is served. No response or a negative response is considered a refusal and documented in the electronic file as the same. Recreation is generally provided first thing in the morning and at some facilities is completed by 0900. At other facilities, recreation continues until approximately 1600. The recreation scheduled varied at several facilities and was normally based on the number of inmates requesting recreation for that day.

The Program Review Division reported in October 2011 that at USP Florence the facility failed to properly complete documentation identifying recreation, meals and unit officer signatures in the SHU[136]. The project team reviewed both manual and automated reports for the most recent four months and found that the documentation indicated that inmate access to meals, recreation and unit officer signatures were being provided on a regular basis.

[136] The Bureau subsequently report that at the FCC Florence Correctional Services Program Review conducted in October 2014, revealed these issues were corrected.

Reports and documentation reviewed at several facilities reflected that a very small percentage of inmates were utilizing the recreation cages. Inmates interviewed expressed concerns that recreation requests occur only once per day, at approximately 0500 and that if the inmates are not standing at the cell door at that time they were not allowed to participate in recreation on that day. The requirement to stand at the door was not found to be a required practice at all facilities.

Project team members observed the practice at several facilities which consisted of the officer going to each cell and requesting whether the inmate wanted to go to recreation that day or not. Standing at the cell door was not a required procedure during the project team's observation. Staff reported that on average, 50 percent of the inmates in administrative detention status do not participate in recreation on any given day. A significant number of inmates in administrative detention status reported to team members that they chose not to participate in recreation because they feared being assaulted. Inmates in administrative detention status are not placed in the same recreation cage as an inmate in disciplinary segregation status, however in some facilities recreation may take place at the same time.

SMU exercise and recreation. Inmates assigned to the SMU program receive the opportunity to exercise outside their cells at least five hours per week, ordinarily in one-hour periods five days per week. SMU Level 1 and 2 inmates receive one hour of outdoor recreation, five days a week. SMU Level 3 and 4 inmates may receive up to 15 hours of indoor / outdoor recreation per week depending upon where they are housed. There is no difference in the amount of recreation time offered to Level 1 and 2 inmates or between Level 3 and 4 inmates, except for where they are housed. Inmates in Level 3 and 4 housed at USP Lewisburg were not provided indoor recreation. As a result, they were limited to approximately five hours of outdoor recreation per week based on weather conditions. Overall, however, practices were consistent with minimum federal regulations.

ADX: exercise and recreation—Inmates assigned to the ADX program receive the opportunity to exercise outside their cells at least seven hours per week. This practice is consistent with federal regulations. ADX General Population inmates receive two hours per day out of cell five days a week for a total of ten hours. Control inmates receive 1.5 hours a day four days per week and one hour one day for a total of seven hours per week out of cell. The ADX Step-down inmates normally receive 1.5 hours inside and 1.5 hours outside cell seven days a week for a total of 21 hours per week.

Personal property. Inmates may have reasonable amounts of personal property. Personal property may be limited for reasons of fire safety, sanitation, or available space *(28 CFR 553, 28 CFR 541, P5270.10, P5217.01; ACA 4-4261, 4-4265, 4-4292).*

In administrative detention status an inmate may ordinarily be allowed a reasonable amount of personal property and reasonable access to the commissary. In

disciplinary segregation status an inmate's personal property will be impounded, with the exception of limited reading/writing materials, and religious articles. The warden may modify the quantity and type of personal property allowed. Personal property may be limited or withheld for reasons of security, fire safety, or housekeeping. Unauthorized use of any authorized item may result in the restriction of the item. Also, commissary privileges may be limited.

SHU personal property. Although administrative detention status is a nonpunitive status and disciplinary segregation is a punitive status, there are very few differences in conditions of confinement between the two groups. However, personal property is one area where there are a few minor differences. The two notable differences in personal property were inmates assigned to administrative detention were allowed to purchase a portable radio with ear buds and a limited amount of food items and coffee from the commissary. Inmates in disciplinary segregation were normally not allowed to purchase those same items.

Other noted differences between the two SHU statuses outside of personal property was that administrative detention inmates are to have access to educational programming while inmates in disciplinary segregation may have their programming suspended. In addition at two facilities, inmates in administrative detention received a two hour visit per week while inmates in disciplinary segregation received a one hour visit per week. No other significant differences in conditions were noted between the two statuses.

With respect to personal property, administrative detention status inmates according to the SHU program statement are ordinarily allowed to have the following: Bible, Koran, or other scriptures (1), books, paperback (5), eyeglasses, prescription (2), legal material (see policy on inmate legal activities), magazine (3), mail (10), newspaper (1), personal hygiene items (1 of each type) (no dental floss or razors*), photo album (25 photos), authorized religious medals/headgear (e.g., kufi), shoes, shower shoes, snack foods without aluminum foil wrappers (5 individual packs), soft drinks, powdered (1 container), stationery/stamps (20 each), wedding band (1), radio with ear plugs (1) and a watch (1).

FINDING: There is very little difference between the personal property of inmates assigned to administrative detention and disciplinary segregation with the exception of noted commissary items. This is problematic given that at some facilities the majority of administrative detention inmates are on protective custody status.

SMU personal property. Inmates are limited in the amount of personal property that may be possessed, purchased and maintained in their assigned cell. As participants progress through the program, more property privileges become available. Separate commissary lists are available and generally grouped into lists for inmates in Level 1 and two and those inmates in Level 3 and 4.

USP Allenwood, which does not house Level 1 or 2 inmates, primarily has one list and the difference in approved property between Level 3 and 4 inmates is that inmates in Level 4 may purchase one pair of sweat pants and one sweatshirt and inmates in Level 3 cannot. Other than the clothing mentioned there were no significant differences.

At USP Lewisburg the approved property list for SMU inmates is the same for each level,[137] although a separate commissary list is provided for inmates in Level 1 and 2 compared to Level 3 and 4. The primary difference between inmates in Level 3 and 4 and those in Level 1 and Two at USP Lewisburg is inmates in Level 3 and 4 have access to additional clothing and snack items. Inmates placed on commissary restriction will be able to purchase stamps and certain hygiene items (as specified by staff) based on their level.

At USP Florence, two separate commissary lists are provided, one for inmates in SHU and Level 1 and 2 of the SMU and one for inmates in Level 3 and 4 of SMU. The primary differences between the two lists are Level 3 and 4 inmates have access to more food items, clothing, miscellaneous items and additional options in each category.

ADX personal property. Property limitations including limitations on legal materials were found to be appropriate in volume and type to ensure safety and good order of the ADX. Personal property was being stored appropriately in the space provided. All general population, step-down, control unit, special security unit, and SHU inmates, with the exception of those inmates assigned to disciplinary segregation, are issued televisions. With the exception of inmates assigned to the SHU, each television has leisure viewing channels. Separate commissary lists are provided for each classification within the ADX and appeared appropriate based on the classification and security nature of the facility. Primary differences in the various commissary lists included the number of options available, access to additional clothing and food and snack items. Overall, access to property and commissary items is consistent with national standards.

Correspondence and telephone use. Inmates may correspond with persons in the community and use the telephone in accordance with *28 CFR 540.17* and Program Statements *P5217.01, P5264.08 and P5270.10.* Special mail and unmonitored attorney telephone calls are handled in accordance with *28 CFR 540.17. 28 CFR 540.17; ACA 4-4266, 4-4271, 4-4272. 28 CFR 540.16(b)* states, the warden shall permit an inmate in segregation to have full correspondence privileges unless placed on restricted general correspondence under *540.15. 28 CFR. 540.15(a)* states the

[137] USP Lewisburg SMU Handbook, page 51, Appendix B.

warden may place an inmate on restricted general correspondence based on misconduct or as a matter of classification. The warden shall permit an inmate who has not been restricted from telephone use as a result of a specific institution disciplinary sanction to make at least one telephone call each month.

28 CFR 540.101(d) Procedures states ordinarily an inmate who has sufficient funds is allowed at least three minutes for a telephone call. *28 CFR 540.103* states the warden may not apply frequency limitations on inmate telephone calls to attorneys when the inmate demonstrates that communication with attorneys by correspondence, visiting or normal telephone use is not adequate. *28 CFR 540.105(b),* Expenses of inmate telephone use, states that the warden shall provide at least one collect call each month for an inmate who is without funds. *28 CFR 540.17; P5217.01; ACA 4-4266, 4-4271, 4-4272, Program Statement P5264.08* states a local institution supplement is required and must include, in part, the following: a maximum length of telephone calls of 15 minutes.

The frequency and length of time of a social telephone call as cited in the Bureau's program statements is at least one telephone call per month for no more than 15 minutes, unless the inmate is placed on telephone restriction as a result of a disciplinary sanction.

SHU correspondence and telephone use. In the SHU's this is the general practice for both administrative detention and disciplinary segregation inmates. There is no difference in access to a telephone for inmates assigned to administrative detention or disciplinary segregation. The minimum frequency is provided and the maximum duration is set by the program statement. All other correspondence, including mail services are the same as those services provided to inmates assigned to general population, with the exception of email access.

SMU correspondence and telephone use In the SMU program opportunities to send and receive written correspondence and make telephone calls are subject to monitoring and analysis for intelligence purposes. Legal correspondence and calls are not subject to monitoring and analysis. Unless an inmate is on telephone restriction status, inmates assigned to Level 1 of the SMU are allowed to make two telephone calls per month. Inmates assigned to Level 2 are allowed to make up to four telephone calls per month. Telephone calls may last up to 15 minutes. Level 3 inmates can access telephones from the common area of their housing unit and may make up to 150 minutes of calls per month. Level 4 inmates may make up to 300 minutes of calls per month and participate in the electronic mail program (email). There is a program at USP Florence for inmates who have lengthy telephone restrictions of months or years to earn back telephone privileges by compliance with certain items. This was not found to be an incentive found in all facilities.

ADX correspondence and telephone use In the ADX General Population, Control and SHU inmates schedule legal calls through their assigned counselor. General

Population inmates can make (2) 15 minute telephone calls per month, Control inmates can make (1) 15 minute telephone call per month unless on disciplinary status then (1) 15 minute call every 90 days, SHU inmates receive (1) 15 minute personal telephone call per month on administrative detention status and (1) 15 minute telephone call if on disciplinary status. Control step-down unit inmates can receive (3) 15 minute calls per month. Incentive telephone calls can be earned. All inmate personal telephone calls must be live monitored by ADX staff.

All incoming and outgoing ADX inmate correspondence is inspected by Special Investigation Service technicians. Incoming and outgoing social mail is reviewed by SIS technicians and must be processed within 36 hours. Legal mail is picked up and delivered by the unit counselor which must be processed within 24 hours of receipt. .

Visiting. Inmates may receive visitors in accordance *with 28 CFR 540.40. 28 CFR 540.43, Frequency of visits and number of visitors, P5217.01, P5270.10 and P5267.08.* The warden shall allow each inmate a minimum of four hours visiting time per month. The warden may limit the length or frequency of visits only to avoid chronic overcrowding. Inmates may be provided noncontact visits, through the use of videoconferencing or other technology. *(P5217.01, P5270.10, P5267.08, ACA 4-4267.)* Title 28 CFR 541.17 states: "Ordinarily, an inmate in administrative detention or disciplinary segregation status may receive visits in accord with the same rules and regulations that apply to general population inmates, providing such visits do not pose a threat to the security or orderly operation of the institution. In such cases, the warden may authorize special visiting procedures to preclude such a threat."

SHU visitation. Generally an inmate retains their visiting privileges while in administrative detention or disciplinary segregation status. However, visiting may be restricted or disallowed when an inmate (while in administrative detention or disciplinary segregation) is charged with or was found guilty of a prohibited act related to visiting guidelines, or has acted in a way that would reasonably indicate a threat to security or order in the Visiting Room.

A minimum of four hours per month of visitation is required by statute and the program statement unless the length of time creates chronic overcrowding. At one facility, FCI Butner II, inmates assigned to the SHU received contact visits, however at all other SHUs, only noncontact visits were provided. The frequency and length of visit for both administrative detention and disciplinary segregation inmates at most facilities were generally the same, one visit per week for two hours. At USP Coleman I and FCI Butner II inmates in disciplinary segregation status received a one-hour visit. SHU inmates generally receive noncontact visits while general population inmates receive contact visits.

At USP Florence, the SHU inmates receive visits through video from a secure room within the SHU. Video visits at USP Florence may last two hours and there is a limit of five visits per month for SHU inmates. Few SHU inmates actually receive visits based

on information obtained during interviews. Legal visits are arranged upon request and take place in the general visiting room area either in a glass noncontact visiting booth or in private room designated for attorneys, depending on the circumstances.

SMU visitation. At USP Lewisburg and USP Florence, social visits are provided primarily through video technology. The inmates utilize the video visiting room located in their assigned housing unit, and their visitors utilize the video-visiting units located in the Visiting Room. Regular visitation for SMU inmates in Levels One, Two, and Three is only available to immediate family members, and the relationship must be verified. At USP Lewisburg, inmates in Level 3 are permitted noncontact visits in the visiting room and inmates in Level 4 are permitted contact visits in the visiting room and are not limited to immediate family members. SMU inmates are limited to a maximum of five social visits per month. This does not include legal visits. SMU inmates must submit a request, in writing at least one week in advance of the expected visit. As the availability of video equipment may be limited, visits may be limited to two hours per inmate at USP Florence and one hour visits at USP Lewisburg, although more time may be allotted based on availability of visiting booths.

At USP Allenwood, legal visits are allowed in a manner consistent with national practices. Social visits are noncontact visits and are ordinarily scheduled from 0830 to 1500 hours, Tuesday through Thursday. The social visits for these inmates are limited to immediate family members only. Level 3 inmates are allowed two one-hour visits per month and Level 4 inmates are allowed four one-hour visits per month. The frequency and duration allowed for each visit is reportedly limited due to the number of noncontact rooms available. There are four private noncontact visitation rooms. Staff at USP Allenwood reported the number of visits for SMU inmates was quite low because of several factors including the distances that most visitors have to travel in most instances.

The applicable federal regulation states: "*The Warden shall allow each inmate a minimum of four hours visiting time per month. The Warden may limit the length or frequency of visits only to avoid chronic overcrowding.*"[138]

FINDING: The frequency of visitation allowed for inmates in Level 3 at USP Allenwood is inconsistent with Bureau practices for the same level of inmate at other facilities and not representative of national best practices.

At USP Florence, the frequency for Level 3 inmates was five visits per month for up to two hours per visit through the use of video technology. At USP Lewisburg, Level 3 inmates were allowed up to five one-hour noncontact social visits per month. When

[138] *28 CFR 540.43, Frequency of visits and number of visitors.*

comparing USP Lewisburg visitation policies with USP Allenwood visitation policies, inmates in the same level are allowed a difference of three hours in visits per month.

RECOMMENDATION 7.1: A further review of the frequency and duration of visits should be conducted at USP Allenwood for Level 3 inmates. Serious consideration should be given to providing the allowance for additional time for those inmates in Level 3.

Although the warden may limit the length of time or frequency of visits to avoid chronic overcrowding, there was no evidence presented to indicate the established frequency and duration for Level 3 inmates as identified in the facility policy should be less than four hours per month. In addition to the hours provided, there is an issue of consistency in the conditions of confinement for each level. Currently, an inmate housed at USP Allenwood in Level 3 is allowed up to two hours of social visits per month while the same inmate housed at USP Florence would receive ten hours of social visits per month.

Establishing a reference to "more time may be allowed based on availability" in the policy, expanding the number of days or hours visitation is allowed for Level 3 inmates, use of video technology and/or increasing the number of noncontact rooms should all be considered as viable options to provide more consistent visitation practices.

ADX Visitation. The legal visits for inmates confined at the ADX are scheduled through the housing unit counselor. ADX inmates can receive five general visits per month with each visit lasting as long as seven hours. Inmates are dressed in different clothing for visits; SHU-Orange Jumpsuits, Control-Yellow Jumpsuits, and General Population-White Jumpsuits. Hand restraints are removed from General Population and SHU inmates after the inmate is secured in the visitation booth with leg irons remaining in place. Control inmates remain in full restraints even after placement in the visitation booth. The ADX has ten noncontact visitation booths for general visits and four noncontact visitation booths for legal visits.

Legal activity. SHU inmates must submit a request to use the electronic law library located in a room in SHU. The equipment is available seven days per week. A review of the logbooks reflects that this equipment is frequently used. SMU Level 1 and 2 inmates submit a request to use the electronic law library that is located in their respective housing units. At USP Florence, there are two enclosures in each unit that contain the equipment and a printer. They were observed in frequent use during our review. SMU Level 3 and 4 inmates have open access to this equipment that is located in the common area of their units, which they can frequently access. That equipment was also observed in use during our review. Upon approval of the unit manager, an inmate may request another inmate to assist in legal matters / use of the equipment. This was also observed in action with Level 1 and Two SMU inmates. At USP Allenwood, the records reflected a minimum of one hour access and frequently more

than that. SMU inmates have a dedicated electronic law library in the common recreation area that may be used during recreation. An additional terminal is located in a room adjacent to the common area when a SMU inmate needs privacy or for noise considerations. The project team noted consistent access to the electronic law library throughout site visits.

Access to medical care. Inmates in restrictive housing units have limited capability to access and communicate to staff because of the nature of secure confinement. Nationally accepted best practice dictates that inmates are afforded daily access to medical care, or in more emergent circumstances immediately. Correctional institutions should have in place a method to allow for unimpeded access to medical care. This is particularly difficult to carry out in restrictive housing units, where the inmates are mainly locked in their cells 23 hours per day, seven days per week. This section of the report examines access to healthcare in the Bureau facilities assessed.

Title 28 Code of Federal Regulations, section 541.32 (a) addresses the provision of medical and mental health care in the SHU. The regulation specifies that a health services staff member will visit each inmate daily to provide necessary medical care, exclusive of emergency care, which is provided on an as needed basis.

The assessment team examined SHU sign-in records and logbooks, as well as making direct observations at each of the facilities assessed to determine the frequency that medical staff signed into the unit to make rounds of the cellblock ranges and also administer medication. The following findings are the result of that analysis.

- *USP Tucson*. Medical staff visit the unit two times per day. During the morning visit, healthcare staff observe each inmate in their cells and respond to inquiries. Also the medical staff receive formal written medical requests from the inmate. Evening medical rounds focus more on administering medication.

- USP Victorville. Records were reviewed for a 60 day period and the following was revealed. The average number of medical staff visits to the unit was two per day. In five of the 60 days medical staff signed into the unit one time. A medical staff member visited the unit at least once per day for all 60 days.

- USP Hazelton. At this facility, sign in records revealed that once per day a physician's assistant visited the unit to visually observe the inmates.

- *USP Florence*. Assessment team members observed medical staff traveling cell to cell to check on the inmates and make visual observations. Records revealed that medical staff entered the unit multiple times per day.

- *USP Terre Haute*. Sign in logs revealed that a registered nurse enters the unit a minimum of once per day and a medical staff person visits the unit multiple times each day.

- *ADX Florence.* SHU records revealed the presence of medical staff two times per day to conduct rounds and administer medication.
- *USP Allenwood.* In the SHU medical staff signed into the unit two times per day to conduct rounds and administer medication.
- *FCI Butner.* 90 days of sign in logs were reviewed and it was determined that medical staff visited the SHU multiple times per day administering medications, observing inmates, and collecting medical slips.
- *USP Coleman.* 62 days of sign in logs were reviewed revealing the presence of medical staff on a daily basis in the unit.

The ACA standards that address the provision of medical care in restrictive housing units call for, at a minimum, daily visits by qualified healthcare personnel and unimpeded access to prescribed medication.[139]

SMU healthcare access requirements are outlined in *Program Statement P5217.01, Special Management Units*, dated 11/19/2008. Section 5 (a) 15 regarding medical care reads: "...a health services staff member visits inmates daily to provide necessary medical care. Emergency medical care is always available either at the institution or from the community."

Three SMUs were visited during this assessment. At USP Florence, SMU sign in records and logs revealed that health care staff visited the unit one time per day, consistent with the requirements of the program statement.

The largest of the SMU programs is at USP Lewisburg. Logbooks, sign in sheets and observations revealed that health care staff enter the units at least one time per day to conduct their rounds. A spot check of sign in documents was conducted covering a six-week period to make this determination.

At USP Allenwood, which houses SMU inmates in Level 3 and Level 4, records revealed that health care staff visited the two SMU cellblocks, two times per day.

[139] 4-4258 Written policy, procedure, and practice provide that inmates in segregation receive daily visits from the senior correctional supervisor in charge, daily visits from a qualified healthcare official (unless medical attention is needed more frequently), and visits from members of the program staff upon request. 4-4261 Written policy, procedure, and practice provide that all inmates in segregation provide prescribed medication, including that is not degrading, and access to basic personal items for use in their cells unless there is imminent danger that an inmate or any other inmate(s) will destroy an item or induce self-injury.

ADX control unit healthcare personnel make rounds of the various control unit housing areas once per shift or two times per day. Section 541.67, of Title 28 Code of Federal Regulations requires that "...a medical staff member see the inmate daily and regularly record medical and behavioral impressions."

Bureau regulations and program statements provide clear direction with respect to inmate access to healthcare in segregated units. Inmates in these units have limited mobility and a limited capacity to communicate with staff. This has been recognized by the corrections profession and nationally accepted correctional standards, such as the ACA standards require that inmates be seen daily in the living unit and also have unimpeded access to their prescribed medications.

Bureau regulations call for a minimum of a daily visit by a qualified healthcare professional to these units. Our assessment process included a review of sign in or attendance records of health care staff entering the various segregated units. Our findings are outlined in the above paragraphs. These findings are supported by interviews with staff, interviews with inmates, and documentary evidence that revealed that health care staff meet and often exceed the minimum requirement of attending to inmates in segregated units.

This examination did not include a review of medical records or the quality of medical care that is provided, as this was beyond the scope of this analysis. A number of the inmates interviewed did express concern about the quality of the care they were receiving; however, there were few complaints that medical staff were unavailable to speak with inmates during medical rounds.

FINDING: The presence of health care staff in the segregated units is ongoing at least daily, and often more frequently, consistent with Bureau policy and ACA standards.

Health care staff administer medications to inmates and this is an ongoing process that takes place at different times during the day. In addition, the medical staff are required each day to visually observe all inmates, regardless whether or not they are receiving medication, as a wellness check to determine if they may need healthcare services. There were no examples that we detected where a medical staff person didn't make a visit to a segregated housing unit at least once per day.

Adequacy and allocation of program space

The focus of this section of the report addresses the findings and recommendations related to program space available in the three main segregation units being analyzed: SHUs, SMUs, and ADX. The reported lack of space has been cited at several facilities by staff as one of the primary reasons why programming is provided for

most inmates individually in their cell using a self-study format. This section focuses more on the potential use of existing space available to provide small group programming for appropriate inmates rather than on specific programming opportunities, which are addressed in another section of the report.

According to federal regulations and applicable Bureau program statements, all three of the restrictive housing units are designed to help ensure the safety, security, and orderly operation of the Bureau facilities. Title 28 Code of Federal Regulations, section 544.81 Education states: "the warden shall ensure that an inmate with the need, capacity and sufficient time to serve has the opportunity to: Complete an Adult Literacy program leading to a General Educational Development (GED) certificate and/or high school diploma." The required access to program activities is based in part on the inmates' status and the type of restrictive housing unit in which they are housed.

Statutory and Bureau requirements

Special housing unit programs. In administrative detention status, an inmate will have access to programming activities to the extent safety, security, orderly operation of a correctional facility, or public safety are not jeopardized. In disciplinary segregation status, participation in programming activities, e.g., educational programs may be suspended. *(28 CFR 541.31, 28 CFR 544.81, P5270.10)*.

Inmates assigned to an SHU are either in administrative detention status (nonpunitive) or disciplinary segregation status (punitive). Based on federal regulations, inmates in administrative segregation status are allowed to have program access as long as it does not jeopardize safety. Inmates in disciplinary segregation status may have their program activities suspended.

Educational and religious program activities are provided on an individual basis normally while the inmate is in the cell and the staff member is outside the door. There is no small group programming provided with the exception of recreation where between one and four inmates may be placed in a single recreation yard. In most facilities, educational services were available however the services were considered limited and provided in a self-study format while the inmate remained in the cell.

At FCI Butner II, inmates enrolled in GED or ESL classes prior to being in the SHU were allowed to remain in those classes for 60 days and provided with appropriate instructional materials to continue their studies. Inmates in the SHU more than 60 days are dropped from those courses and placed on a waiting list to restart the courses upon their release from the SHU. A new education program with a series of classes on various topics was reported to have started in the SHU beginning February 17, 2014. The inmates are provided self-study materials to be completed in-cell.

Twenty-six courses are offered in six categories: Math (7 classes); Science (3); Reading (4); Social Studies (4); Writing (4); and Miscellaneous classes (4). The significant number of enrollees in the first week is a strong indication of the desire of SHU inmates to participate in programming. All of the inmates interviewed expressed a desire for more program offerings while in the SHU. An OASIS computer based course was being offered to inmates in the general population and could be offered to inmates in the SHU to complete in the SHU Law Library if approved. Most other facilities offered comparatively limited opportunities.

Special management unit programs. SMUs consist of four program levels and access to program activities generally increases as the inmate advances through the program. Progression through Level 1 is based upon the inmate's compliance with behavioral expectations as established by staff. Progression through Level 2 and Three is based upon the inmate demonstrating the "potential for" or positive "community" interaction. Progression from Level 4 to a general population facility is "based upon the inmate's ability to function in a general population setting with inmates of various group affiliations." P5217.01.

The project team found that a staff member representing the education department was assigned to each of the SMU programs and based on documentation reviewed frequently visited the units. Inmates in Level 1 and Two normally are involved in individual self-study programming which takes place in the cell. Staff primarily visit the inmate in front of their cell and communicate through the cell door. Inmates without a verified high school diploma or GED certificate are required to participate in a literacy program with the goal of improving their knowledge and skills through academic activities. At all three SMU programs daily schedules reflect educational personnel are scheduled to make rounds in the housing unit on a regular basis.

The opportunity for additional inmate interaction increases when the inmate reaches Level 3 and 4. Most programming for Level 3 and 4 inmates is individualized self-study however during the inmates' out-of-cell time they are allowed to seek assistance from the staff member. There is no formal group educational programming offered in the SMU program.

ADX programs. The federal regulations for the control unit program state that the warden shall assign a member of the education staff to the unit on at least a part-time basis to assist in developing an educational program to fulfill each inmate's academic needs. The education staff member is ordinarily a member of the unit team[140].

[140] 28 CFR 541.46, 28 CFR 544.81.

The ADX consists of several different program levels ranging from the general population, intermediate step of the step-down program, SHU, control unit, and special security unit. In each phase of the program the level of access to program activities changes. As an inmate progresses through the different program levels access to program activities increases. A staff member representing the education department is assigned to the each program. For those inmates in the control unit, the majority of programming is conducted in cell and on an individual self-study basis. Programming is also offered on the closed circuit TV within the inmate's cell. For those inmates in the ADX general population units, the majority of the programming is conducted in-cell on an individual self-study basis and programming is offered on the closed circuit TV within the inmate's cell. The ADX recently constructed five "therapeutic enclosures" in the gymnasium where five inmates in separate enclosures can participate in a group program. At the time of the on-site review, the psychology department was using the therapeutic enclosures to conduct a reentry preparation program. One 90-minute "group" is meeting once a week. Generally, inmates assigned to all of the ADX phases are provided self-study materials to be completed in their cell.

Program statements and facility supplemental statements related to program access in restrictive housing units are aligned with the regulatory requirements identified in the federal regulations. The review team found that personnel were generally familiar with the program statements and the program access requirements. Daily activity schedules were in place, appropriately trained personnel were assigned to adhere to these requirements and oversight was provided. The assessment team observed that almost all programming outside of recreation was provided on an individual basis while the inmate remained in their cell.

Existing potential program space

The current practice observed by the project team reflected access to program activities for most of the inmates assigned to a segregation unit is provided individually while the inmate is in the cell and the staff member is outside the cell door. The federal regulations do not address how program activities are to be provided or the frequency in which they are to be provided. Outside of a few select cases or during recreation and the day room time provided for inmates assigned to an ADX transitional unit, or Level 3 and 4 of the SMU program, almost no formal group program activity is being provided. As indicated in other sections of the report, there had been recent initiatives including the building of multiple individual enclosures to provide some limited "group" programming.

Overall, access to program activities appears to be consistent with meeting the minimum requirements cited in the federal regulations. Most programming consists primarily of cell-side services. Staff interviewed during the review process reported

that individual in-cell programming was preferred primarily due to safety concerns and the lack of available small group space.

FINDING: Based on an assessment of the physical plants and on-site reviews, there does appear to be an opportunity to provide properly scheduled small group programming for appropriate inmates in existing space at the facilities.

Every facility the project team visited had space within the unit to provide small group programming for three to six inmates at a time. Based on site observations and staff interviews, all of the potential group programming space was not consistently being used during the day.

In the other facilities visited limited small group programming space located primarily on the front end of the range or unit that was being used primarily for interviews, hearings, storage or screening and could also be considered available programming space during select times. The project team identified limited space available to provide small group programming for appropriately screened inmates at all of the facilities visited.

The project team is not advocating group programming be provided to all inmates in the segregation units however some may be considered appropriate. For example, inmates who are in administrative detention status (nonpunitive) for the sole reason they have been verified by staff as requiring protection or inmates who have advanced in their assigned program to a higher level (SMU Level 3 or 4, ADX step-down, transitional and pre-transfer unit) structured small group programming should be considered an option as space appears to be available.

FINDING: There are a limited number of potential small group programming spaces available at each facility.

The location of the potential space was all in an area in the housing unit that was consistent with maintaining a secure environment for both the inmate and staff. Though the size of each space varied, the rooms appeared to be sufficient to accommodate multiple individuals for short periods of time. Currently, most programming is offered individually while the inmate remains in the cell.

The project team is not advocating all individuals assigned to a restrictive housing unit be provided access to small group programming, however some inmates with specific classifications should be considered when proper security precautions are applied. For example, those inmates who have been assigned to administrative detention status (nonpunitive) solely for protection and have been verified by Bureau staff as requiring protection, inmates in Level 3 and 4 of the SMU program, (the program statement states frequent group counseling, they currently recreate in a group setting and participate in day room activities as a group), and ADX Step-Down,

Transitional and Pre-Transfer inmates who currently recreate and share day room activities at the same time should all be considered for small group programming.

RECOMMENDATION 7.2: Use of existing small group space should be seriously considered for inmates who have been properly screened.

Observations on conditions of confinement

FINDING: The general conditions of confinement were found to be consistent with national regulations and standards. Establishing, maintaining and monitoring the conditions of confinement appeared to be a routine part of the daily operations of managing the Bureau facilities visited. Policies were in place, staff were familiar with the requirements, and post orders and job descriptions had been established to enforcing compliance in this area.

The additional use of external monitoring and assessment through the Bureau's ACA efforts was considered a valuable management tool that provided quality feedback regarding general conditions of confinement. The project team found that areas of deficiency that were cited by the Program Review Division (PRD) and/or ACA were addressed and/or seriously considered by facility management staff. Every facility visited had received accreditation status by the ACA.

However, some areas of concern identified during this assessment were either not present at the time of the PRD or ACA review or had not been identified by the PRD and ACA reviews as concerns.

- *Triple-celling.* The practice of housing three individuals in a cell that is approximately 85 square feet in size and contains two beds should be eliminated. This practice is inconsistent with nationally accepted standards and creates an environment that threatens the safety of both inmates and staff. The absence of an established written policy that identifies proper procedures to follow before placing three individuals in a cell with two beds, including monitoring practices, inmate screening, time limits and authorization is inconsistent with national best practices.

- *Low levels of participation in out of cell recreation.* Many inmates do not take part in recreation due to access only at early hours (0500 wake up calls for recreation), fear of being assaulted, passing room inspection, and lack of equipment.

- *Lack of consistency in the conditions of confinement provided for individuals in the same level.* For example, and inmate in Level 3 housed at USP Allenwood is allowed up to 150 minutes in social telephone calls per month, two one-hour noncontact social visits per month and indoor and

outdoor recreation totaling approximately fifteen hours per week. The same inmate if housed at USP Lewisburg would be allowed twice the number of social telephone call minutes per month (up to 300 minutes), more than twice the amount of social visits per month (five one-hour social visits) and significantly fewer recreation hours per week (five hours of outdoor recreation). The differences in frequency, type, and the duration of conditions of confinement for an inmate classified at the same level in the same program while housed at a different facility presents concerns regarding the integrity and design of the level system.

- *Similarity in conditions of confinement for inmates in administrative detention and disciplinary segregation status.* Administrative detention is identified as a nonpunitive status while disciplinary segregation is identified as a punitive status. However, the inmates are assigned to the same housing unit, inmate movement procedures including application of restraints are the same, the frequency of recreation is the same, telephone access is the same and visits at all but two facilities visited were the same. With the exception of minor differences in personal property allowed and in-cell programming opportunities the day-to-day conditions of confinement were not much different. Considering one status is nonpunitive and includes in part individuals that are in administrative detention status strictly as a result of being verified as requiring protection serious consideration should be placed on reevaluating the day-to-day condition of confinement authorized for individuals in a nonpunitive status.

Program reviews

The Program Review Division (PRD) is directly responsible for overseeing Bureau-wide performance reviews that are designed in part to examine facility operational compliance levels with applicable laws, rules, regulations, and policies. In addition, the division examines the adequacy of controls, the efficiency of operations, and effectiveness in achieving the desired program results. PRD is also responsible for ensuring an analysis of specific program performance patterns is completed and serves as the Bureau's liaison with most external audit agencies.

To provide personnel with consistent direction and guidance a comprehensive program statement[141] has been established that identifies the purpose, requirements

[141] *Program Statement 1210.23, Management Control and Program Review Manual*, dated 8/21/2002.

and procedures associated with meeting review responsibilities. As a result, *local operational reviews* are required to be conducted by facility personnel at least once every 10 to 14 months. These *operational reviews* are commonly considered facility self-audits. In addition, a comprehensive *program review* managed by central office is conducted and completed by external Bureau personnel at least once every three years.

Throughout the review process the project team examined the operational and monitoring practices and found that both program and operational reviews were normally being completed on a scheduled basis. Facility personnel were familiar with the process, documentation was available and dedicated personnel were assigned to each facility that were held accountable for monitoring local compliance levels.

Program review observations

Policy and review schedules have been established that are consistent with federal requirements and have been designed to ensure that both the operational and program reviews are conducted in a manner that best addresses the requirements of the Bureau. The division normally schedules the external *performance reviews* based on specific areas being analyzed and the location of the facilities. For example, either a correctional services or facilities management *program performance* review is scheduled for a prison complex and will include an examination of several subject areas to be reviewed within the complex. In most facilities specific guidelines have been established to ensure certain policies and procedures are reviewed.

At the Federal Correctional Complex Tucson a facilities management review was conducted on February 12-14, 2013, which included the Federal Correctional Institution, USP, and the satellite work camp. Guidelines were established by PRD that identified specific policies to be reviewed including policies impacting both general population and SHUs at each of the facilities. The scope of coverage and format used during the Tucson review was typical of what the project team observed in evaluating other PRD reports.

A typical performance review normally does not focus strictly on a particular housing type or specific subject matter, but analyzes and provides a report that identifies the overall complex performance findings and trends. *Program reviews* are not designed to examine each requirement identified in every policy in every housing type. However, *program review* guidelines have been established to ensure specific protective policies, conditions and procedures that are reviewed, include general population, SHUs and SMUs. Additionally, to provide further observation of SHU operations, each institution's program review (all disciplines) includes the reviewer-in-charge conducting a comprehensive tour of the SHU, promptly reporting findings as appropriate, and including the findings in the final report.

For example, inmate access to recreation may be examined complex-wide and by policy a sample number of general population, SHU and SMU files will be required to be reviewed. If there are specific concerns identified in this area those concerns are generally noted in a subsection entitled "general comments" or "deficiencies" in the PRD report. Bureau policy states that the reviews include an examination of a select percent or number of general population, SHU and/or SMU files. What is excluded in the review is the same level of examination of conditions for the ADX. The Program Review Division at the time of the project team's assessment did not have specific monitoring requirements for ADX policies as was the case for the SHUs and SMUs. Operational reviews and performance reviews were being conducted at the ADX as evidenced by documents provided, however specific guidelines ensuring select areas were reviewed had not been established.

FINDING: Specific conditions of confinement and protective policy compliance levels are monitored locally by facility personnel and in some areas by central office personnel that are not assigned to the Program Review Division.

The lack of these specific guidelines for the ADX creates the potential for possible omissions in examining areas that require ongoing review.

RECOMMENDATION 7.3: Guidelines that identify specific conditions of confinement and protection policies consistent with applicable federal regulations and national standards should be developed and included as part of the Program Review Division performance review process[142].

Reporting

In addition to a review of the specific policies and conditions examined by the Program Review Division, an assessment of the performance reports was completed. Program Review Reports from 2011 to 2013 were reviewed as well as *Program Statement 1210.03, Management Control and Program Review Manual.* Each report identified the dates the review was completed, overall rating, response requirements, if applicable, reviewer assurance statement, background information, general comments (concerns, if any) and deficiencies.

In examining the documents from 2011 to 2013, there were several program review reports that identified concerns in the restrictive housing units that required a response from facility personnel. Some of the concerns noted in the reports included such areas as: inadequate cell search procedures; consistent documentation of staff

[142] The Bureau has reported that ADX-specific program review guidelines were developed and became effective June 13, 2014.

rounds; consistent documentation of inmate access to services; proper application of restraints; and below average sanitation conditions. The positive aspect of the reviews was that the Program Review Division was identifying concerns during their review and requiring facility personnel to provide a written response and corrective action plan for each.

A few of the concerns cited in the 2011 - 2013 reports were consistent with the review team's observations in 2014. Policies were in place that required activities and service delivery to be documented when provided, however observations reflected there were occasions when incomplete documentation was being provided. The frequency of the omissions was few. The addition of the new automated software program designed to document inmate service delivery was in use at several of the facilities. The system allowed routine activities to be recorded electronically such as meals delivered, recreation, and shower access. This procedural upgrade was viewed by staff and the project team as a significant improvement over the manual system. Staff were familiar with the automated system and procedures were in place to ensure select service activities and conditions were documented and inputted into the system.

Operational review observations

The Program Review Division (PRD) is an essential part of the Bureau tasked with the responsibility of overseeing Bureau-wide performance reviews that are designed in part to identify facility operational compliance levels with applicable laws, rules, regulations, and policies. Policies and procedures have been developed, qualified staff are assigned and site reviews are conducted on a regular basis consistent with applicable regulations.

FINDING: Both program and operational reviews served a vital role in the overall positive operations of the Bureau's facilities.

Appropriate adjustments and revisions were being implemented to refine the system and Bureau personnel reported additional modifications are being considered. In line with the approach of continued growth and refinement, the project team has identified a few recommendations in this area:

RECOMMENDATION 7.4: Establish a separate program performance review for the USP Florence ADX that includes in part a comprehensive evaluation of specific policies and procedures that are unique to the ADX.

The current review includes three facilities: Federal Correctional Institution; USP Florence High, and USP Florence ADX with a separate satellite work camp. The benefit of providing a separate review with specific guidelines focused on the unique

operations of the ADX can only assist in meeting the established mission of the Bureau.

Specific guidelines to be reviewed have not been established for the ADX and should be considered. These guidelines should reflect federal regulations, Bureau policies and national standards. Based on the uniqueness of the program, including the ADX's operations and conditions of confinement a separate review may provide for a more detailed assessment of the facilities overall compliance levels with established policies and regulations.

RECOMMENDATION 7.5: Enhance the external oversight of the local operational reviews that are being conducted no less than on an annual basis.

External program performance reviews appear to be identifying a number of issues that should be addressed and corrected as a result of the local operational reviews that are conducted by the facility. Written responses are required and provided on concerns identified in the operational review, however reported corrective action may not always resolve the deficiency. Exploring the expanded use of announced or unannounced follow-ups and or requiring repeated assurances over a period of time regarding the effectiveness of the correction action should be considered.

RECOMMENDATION 7.6: Reassess the performance review rating system.

A number of program reviews resulted in an overall rating that may not have been consistent with the findings or definitions identified in the applicable program statement. Based on the project team's observations and review of documents, the team did not identify any facilities that warranted an overall rating of "deficient" or "at-risk," and none of the reports indicated the same. Re-evaluating the overall performance rating designation and ensuring an accurate rating is provided essential to solidifying the integrity of the review process.

Chapter 8: Summary of conclusions

The following summarizes the major findings and recommendations that were presented in the previous chapters of this report.

Extent of segregation

The Bureau experienced an increase in the use of restrictive housing that began in 2009 by rapidly implementing its existing SMU program. Data indicates that the ADX population has remained quite stable over the same time period.

Only a limited amount of information is known about the SHU population in terms of historic trends as the Bureau did not retain data on the number and type of inmates placed in the SHU status - protective custody, investigation and disciplinary segregation. More recent data indicates that the size of the SHU population has been steadily declining since 2011. The Bureau was able to provide detailed SHU population statistics beginning in February 2013. At that time, the count was 10,262 in over 100 facilities and has steadily declined since then reaching 8,939 by June 2014. This is a significant reduction from the self-reported count of the SHU population of over 13,000 in 2011.

The decline can be attributed to several factors as reported by staff at all levels and confirmed and observed by the CNA project team. The process of conducting weekly reviews of SHU placements has been in place for some time and is a key factor in the decline. These reviews are held in a formalized setting with the entire management team of the facility participating in a review of the status of each inmate in SHU. The review includes an assessment and evaluation of all placement options including release from SHU. Staff noted that in the last three years the process has been re-emphasized as a means to ensure that inmates are managed in the least restrictive setting given their risk to the system.

As of November 2013, approximately 5 percent of the entire Bureau's inmate population was being housed in one of these three restrictive housing populations with the vast majority in the SHU status. From a state prison population perspective, this number is neither high nor low, but more in the middle.

However, this review indicates that there are excellent opportunities to significantly lower the SHU and SMU populations by adopting the recommendations outlined in this report. Specifically, we estimate that the current SMU and SHU populations can be lowered significantly by adopting the following approaches:

As of 2014, there were 4,252 inmates in some form of investigation status. This is partially a result of the lack of a policy requirement that investigation be limited to a specified maximum time period, absence a rationale for continuing the inmate on investigation beyond the specified time period. Presently, investigations can linger for months without resolution:

- Related to the investigation time period, once the investigation is completed and the case heard by the DHO, the sanction issued is not retroactive to the original date of placement in the SHU. As a result, if the investigation continues for 180 day and the inmate is found guilty of the infraction and issued disciplinary time of 30 days, the sanction and disposition is in reality 210 days as it is not retroactive to the original placement date. Giving the option for credit for time served will reduce the bed days in segregation significantly given the size of the investigation population.

- It was reported that in November 2013, there were 1,437 protection cases in special housing with an additional 172 housed in special housing but pending placement back into the general population. As noted in the report, many states have removed protection cases from administrative segregation and created specialized housing that is secure but replicates the conditions of confinement and programming of a general population unit. Not all of those in protection status would qualify for such placement as those whose protection is related to their own behavior could be excluded as they represent an ongoing risk to others. This option would, however, remove a significant number of offenders from the SHU. The Bureau is already utilizing this option to a small degree with the establishment of the RHU in Oakdale, Louisiana.

- The Bureau should continue to utilize a process of careful review of all referrals for placement to the SMU program. As noted in this report a recent snapshot of the review process indicates that 22 percent of the referrals initiated at the institutional level have been denied placement. This recent level of denials are an increase over prior measured levels and will assist in controlling any future growth as the SMU beds are reserved for only those who require such placement.

- It is recommended that the time period for completion of the SMU program be reduced from the present 18-24 months to 12 months and also the four levels be compressed to three levels by combining Level 3 and

Level 4 and allowing more differentiation between the condition of confinement between the levels.

Implementation of these recommendations will significantly reduce the present restrictive housing population, while ensuring that mechanisms are still in place to maintain the safety and security of the institutions.

Conditions of confinement

In general, we found the housing units, cells, and furnishings provided in the cells to be adequate to accommodate either single or double celling of the ADX, SMU and SHU populations. Lighting, ventilation, access to showers and recreation areas were also nonproblematic. Some concern is noted with recreation, as a significant portion of the restrictive population decline to use scheduled recreation periods. Interviews with inmates with few exceptions validated our on-site observations. The quality of food provided to inmates was rarely cited as an issue by inmates.

Virtually all of the inmates in SMU and SHU are double-celled. Inmates do have regular access to showers and recreation but the vast majority of their time is spent in their cells with their cellmates (with the exception of the Level 4 SMU inmates). Security staff, case managers, medical and mental health staff make regular visits to the housing units. However, direct out-of-cell contact with staff is very limited. When such contacts occur, they are brief and in front of the cells doors.

Establishing, maintaining and monitoring the conditions of confinement appeared to be a routine part of the daily operations of managing the Bureau facilities visited. Policies were in place, staff are familiar with the requirements and post and job descriptions had been established to help in enforcing compliance.

A typical week for the inmate in restrictive housing consists of a few hours of recreation, limited visits, and no phone calls (primarily due to the restriction issued by the DHO as part of the disciplinary hearing process), and no participation in out of cell treatment programs. Based on the information obtained by the prisoner interviews, although inmates are afforded opportunities for out of cell activities, portions of the SHU and SMU populations never leave their cells each week.

Administrative detention is identified as a nonpunitive status while disciplinary segregation is identified as a punitive status. However, the inmates are assigned to the same housing unit, inmate movement procedures including application of restraints are the same, the frequency of recreation is the same, telephone access is the same and visits at all but two facilities visited were the same. With the exception of minor differences in personal property allowed, number and duration of phone calls, and in-cell programming opportunities the day-to-day conditions of

confinement were basically equivalent. Considering one status is "nonpunitive" and includes individuals who are in administrative detention status for protection, serious consideration should be placed on reevaluating the day-to-day condition of confinement authorized for individuals in a nonpunitive status.

The Bureau needs to increase the amount of out-of-cell activities and continue its ongoing efforts to reduce the overall size of the restrictive housing population.

Impact of the "separatee" status

The SHU situation is complicated by the fact that a high percentage of inmates residing in SHUs have requested protection from other inmates, often due to gang related issues. Many inmates in the system have what are termed as "separatees." A separatee is an inmate who for security and safety concerns cannot be housed with specific inmates in housing units where they may congregate with one another. The number of inmates that have separatee issues is significant and impacts inmate management in the agency. For example, the warden at USP Lewisburg advised the assessment team that of 748 inmates at that facility, 334 of them had separatee issues. Some individual inmates had as many as 14 separatees. Keeping in mind that these inmates can't congregate with one another, bed management in the general population and segregation units is very complicated.

In the SMU at USP Allenwood, where inmates in Level 3 and Level 4 are allowed to congregate, the lieutenants and unit management staff have to carefully place inmates according to their gang or group designation.

The gang issue in the USPs that was assessed impacts the management of the SHU as it creates separatee issues and likely increases the number of inmates requesting protective custody, resulting in them being housed in restrictive housing. This observation was confirmed through interviews with staff and inmates who indicated that many of the segregated inmates were unable to live in general population because of the influence, harassment, intimidation, and threats of violence from members of gangs and "cars" (Prison based gangs in the facilities).

Difficulties in the management of the gang problem exacerbate the protective custody problem, thus causing a high incidence of inmates leaving general population by their own request and being placed in segregation units after being threatened in general population. There is no simple solution for this issue but its impact is significant throughout the Bureau. Through its investigation units and its gang management unit the Bureau is aggressively attacking the problem. The wide spread presence of the gang factions, especially in the United State Penitentiaries, significantly impact the presence and size of the restrictive housing units.

Investigation, protective custody, and pending transfer inmates in SHU

The SHU population needs to be understood in terms of the major statuses that one can be assigned. Those assigned for disciplinary sanctions purposes are inmates who have been found guilty by a well-functioning disciplinary process for serious violations of prison rules and conduct. However, the much larger number of inmates held administrative detention for investigation, protective custody, and pending Bureau actions under restrictive conditions of confinement for extensive periods of time deserves further discussion and scrutiny.

The largest number of inmates being held in SHU are either there for investigation or protective custody. Although the Bureau states in its policy that both statuses are "nonpunitive," this is clearly not the case when examining the units from an operational and program standpoint. Inmates in protective custody and investigative status are housed in SHU experience the same living conditions as those placed in what is an explicitly punitive environment. As of 2014, there were 4,252 inmates in some form of investigation status and another 1,361 inmates in some form or protective custody. Further another 1,802 inmates in the punitive SHUs awaiting some action by the BOP to either have a hearing for discipline, or transfer to ADX or SMU status or some other location. Thus, over 80 percent of the SHU inmates have not been found guilty of disciplinary conduct.

As noted previously, investigations should be completed in a more timely manner. It is suggested that a limit of 45 days be established, with provisions for an extension of this time limit when circumstances exist that require additional time.

Also noted previously, there needs to be a clear difference in the conditions of confinement from those in punitive segregation, those in investigation or protection status, and those simply awaiting an administrative action of some kind.

Inmates awaiting administrative actions

Somewhat related to inmates under investigation status are those awaiting some final action by the Bureau's central office. This population is excessive and needs to be reduced. The reasons for delays in transferring inmates from SHU either to SMU/ADX or back to the general population is complicated by lack of space and the number of separates. Little can be done about the number of separatees but, as noted later, much can be done about the lack of bed capacity.

SHU inmates who have pending transfer actions should be transferred out of SHU within ten working days once their status for placement in SHU has expired.

Protective custody inmates in special housing units

Housing protective custody inmates in a punitive setting clearly contradicts best correctional practices. States that have been found to do so have suffered from on-going litigation and court ordered reforms. Many states have developed specialized protective custody housing units where inmates are provided the same level of basic privileges and access to rehabilitative programs and even work assignments as general population inmates. The one exception is that they are assigned to specially designated housing units within a prison or a specialized facility.

It was reported that in November 2013 there were 1,437 protection cases in special housing with an additional 172 housed in special housing but pending placement back into the general population. In October 2013, the Bureau issued a memorandum that provided field staff with procedures and criteria for placement of inmates in the reintegration housing unit (RHU) located at the Federal Correctional Complex at Oakdale, Louisiana.

The target population for the RHU consists of male inmates who "consistently refuse to enter general population at multiple locations" and those who have been designated through the classification process as protective custody.

The question then becomes 'what is the appropriate manner to manage inmates who have verified protection needs?' such inmates are presently housed in administrative detention, which is identified by Bureau policy as a nonpunitive status. However, the inmates who are verified protection cases are assigned to the same housing unit as punitive segregation inmates, inmate movement procedures including application of restraints are the same, the frequency of recreation is the same, telephone access is the same and visits at all but two facilities reviewed were the same. With the exception of minor differences in personal property allowed and in-cell programming opportunities, the day-to-day conditions of confinement were not much different. Considering one status is nonpunitive and includes in part individuals that are in administrative detention status strictly as a result of being verified as requiring protection, serious consideration should be placed on reevaluating the day-to-day condition of confinement authorized for individuals who have been verified as needing protection.

This is a complex issue within the Bureau due to extensive presence of security threat group members even in the SHU. Many of those have verified protection as a

direct result of their prior involvement with a security threat group. But many are also victims or potential victims who need protection. These protection needs should be provided but in a more normalized setting than what is presently provided in the SHU.

In numerous state departments of correction, the conditions of confinement for protection cases have been altered to parallel that provided to other general population inmates. In these instances inmates are housed in SHU or similar units while the claim for protection is being investigated. Once the need for protection is verified they are moved to a separate unit that provides conditions of confinement that are similar if not identical to that provided to general population inmates. These units operate separate from other general population units and afford the inmate the ability to function in a normalized prison environment while ensuring they are protected. Kentucky has done this successfully at the Eddyville facility while Ohio also operates units that replicate general population conditions for protective custody inmates. It should be noted that the Bureau is moving in this same direction with the establishment of the RHU in Oakdale, Louisiana.

The Bureau should to establish nonpunitive protective custody housing units that have equivalent levels of programs and privileges as general population inmates.

The special management unit program

The Bureau has developed a much-needed step-down program for inmates removed from the general population. The criteria for such removals are objective and reasonable (only inmates who have committed serious acts of violence or pose a threat to the safety and welfare of the other 95 percent of the inmate general population).

The conditions of confinement for SMU inmates are more restrictive than for general population inmates. SMU inmates are expected to complete the four-level SMU program in 18 to 24 months, at which time they may be re-designated (transferred) to an appropriate facility. At the time of the initiation of this review, SMU programs were functioning at USP Lewisburg, USP Allenwood, and USP Florence. During the course of the review the Bureau began the phasing out of the SMU at USP Florence through the gradual transfer of inmates to USP Lewisburg.

Documentation provided by the DSCC indicated that a total of 5,435 inmates had been submitted for SMU placement from January 2009 to June 6, 2014. Of the inmates referred, 1,057 (19.5 percent) had been denied placement by the DSCC. This does not include denials/rejections that occurred at the regional offices as those records were not readily available.

A more recent picture of the validity of the referral and review process was obtained by reviewing the number of referrals by month that have been submitted since January 2013 through February 2014 and the number of these by month that have been rejected by either the DSCC or the regional director. Table 21 summarizes these decisions.

This more recent snapshot of the review process indicates that 22 percent of the referrals have been denied placement.

What is uncertain is the need for four levels and overall time to complete all four levels before an inmate can be returned to the general population. Currently, the total minimal amount of time required to complete all four levels is approximately 18 months. We say "approximately," because in the Bureau the levels are designated by policy as six to eight months and two to four months in each level.

As noted in chapter 2, most of the reviewed state prison step down programs allow for only three phases of confinement, which tend to last 90 days each. Many have implemented a program that has a minimum stay exceeding 12 months. Nor is there any research basis for extending the minimum amount of time in segregation for fully compliant inmates beyond nine months or for that matter any length of time.

It was also discovered that SMU inmates who have completed a particular phase of the program are not promptly transferred to the next program phase location. This was a problem at USP Lewisburg for inmates who had completed Level 2 and were scheduled to advance to Level 3. These backlogs in inmates awaiting transfer to the next program level negate the intent of the program design and decrease the motivation to change behavior.

Finally, relative to program content, much of the program elements of the status (with the exception of Level 4) consist of in-cell written assignments that are not testing the prisoner's ability to return to the general population. In order for the program to be more effective, the Bureau should examine whether to develop a range of structured out-of-cell contacts and activities beginning at Level 2 and expanding at Level 3/4.

As a result of this review, it is recommended that the Bureau modify the current SMU program to have a stay of 12 months and only three levels and increase the amount of structured out of cell activities for SMU inmates especially for those in Level 2.

Mental health services

In general, each of the restrictive housing units is providing mental health services to the inmates assigned to the units. Mental health staff routinely visit the housing units as required by Bureau policies. There are sufficient nonpsychiatric mental

health staff assigned to the units to provide sufficient mental health services. Monthly mental health records are being updated on a regular basis as required by Bureau policy. Inmates in special housing being monitored for having suicidal tendencies in specially designed cells under direct supervision is consistent with best correctional practices.

However, our review of the mental services found a number of areas that the Bureau needs to significantly improve upon. The issues raised can be separated into three separate subcategories:

1. Proper mental health diagnosis
2. Effective treatment
3. Sufficient psychiatric staffing

Relative to diagnosis, based on the Bureau's four level mental health rating system, only about 10 percent of the segregated populations were assigned to Care Levels 2, suggesting minimal need for mental health care treatment beyond limited psychotropic medications. However, our review of randomly selected Care Level 1 cases by two experienced psychiatrists found a number of inmates exhibiting significant mental health symptoms which suggest their care level should be increased to Care Level 2 or higher. A contributing factor to this issue is that very few of the monthly mental health assessments occur in private settings on a face-to-face basis.

The majority (between 68 and 72 percent) of restrictive housing inmates have been classified by the Bureau as healthy or only having simple chronic medical care, and not requiring any specialized medical treatment (see table 11). These proportions are virtually identical to the other Bureau inmates (also 72 percent). Of those requiring medical care, the level of care is mostly at the lowest threshold (between 26 and 30 percent at "Care Level 2 -Stable, Chronic Care").

Somewhat surprisingly, relative to mental health care level, the proportions in need of care or treatment are even lower with the vast majority assigned to Care Level 1. The ADX has the highest proportion of Mental Health Care Levels 2 and 3 but they only represent ten percent of the entire ADX population. These proportions are comparable to the mental health care levels of the nonrestrictive populations.

Based on the assessment of the project psychiatrists the review further indicated that the treatment being offered by the Bureau was insufficient or inappropriate in over half of the cases. In particular, there was little evidence of structured out of cell treatment services occurring for those in need of services beyond medication.

Much of the "treatment" being provided to the inmates takes the form of psychiatric medications that can only be prescribed by a psychiatrist or a psychiatric nurse

practitioner whom is familiar with the patient's symptoms and prior mental health history. There is a significant lack of coordination between the psychology staff who cannot prescribe these medications and psychiatric staff who are prescribing the psychotropic medications. A significant number of the inmates which the review found had been misdiagnosed and/or were receiving inadequate treatment should be transferred from the SMU or SHU to a comprehensive mental health program directed by a psychiatrist. It is acknowledged that mental health clinicians frequently disagree on diagnoses and that doctoral level psychologists are most certainly capable of directing a mental health program.

The shortage of psychiatric staff in Bureau facilities leads to numerous problems in both proper diagnosis and treatment, particularly for the seriously mentally ill inmates at the large segregation units. For example, at most facilities, the prescribing physician was not a psychiatrist, which further added to the problems of coordination with the psychology staff.

As a result the following recommendations are submitted:

- All inmates should be seen in a private setting for a comprehensive mental health evaluation prior to placement in any segregated setting.
- A complete re-evaluation of the mental health record should be performed by psychology and psychiatry staff every 30 days which would require a face to face interview in a private setting.
- Additional full time psychiatric staff are needed at the major restrictive housing units (in particular USP Lewisburg).
- A complete review of all inmates assigned to ADX, SMU and SHU should be completed by the Bureau to identify all inmates who should be transferred to a secure mental health program similar to the one being developed at the USP Atlanta and USP Allenwood.

Crowding and segregation

As has been noted earlier, the ability of the Bureau to place inmates who are being returned to general population from restrictive housing and housing inmates within the SMU and SHU's which are largely double-celled is often hampered by the number of separatees that each inmate may have. As noted in chapter 3, virtually all of the ADX and SMU, and 2/3rds of the SHU inmates have at least one other inmate they must be separated from. Even within the nonsegregated population, 40 percent have separation orders. Many of these separation orders are related to conflicting gang affiliations.

In general, inmates with separation orders cannot be transferred to general population in facilities where separatees are currently located. This in turn produces delays in the transfer of inmates from segregation status back to the general population.

A final complication is the level of crowding that permeates the Bureau's facilities. As of 2013, the Bureau was operating at 137 percent of its rated capacity and even higher at its high (154 percent) and medium (144 percent) security facilities. Only two options exist to reduce these exceedingly high crowding levels – add more and expensive high security general population beds or reduce the current Bureau population.

These two factors (high numbers of separatees and prison crowding) contribute to the number of inmates in SHU who are awaiting transfer back to the general population.

Due process

Sanctions issued by the DHO were found to be consistently lower than the allowed level for each of the severity levels. For example, offenses in the Greatest Severity Level carry a maximum time in disciplinary segregation of 12 months. Of all the case files reviewed, not one included a sanction of 12 months in restrictive housing. For 100 level offenses such as a weapon, the typical sanction included 30 – 45 days disciplinary segregation and in many cases was 15 – 20 days segregation. At USP Victorville, the typical sanction for an assault or a weapon offense was 30 or 60 days disciplinary segregation. At USP Tucson, a typical sanction of possession of a weapon was 45 days while an assault resulted in 60 – 90 days segregation. At USP Coleman, a weapons offense resulted in 30 days disciplinary segregation.

It was apparent from interviews and case file reviews that the DHO's have made extensive use of the loss of access to basic privileges (visits, telephone, and commissary) for extended periods of time as a disciplinary sanction. The use of these sanctions is an outgrowth of the objective to find alternative sanctions to the placement of the offender in disciplinary segregation.

The Bureau DHO's use the restriction of privileges such as visiting, commissary, and telephone extensively as a sanction for offenses within all severity levels. Almost every sanction issued by the DHO at each of the facilities reviewed included a restriction of one or all of the above privileges. At USP Coleman, weapons offenses typically resulted in a sanction of 41 days loss of Good Conduct Time, 15 days placement in disciplinary segregation, 180 days restriction on visits, commissary and telephones. Similar sanctions with some variance in the amount of segregation time were found in virtually all the institutions reviewed. In the cases reviewed, it was a

normal practice for the DHO to use the restriction of 180 days loss of Commissary, Telephone, and Visits.

The extensive use of restriction of privileges resulted in the accumulation of loss of privileges over an extended period. It was not unusual to find inmates who had lost visiting privileges for in excess of one or two years. During one interview, an inmate reported that he had lost visiting and phone access for a period of seven years. This was confirmed through review of disciplinary records provided by the DHO. File reviews confirmed that similarly lengthy periods of restrictive privileges was common place in the system.

Sanctions issued by the DHO are effective the date of the hearing and are not made retroactive to the date of the incident report or the date of referral by the UDC to the DHO. There is no time limit in policy that governs how quickly the DHO must hold a hearing after the investigation/UDC process is complete. Scheduling of hearings is at the discretion of the DHO.

The lack of time parameters for completion of disciplinary hearings results in substantial variation among facilities in the amount of time served in restrictive housing for similar offenses, and can result in disproportionately long sanctions.

During our review, we found institutions that had established internal informal requirements that the hearing be completed within 14 days of receipt by the DHO (USP Coleman). Another facility had established a guideline of 20 days. In the course of this review, instances of hearings held more than 30 days after the incident date were not unusual. Longer delays occurred when cases were continued awaiting the results of drug tests, when cases where referred for further investigation, and when cases were continued for further information. The result was that, in many cases, a sanction of 30 days segregation in actuality became a sanction of 90 days segregation or longer since the time served in segregation was not credited to the sanction or made retroactive to the date of original confinement in segregation.

By comparison most state systems have specific time requirements for conducting the hearing or issuing a continuance based on need for additional information (investigation, availability of witnesses, etc.). Ohio policy requires that inmates charged with a rule violation must be scheduled for a hearing as soon as practicable but no later than seven days, excluding weekends and holidays, after the alleged violation is reported, unless the hearing is prevented by exceptional circumstances, unavoidable delays, or reasonable postponements. The exceptional circumstances, unavoidable delays, or reasonable postponements must be documented.

Reentry

There is no formal Bureau-wide reentry preparedness program specific to restrictive housing. Each facility visited seemed to have their own unique programming that they tried to offer within the confines of the restrictive housing unit. Most staff interviewed did not appear to recognize the need for programming beyond self-help packet programs and no facility was able to provide data on the number of inmates actually being released from restrictive housing. The mindset that it is okay and preferable to discharge from a SHU needs to change.

The issue of inmates releasing from restrictive housing with little or no reentry preparation is significant. The magnitude of the issue is not fully known since no data was available on the frequency of this practice and limited research on the effectiveness of reentry programs. One staffer reported that they do not need to track that information since their goal is to minimize the time an inmate spends in restrictive housing. While the goal of shortening the time in restrictive housing is correct and will help this situation, it ignores the reality that inmates are still releasing from restrictive housing.

Facilities do not provide step-down planning to transition an inmate from restrictive housing to general population and subsequently to their eventual release. The prevailing practice is to keep inmates in restrictive housing until such time as they discharge to an RRC or directly to the community.

With the exception of assigned completion of self-study activities related to reentry, inmates transition from often extended stays in restrictive housing to an abrupt release to general population or the community without any meaningful step down programming. Many of the staff interviewed found this completely acceptable and indicated that it was preferable to release inmates from the SHU, SMU or ADX rather than first transitioning to general population due to the risk of violence to the general population. While this may be a sound decision for institutional security, it can hardly be in the interests of the communities where these inmates are being released. Inmates spending extended periods of time in close confinement with little social interaction or skill-building programming are seriously unprepared for reentry and re-socialization.

As can be seen from these examples, inmates in Bureau restrictive housing have very limited access to reentry programming. Services are generally limited to providing basic information on identification and benefit issues, and referrals to community programs and services. This stands in stark contrast to range and depth of reentry programming provided to Bureau general population inmates. It is the restrictive housing population that is in the most need of programs and poses the greatest potential risk in their transition back to the community.

Information system needs

The report has noted the difficulties in tracking the number and movement of inmates within the restrictive housing units. For the SMU population, it was not possible to track which level of the SMU program the inmate was assigned to and how long he had been assigned to that level. The lack of such data was even more pronounced for the much larger SHU population. If the Bureau is to develop more effective forms of restrictive housing intervention, it will need to significantly enhance its information data system and its capabilities to effectively analyze trends within this population.

Summary of findings and recommendations

Statistical analysis of restrictive housing

FINDING: There are over 2,000 inmates in restrictive housing who will be released within a year, which suggests the need for reentry services. The differences in sentence lengths, time served, and time left to serve are especially pronounced among the ADX and SMU prisoners.

FINDING: The majority of inmates in restrictive housing do not require specialized medical treatment and are virtually identical to the other Bureau inmates. Somewhat surprisingly, relative to mental health care level, the proportions reported in need of care or treatment are lower than and comparable to the mental health care levels of the inmates in general population housing.

FINDING: SMU and ADX inmates have lengthy disciplinary records that include histories of repeated institutional violence and other types of serious misconduct. It appears that these rates of misconduct significantly decline while in restrictive housing status and after release from restrictive housing.

FINDING: The vast majority of ADX and SMU inmates released in 2011 were not returned to restrictive housing status, although most incurred another disciplinary report within two years. The average number of disciplinary reports declined sharply after released from either ADX or SMU.

FINDING: The Bureau's information system cannot directly provide the most basic data on the number of inmates admitted and released from restrictive housing, the current restrictive housing population, and the status of inmates assigned to restrictive housing.

RECOMMENDATION: The Bureau information system needs to be modified so it will directly measure the movement of restrictive housing placements and removals as well as the basis for and current status of each placement.

FINDING: The use of four SMU levels that last at least 18 months is not consistent with other, state programs, which typically require only two or three levels and a minimum period of confinement ranging from 9 to 12 months.

FINDING: There was no strong or consistent relationship between time in SMU and prison recidivism rates, although inmates with the longest placement in SMU had higher rates of return to restrictive housing.

RECOMMENDATION: The current required minimum length of stay for SMU inmates should be reduced from 18 months to 12 months and the number of levels consolidated from four to three.

Due process

FINDING: The DHOs and others involved in the disciplinary process were well versed in their duties. All appropriate notices and procedures were followed, and inmates responded respectfully to the process and the decision.

FINDING: Bureau disciplinary processes and procedures provide substantial and redundant assurances for due process compliance.

FINDING: The lack of time parameters for completion of disciplinary hearings results in substantial variation between facilities in the amount of time served in restrictive housing for similar offenses, and can result in disproportionately long sanctions.

FINDING: Sanctions issued by the DHO become effective on the date of the hearing and are not made retroactive to the date of the incident report or the date of referral by the UDC to the DHO.

RECOMMENDATION 4.1: Establish reasonable time frames in which the hearing must be scheduled, while permitting reasonable continuances when waiting for investigation reports, drug tests, etc.

RECOMMENDATION 4.2: Establish by policy that a sanction of restrictive housing time should be issued retroactive to the date of the original admission, providing credit for time served.

RECOMMENDATION 4.3: Establish a system for monitoring patterns and trends in the use of disciplinary sanctions among Bureau facilities.

FINDING: A disproportionate number of inmates are being housed in the SHUs based on protection claims.

FINDING: The application of the same security and operational restrictions to the protective custody population as those applied in administrative segregation is contrary to national accepted practices.

RECOMMENDATION 4.4: Expand housing alternatives for inmates in verified protective custody status to provide levels of programs and privileges equivalent to those provided for the general population.

FINDING: The conduct of weekly reviews of SHU placements in a formalized setting with the entire management team of the facility is an exemplary practice that ensures ongoing review of the status of inmates in SHU and evaluation of placement options.

RECOMMENDATION 4.5: Establish a policy standard requiring private, face-to-face interviews for the restrictive housing review.

FINDING: The SRO reviews at some of the facilities reviewed appeared perfunctory and lacked substance in contact and purpose.

FINDING: The review of randomly selected inmate records found omissions in the maintenance and content of inmate records documenting the placement rationale in the SHU.

RECOMMENDATION 4.6: Develop and deploy an electronic inmate record system to document SHU placement decisions.

FINDING: The requirements that are contained in the policy and procedures that govern the placement and review of inmates housed in the SHU are consistent with national standards and afford inmates in these units due process in relation to their placement in the units.

FINDING: The Bureau has established policies and procedures that afford due process protections to inmates in the referral and assignment to SMU.

FINDING: The significant level of SMU placement request denials indicates that the review process provides a valid and independent assessment beyond the institution level of the necessity of the SMU placement.

FINDING: Scheduled SMU conditions reviews were in some cases not conducted in a private setting, consistent with professional practices, and were not reflected in the official inmate records in a timely manner.

FINDING: Current backlogs in inmates awaiting transfer to the next program level negate the intent of the program design and decrease the motivation to change behavior. Further it is inconsistent with the program's objectives to hold graduates of Level 2 in a unit that operates with that level's restrictions rather than receiving the benefits of advancement to Level 3.

FINDING: SMU operational practices at the facilities fail to meet the standards set by the Bureau's program statement.

FINDING: There is a lack of consistency in the conditions of confinement for an inmate classified at the same level in the same program but housed at a different facility. This presents concerns regarding the integrity and design of the level system.

RECOMMENDATION 4.7: Reexamine the SMU levels as they currently operate, their corresponding conditions of confinement, the length of time at each level, and their compliance with the SMU program statement. The program should be consolidated from four levels to three and the minimum length of time to complete the program adjusted accordingly.

Mental health

FINDING: Based on the review of the inmate mental health records and the inmate interviews, the reviewers disagreed with the Bureau diagnosis in nearly two thirds of the cases and found in over half of the cases that the treatment being offered was insufficient or inappropriate.

RECOMMENDATION 5.1: All inmates should be seen in a private setting for a comprehensive mental health evaluation prior to placement in any segregated setting.

FINDING: The lack of ongoing assessments can lead to the absence of a proper mental health status evaluation.

RECOMMENDATION 5.2: A complete reevaluation of the mental health record should be performed by psychology and psychiatry staff every 30 days. Included in this review should be a face-to-face interview by a member of the mental health team in a private setting, and the results of this interview should be included in the reevaluation record.

FINDING: Many inmates in restrictive housing demonstrated significant symptomatology compatible with the presence of an SMI, which was as yet undetected by the psychology staff.

RECOMMENDATION 5.3: A vigorous quality improvement program should be established for the provision of mental health.

FINDING: Very few of the monthly mental health assessments occur in private settings on a face-to-face basis.

FINDING: The shortage of psychiatric staff in Bureau facilities leads to numerous problems in both diagnosis and treatment, particularly for seriously mentally ill inmates.

Recommendation 5.4: Given the level of disagreement in the assessment and treatment plan formulation, the Bureau should conduct an inter-reliability test for its mental health staff to better determine the accuracy of the diagnosis and treatment plan process.

RECOMMENDATION 5.5: Psychiatrists need to be more actively involved in diagnosis and treatment.

FINDING: Overall, most restrictive housing units had no mental health programing and especially no out-of-cell programming for any inmates with or without mental illness.

RECOMMENDATION 5.6: A program of regular out-of-cell mental health treatment needs to be implemented.

FINDING: Almost all facilities reported a lack of mental health staff required to provide treatment services.

RECOMMENDATION 5.7: The Bureau should complete a clinical staffing needs analysis.

FINDING: Our review identified inmates in restrictive housing whose mental conditions should have precluded them from assignment to these units.

RECOMMENDATION 5.8: A protocol needs to be established that identifies those inmates with serious mental illness who should be excluded from SHU, SMU, or ADX housing.

FINDING: The assessment team encountered no cases in which an inmate's serious mental illness was due to prolonged placement in the ADX.

RECOMMENDATION 5.9: Any inmates who are found to be decompensating from the effects of restrictive housing should be transferred to a mental health unit for treatment and observation.

RECOMMENDATION 5.10: Inmates with SMI who are not excluded from restrictive housing should start participating in a treatment program.

RECOMMENDATION 5.11: Inmates should not be housed in a SHU for protective custody but rather should be in sheltered general population housing.

Reentry

FINDING: No data were available at any of the facilities visited that identified the number of inmates scheduled to be released directly to the community from restrictive housing within the next 180 days.

RECOMMENDATION 6.1: On a monthly basis, track and monitor the numbers of inmates who are scheduled to be released within 180 days and are being released directly from restrictive housing at each facility.

FINDING: Facilities do not provide step-down planning to transition an inmate from restrictive housing to general population and subsequently to their eventual release. The prevailing practice is to keep inmates in restrictive housing until they are discharged to an RRC or directly to the community.

RECOMMENDATION 6.2: Establish a policy whereby only under extraordinary circumstances would an inmate be discharged directly from a SHU, SMU, or ADX.

RECOMMENDATION 6.3: Develop a step-down program with increasing incentives, more out-of-cell opportunities, and increasing opportunities for congregate programming.

RECOMMENDATION 6.4: Ensure that when inmates complete psychology self-help programs—for example on anger management, coping, or drug and alcohol abuse—completion is documented so that case managers and counselors are aware of it during reentry planning.

RECOMMENDATION 6.5: Develop and provide coordinated, comprehensive, targeted, specialized cognitive reentry programming specifically designed for inmates in restrictive housing.

RECOMMENDATION 6.6: Provide programming that identifies and addresses most significant areas of need for high-risk inmates in order to assist them in successfully reintegrating into the community.

RECOMMENDATION 6.7: Educate staff about the need for inmates in restrictive housing to receive formal reentry programming if being released from restrictive housing.

RECOMMENDATION 6.8: Establish and maintain a culture among all BOP staff, employees, and contractors that recognizes the need for meaningful reentry programs for all inmates in the Bureau of Prisons, including those in restrictive housing, beginning at new officer and staff training and continuing in every annual in-service training.

RECOMMENDATION 6.9: Review the practice of keeping inmates at the ADX until halfway house release or release directly to the community.

Conditions of confinement

FINDING: The management structure of the Bureau facilities is staffed with sufficient personnel to provide management and oversight of its segregated units.

FINDING: Each facility reviewed had sufficient staff to manage the segregation units.

FINDING: The presence of a correctional services team working alongside a unit management team appears to be an effective management approach and provides sufficient personnel to manage a difficult-to-manage inmate population.

FINDING: The Bureau's commitment to staff training is outstanding and consistent with best practices in corrections.

FINDING: The training curriculum used by Bureau facilities is consistent with best practices, providing a range of topics that meet industry and ACA standards.

FINDING: SHU training is not consistent throughout the Bureau in terms of delivery, content, hours of instruction, schedule, or mandatory attendance.

FINDING: The observation of inmates in special housing and those that are being monitored as having suicidal tendencies in specially designed cells under direct supervision is consistent with best practices and in compliance with ACA standards.

FINDING: Difficulties in the management of the gang problem exacerbates the protective custody problem, thus causing a high incidence of inmates leaving general population at their own request and being placed in segregation units after being threatened in general population.

FINDING: Bureau post orders are extremely comprehensive documents that meet national standards and requirements and are considered a best practice.

FINDING: The Bureau has established a comprehensive program statement that clearly identifies the step-by-step requirements associated with managing potential use of force and critical incidents consistent with nationally recognized standards.

FINDING: Overall the sanitation and physical plant maintenance programs in Bureau facilities are considered consistent with nationally recognized best practices.

FINDING: The size and furnishings provided in the cells in the SMUs were consistent with nationally accepted practices.

FINDING: The size and furnishings provided in the SHUs were consistent with nationally accepted practices when providing housing for the designed number of inmates. The fact that most cells in the SHUs contained showers exceeded national standards. However, in one facility, the number of inmates housed in a cell exceeded the design capacity.

FINDING: There is very little difference between the personal property of inmates assigned to administrative segregation and disciplinary segregation, with the exception of noted commissary items. This is problematic given the fact that at some facilities the majority of administrative segregation inmates are on protective custody status.

FINDING: The frequency of visitation allowed for inmates in Level 3 at USP Allenwood is inconsistent with Bureau practices for the same level of inmate at other facilities and not representative of national best practices.

RECOMMENDATION 7.1: A further review of the frequency and duration of visits should be conducted at USP Allenwood for Level 3 inmates. Serious consideration should be given to allowing additional time for inmates in Level 3.

FINDING: Health care staff are present in the segregated units at least daily, and often more frequently, consistent with Bureau policy and ACA standards.

FINDING: A limited number of potential small-group programming spaces are available at each facility.

RECOMMENDATION 7.2: Use of existing small-group space should be considered for inmates who have been properly screened.

FINDING: The general conditions of confinement were found to be consistent with national regulations and standards. Establishing, maintaining, and monitoring the conditions of confinement appeared to be a routine part of the daily operations of managing the Bureau facilities visited. Policies were in place, staff were familiar with the requirements, and post and job descriptions had been established to enforce compliance in this area.

RECOMMENDATION 7.3: Guidelines that identify specific conditions of confinement and protection policies consistent with applicable federal regulations and national standards should be developed and included as part of the PRD performance review process.

RECOMMENDATION 7.4: Establish a PRD review for the ADX that is separate from the rest of the Florence Complex.

FINDING: Both program and operational reviews served a vital role in the overall effective operation of the Bureau's facilities.

RECOMMENDATION 7.5: Establish a separate program performance review for the USP Florence ADX that includes a comprehensive evaluation of policies and procedures that are unique to the ADX.

RECOMMENDATION 7.6: Enhance the external oversight of the local operational reviews that are being conducted on at least an annual basis.

RECOMMENDATION 7.7: Reassess the performance review rating system.

Appendix: Research team bios

Project Directors Ken McGinnis and Karl Becker and Program Manager Tammy Felix were responsible for overseeing all work on this project. Mr. McGinnis was primarily responsible for making decisions on the direction of research activities and operational analysis, while Ms. Felix and Mr. Becker were responsible for monitoring progress on the project work plan and assuring the quality and timeliness of all products. Below we provide a list of the core team members, their role in the development of this report, and a brief summary of their background and experience.

Ken McGinnis, Project Director (CGI). Mr. McGinnis directed all project analysis and the development and delivery of the final report to the Bureau. Mr. McGinnis worked in, managed, assessed, and developed plans for the use of restricted housing units over the course of his 30-year career in corrections. He has served as the Director of the Michigan Department of Corrections and the Illinois Department of Corrections. He also has worked as a warden in maximum, medium, and minimum security institutions and received a number of national awards for his contributions to the field of corrections, including the Walter A. Dunbar Award in recognition for his contributions to the development of professional standards for correctional facility operations. Mr. McGinnis has conducted operational reviews of correctional systems and facilities across the country. He is a recognized expert in security and management issues and has directed operational assessments for the Arizona, Colorado, Florida, Kentucky, Louisiana, Massachusetts, Mississippi, North Dakota, Oklahoma, Texas, Virginia, and District of Columbia correctional systems.

Dr. James Austin, Research Team Lead (JFA). Dr. Austin has over 30 years of experience in criminal justice planning and research. He directed several DOJ-funded research and evaluation programs. He has also assisted numerous state and local correctional agencies design, implement and validate prison and jail classification and risk assessment systems. With regard segregation, Dr. Austin was assigned to the Illinois Department of Correction in one of the nation's first specialized segregation units in the early 1970s. More recently he has conducted comprehensive assessment of the administrative segregation units in the states of Ohio, Mississippi, Colorado, Illinois New Mexico, Oklahoma, and Maryland. He has conducted this work through the JFA Institute (Ohio, Mississippi, Colorado), as the lead consultant for

Vera Institute (Illinois, Maryland, and New Mexico), and in support of CNA (Oklahoma).

Karl Becker, Project Director (CGI). Mr. Becker was responsible for project logistics, work plan implementation, and quality assurance. He provided additional oversight of the development of project findings and the project report. Mr. Becker brings experience in managing more than 50 major consulting engagements that have included performance reviews, organizational assessments, and program evaluations for correctional systems. Mr. Becker has more than 25 years of experience working with federal, state, and local criminal justice agencies. He specializes in management, health care, and financial administration of correctional systems and has extensive expertise in institutional and departmental staffing assessments. Mr. Becker directed program services, planning, and finance for 12 years as the Deputy Director of Administration and Planning for the Illinois Department of Corrections. Over the last 12 years as a consultant specializing in correctional system management, Mr. Becker has worked with senior correctional officials, governor's office staff and legislative appropriations staff on correctional system performance reviews and operational assessments in Colorado, Florida, Illinois, Indiana, Kentucky, Massachusetts, Oklahoma, and Virginia.

Larry Fields, Operations Reviewer (CNA). Larry Fields has over 40 years of experience in the field of correctional administration and leadership. He has demonstrated skills in facility management, community corrections and probation and parole. His expertise has been further enhanced by a background that includes work with juvenile offenders, psychiatric patients, and county jail operational reviews. In addition to serving as Director of the Oklahoma Department of Corrections, Mr. Fields has also served as Deputy Director of Institutions, Regional Director, Warden, Deputy Warden, and Community Corrections Superintendent. His government experience has been supplemented by his extensive experience providing consultant services in correctional management and administration issues nationally for the last 16 years.

Michael Lane, Operations Reviewer (CNA). Michael Lane has 35 years' experience in law enforcement and corrections. As Inspector General for the Illinois State Police, Mr. Lane directed sworn and civilian staff responsible for financial, compliance, and management audits of all Illinois State Police divisions, as well as ensuring compliance with standards established by the Commission on Accreditation for Law Enforcement Agencies. Mr. Lane was Director of the Illinois Department of Corrections from 1981 to 1990, the longest tenure of any Corrections Director in the history of the state. He administered a budget of more than $528 million and managed a staff of 11,000 who supervised 38,000 adults and juveniles in prison or on parole. Mr. Lane supervised a massive $500 million expansion program to meet an adult inmate population that grew from 12,500 to 24,700. He established written, standard policies and procedures for the state correctional system and implemented

a highly effective auditing compliance system. Mr. Lane's career includes experience managing all adult prisons in Illinois as an Assistant Director, as Warden of the largest maximum security prison in the state, the Menard Correctional Center, and as regional administrator of adult parole.

Mike Maloney, Operations Reviewer (CNA). Mr. Maloney completed a 30-year career with the Massachusetts Department of Corrections in 2004. Since beginning his career in 1974, he served as a Social Worker, Director of Classification Deputy Superintendent, Superintendent, Deputy Commissioner, and Commissioner from 1997 to 2004. Throughout his career he has had operational responsibility over segregation units and high-security facilities. While a Deputy Superintendent in the largest medium security institution in Massachusetts, he was responsible for the daily operation of a 100-man segregation unit, which included a 30-man protective custody unit. As the Superintendent of Walpole Prison, the maximum security facility in Massachusetts, he was responsible for all aspects of the operation of the Department Segregation Unit, a department unit designed to hold the most violent and disruptive inmates in the Massachusetts system and also supported the design of the high-security unit, modeled after the Control Unit at U.S. Penitentiary Marion, that replaced the DSU. Mr. Maloney was directly responsible for overseeing the process to develop policy and procedures for the unit, to which inmates were assigned based on a departmental disciplinary hearing. Mr. Maloney was the Commissioner's designee to approve or deny placement in the unit, and to act upon appeals. As Deputy Commissioner, part of Mr. Maloney's responsibility was to ensure that all superintendents with segregation units within their facilities adhered to departmental policy regarding the operation of segregation units.

Mary Marcial, Reentry Reviewer (CNA). Mary Marcial has 25 years of service with the Connecticut Department of Correction. She began her career as a Correctional Counselor in Addiction Services and in Classification and Case Management. In 1992 she was appointed as Warden of the state's DWI unit and later that year was tasked with activating a new institution, which included developing the facility's policies, procedures, post orders, staffing plans, and program mission. In 1995 she was selected to be the first female Warden of the state's reception and high-risk offender special management unit, which at that time also served as the state's Super-Max facility. While there, she initiated a High Bond unit for the state's pretrial offenders and established the state's Chronic Discipline Unit, developing policies, procedures, and post orders for those high-risk offender units. In March 2003, Ms. Marcial was selected to serve on the Commissioner's executive team as Director of Programs and Treatment. In that capacity she was responsible for numerous divisions including Reentry Services, Education, Religious Services, Victim Services, Volunteer and Recreation Services, Program Review and Development, Correctional Enterprises, Health and Addiction Services, and Offender Classification and Population Management. She currently works with ASCA's Reentry Committee managing a

reentry information-sharing grant and has recently conducted an assessment of the Virginia Department of Correction's Reentry and community diversion programs.

Robert May, Reentry Team Lead (CNA). Mr. May is Assistant Director of Program and Technology Services with the IJIS Institute where he oversees the Institute's work in Corrections/Reentry, Justice to Health, Gang Information Sharing, and Statewide Automated Victims Information and Notification System Technology Assistance and Procurement Reform. Mr. May most recently was a principal with the Criminal Justice Institute where he also served as the Associate Director of the Association of State Correctional Administrators (ASCA). He has over 37 years of experience in the fields of criminal justice, law enforcement, substance abuse treatment programming, correctional health care, alternatives to incarceration, and substance abuse program design and implementation. Mr. May serves as ASCA's representative on the Second Chance National Reentry Resource Center (NRRC) Steering Committee and as vice chair of the NRRC's Pre-Release Planning and Post-Release Supervision Subcommittee. He has experience in treatment programming and alternatives to incarceration and has conducted alternatives assessments and reentry work for state correctional systems and counties. Mr. May directed ASCA's Reentry Information Sharing projects funded by the Bureau of Justice Assistance (BJA) with pilot sites in Maryland, Rhode Island, and Hampden County, MA Sheriff's Department. The main goals of these projects were to leverage corrections information for reentry purposes and enable effective sharing of information among corrections and various social service agencies and service providers to improve reentry of offenders back into the community.

Jon Ozmint, Due Process Team Lead (CNA). Mr. Ozmint is an attorney who began his legal career in the U.S. Navy Judge Advocate General's Corps, where he served in various capacities in the criminal justice system. Mr. Ozmint later served as prosecutor in the Tenth Circuit Solicitors Office, where he served as General Counsel to the South Carolina State Department of Labor, Licensing and Regulation until 1994, when the Attorney General appointed him Deputy Attorney General and Chief Prosecutor for the Statewide Grand Jury. In 2003 Mr. Ozmint was appointed Director of the South Carolina Department of Corrections, where he served until 2011. Mr. Ozmint has served as chairman of the Staff Safety Committee for the American Correctional Association and of the Legal, Legislative and Policy Committee of the Association of State Correctional Administrators (ASCA). His experience as a practicing attorney, member of the Judge Advocate General's Corp, and former director of corrections provides him with unique skills, abilities and knowledge that will enable CNA to conduct a thorough and comprehensive review of the due process issues within the special housing units of the Bureau.

Tom Roth, SHU Operations Lead (MGT). Tom Roth has more than 27 years of experience in the field of corrections. He has been involved in virtually every facet of correctional management including central office leadership, facility management,

accreditation, training, and education. Mr. Roth has served as Deputy Chief of Administration for the Illinois Department of Corrections, warden of multiple correctional institutions, and accreditation auditor for the American Correctional Association for nine years. He led the creation and implementation of an agency-wide strategic plan for the Illinois Department of Corrections.

Emmitt Sparkman, Operations Reviewer (CNA). Emmitt Sparkman, the current Deputy Commissioner of Institutions for the Mississippi Department of Corrections, brings extensive experience in the analysis of restricted housing as a tool in correctional system management. Mr. Sparkman has overseen all of the state's correctional institutions for the last ten years and has also served as Warden and Deputy Warden in a career that spans more than 35 years in the operation of state correctional facilities. He has been a key figure in the development of capacity plans for the state of Mississippi that have managed the growth in the overall inmate population without new prison construction. More recently, he has participated in a study of the use of administrative segregation practices in the Colorado and Oklahoma correctional systems.

Dr. Roberta Stellman, Mental Health Reviewer (CNA). Dr. Stellman is a board-certified psychiatrist and Distinguished Fellow of the American Psychiatric Association. She provided clinical psychiatric services to the inmate population of the New Mexico Department of Corrections from 1983 to 2006. She has since served as a consultant in correctional mental health treatment for the state of Delaware, served as the federal court monitor for an agreement on the delivery of correctional mental health services between the state of Delaware and the Justice Department, and participated in a comprehensive outside review of mental health services in the Massachusetts Department of Correction.

Dr. Pablo Stewart, Mental Health/Medical Service Team Lead (CNA). Dr. Stewart was the Senior Attending Psychiatrist for 4 years at the Forensic Unit of San Francisco General Hospital, with administrative and clinical responsibility for a 12-bed, maximum-security psychiatric ward. He was appointed as the Psychiatric Expert for the U.S. Federal Court in the Gates v. Deukmejian case and Madrid v. Gomez, which addressed the quality and availability of psychiatric care provided to the inmates at Pelican Bay State Prison. He has worked extensively on correctional mental health issues as a consultant for the United States Department of Justice, Civil Rights Division in both juvenile and adult systems.

George Vose, ADX/SMU Operations Lead (MGT). Mr. Vose has more than 30 years of experience in the corrections field. He has served in a number of positions within the Massachusetts Department of Corrections, including the director, deputy director, and as superintendent of two facilities. He also served as the Commissioner of the Rhode Island Department of Corrections. Through these positions, he has been responsible for the development and allocation of programs and resources, as well as determination of agency objectives, goals, and internal organizational structure. He

also served as first-in-command regarding correctional issues affecting public safety and was responsible for the safety and security of all state correctional facilities. Mr. Vose has provided consulting services and technical expertise to numerous state departments of correction including Arizona, Maryland, New Mexico, and Wyoming, as well as local government correctional systems in Bristol County, New Jersey, and the City of Philadelphia. He served as the Project Manager for the NIC project, "Assessing Prison Culture," working with the consultant team and NIC to develop a protocol for assessing prison culture and to administer the protocol in correctional facilities throughout the U.S. He also was a consultant on a project for the Maryland Department of Corrections to conduct an organizational analysis of Central Office functions and staffing, and as a consultant on an assessment of the Vermont Department of Corrections organizational structure for the NIC.

Tammy Felix, Program Manager (CNA). Ms. Felix was responsible for the overall delivery of the project and served as the single point of contact for project coordination and technical direction with the Bureau. She also provided project updates and coordinated/ensured the delivery of the final report to the Bureau. Ms. Felix has over 14 years' experience performing analytical and research support work for a variety of safety and security projects focusing on emergency management, homeland security, and law enforcement issues. As the manager of a project assessing the New York City Police Department's (NYPD) implementation of vertical patrol tactics in New York City Housing Authority facilities, Ms. Felix provided oversight and analytic support for the review of the NYPD's Housing Bureau Policies, procedures, rules, training and practice, transcripts, review of other Expert Reports, analysis of the conformity of practice with the policies and whether these policies reflect professional standards within policing. She has also supported site visits in Colorado and Massachusetts state prisons.

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PREPARED STATEMENT OF

ERIC YOUNG
PRESIDENT
COUNCIL OF PRISON LOCALS
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE THE

HOMELAND SECURITY AND GOVERNMENT AFFAIRS COMMITTEE
U.S. SENATE

ON

OVERSIGHT OF THE BUREAU OF PRISONS: FIRST-HAND ACCOUNTS OF THE CHALLENGES FACING THE FEDERAL PRISON SYSTEM

AUGUST 4, 2015

Chairman Johnson, Ranking Member Carper, and Committee Members -

My name is Eric Young. I am President of the Council of Prison Locals, American Federation of Government Employees (AFGE), AFL-CIO. On behalf of the nearly 39,000 federal correctional workers who work at the 122 Federal Bureau of Prisons (BOP) institutions, I want to thank you for the opportunity to submit our prepared statement for this important oversight hearing on the current state of the Bureau of Prisons.

It goes without saying that serving as a correctional worker is an extraordinarily difficult task. Our men and women go into these facilities each day with the most dangerous, most hardened, criminals in the country. Each day they put their lives and safety on the line to protect their communities and keep these dangerous inmates locked away – a task which has become increasingly more difficult over the last thirty years.

Serious correctional worker understaffing and prison inmate overcrowding problems are resulting in significant increases in prison inmate assaults against correctional workers and staff. Illustrations of this painful reality include: (1) the savage murder of Correctional Officer Jose Rivera on June 20, 2008, by two inmates at the United States Penitentiary in Atwater, CA; (2) the lethal stabbing of Correctional Officer Eric Williams on February 25, 2013 by an inmate at the United States Penitentiary in Canaan, PA and (3) the murder of Lieutenant Osvaldo Albarati on February 26, 2013 while driving home from the Metropolitan Detention Center in Guaynabo, Puerto Rico.

These are some of the murders of correctional staff that have occurred during my 20-year tenure at BOP. Thankfully, these tragic events occur infrequently. But much more frequent are the serious assaults on our staff that occur in federal prisons around the country almost daily. As you may expect, these assaults often have devastating and lasting impacts on staff and their families.

I want to share some important information and facts with this Committee as you consider the critical issues surrounding the state of federal prisons. Many individuals and organizations have perspectives on these issues. But few have the day-to-day experiences that our sworn law enforcement officers have - working with, controlling and supervising inmates in a federal penal system. We put our lives on the line every day to ensure that you, your families, and your communities are safe and secure.

I have been employed as a correctional officer with BOP since 1995. I am proud of the work that we do at BOP, despite the inherent dangers associated with our work and despite the insufficient resources we have been provided by the Congress over the years to deal with an ever-increasing inmate population. We correctional officers often say we work the toughest beat in law enforcement because, unlike police officers in the community, we do not have weapons and we often work without a partner around the most dangerous individuals our society has ever produced.

As you may know, Eric Williams was working alone in an inmate housing unit with 130 high security inmates – many of whom have extensive histories of violence in communities and inside prisons. Eric worked with known murderers, drug offenders and gang-leaders. This is not an unusual work assignment for any of our staff. And the correctional workers who work on the recreation yard are similarly imperiled. Often they are alone with several hundred inmates with nothing more than a radio body alarm to call for help in an emergency.

We operate the largest corrections system in the country with some of the world's most hardened criminals. With over 207,000 inmates in federal custody, it is a wonder that we don't have more killings, large-scale disturbances, escapes, and other problems. Our success is attributable to professional staff and agency policies and procedures that have been developed over time that have been vetted, implemented, refined over the years. And we have specialized facilities, including the Administrative Maximum Security prison in Florence, Colorado (ADX).

Nationally, BOP institutions are operating at 30% above rated capacity, with our high security penal facilities 52% above rated capacity and medium security facilities 39% above rated capacity. Overcrowding remains a serious safety issues for every correctional worker employed in a federal facility. This serious threat to officer safety is why the Council of Prison Locals has endorsed legislation that will provide much needed reform to federal sentencing.

We believe that Congress must address the systemic causes of prison population growth, namely the need for broad range sentencing reform. To make a sustained and meaningful impact on prison overcrowding Congress must act on legislation like the Smarter Sentencing Act of 2015. This legislation would modestly expand the existing federal "safety valve" with regard to mandatory minimum sentences for non-violent drug offenders.

The "safety valve" has been effective in allowing federal judges to appropriately sentence certain non-violent drug offenders below existing mandatory minimum sentences. However, this "safety valve" only applies to a narrow subset of cases – defendants that do not have more than one criminal history point. The Smarter Sentencing Act would broaden the "safety valve's" eligibility criteria. The bill provides that a federal judge can impose a sentence for certain non-violent drug offenses below existing mandatory minimum sentences if he or she finds the "criminal history category for the defendant is not higher than category II." Category II includes 2 or 3 criminal history points.

Another key component of the Smarter Sentencing Act of 2015 is reforming mandatory minimum sentencing. While the legislation would not repeal mandatory minimums, it would lower the sentencing floors for federal non-violent drug offenses. Under current law the floors are set at 5, 10, and 20-year mandatory minimum sentences for specific offenses. The Smarter Sentencing Act of 2015 would lower those floors to 2, 5, and 10-year terms for those specified offenses.

The Smarter Sentencing Act would reduce the minimum mandatory minimum sentences for non-violent drug offenses, allowing a federal judge more discretion than he or she has now to decide the appropriate sentence in individual cases. The bill does not lower the *maximum* mandatory minimum sentences (or "ceilings"). For example, a person who knowingly distributes 500 grams of powder cocaine shall be sentenced to a term of imprisonment which may not be less than 2 years – lowered from 5 years – and not more than 40 years.

Because of overcrowding we have had to become creative in the way we manage particularly dangerous inmates. By removing the worst of the worst from our open prison settings at medium security institutions and high security penitentiaries and putting them in the places like ADX or in our Special Management Units, we do a lot to protect the safety of staff, inmates and the public. And it is critical that we have mechanisms in place to remove inmates from all our general population settings, immediately, at critical times, to prevent assaults on inmates and staff which may cause serious injuries and deaths. Inmates who refuse to abide by institution rules or refuse programming pose significant risks to the orderly operation, security and safety of the institutions.

There must be places in our special housing units, the jails inside the prisons, to house inmates who fall into such categories. After all, we provide police officers on the street the opportunity to lock up and remove citizens who have not been convicted of anything, but pose a danger to others when they believe it is important for the protection of the public. In prisons the need is even greater. We cannot tolerate inmates demonstrating lack of respect to our staff who run our prisons. We must be able to restrict and restrain inmates before their behavior escalates. And we must have deterrent mechanisms in place to control inmates' behavior before it creates anarchy in a prison setting. We cannot have staff and inmates being targeted for assaults and certainly cannot allow anyone to be murdered without consequence.

I understand the concerns expressed by some of the members of this Committee, by prison inmate advocacy groups, and by the BOP Director and Department of Justice leaders with regard to ensuring we are mindful of the need for humane treatment of all inmates, particularly those inmates who are segregated from the general population. But let us not forget that there are inmates who have demonstrated their unwillingness to program. Some have shown their proclivity to disrupting the good order of our prisons and demonstrated an interest in harming other inmates and staff.

We should be concerned about the humane treatment of inmate assailants. But we also should be concerned about the safety of both the non-assailant general inmate population and the correctional workers who are responsible for their controlled management. In addition, I want to be clear that I support the efforts of BOP Director Samuels to carefully review our operations and practices on the use of restrictive housing. In the past year, I have also participated providing the Council's perspective to the Government Accounting Office (GAO) in their review of restrictive housing.

Decisions that our staff make each and every day in terms of whether inmates should remain in general population or be transferred to restricted housing units have real implications for the safety and well-being of our sworn law enforcement officers. The theories, research and positive sentiments expressed on behalf of the inmates who are isolated from the general inmate population are certainly worthy of discussion and debate. But at the end of the day, the security of our prisons and the safety of our staff, the general inmate population, and the American public must be paramount.

This is why: In June 2008, at USP Atwater, the high security prison in Atwater, California, two inmates were found to be under the influence of alcohol. Staff at the facility made decisions to not routinely remove intoxicated inmates from their respective units. They felt it was appropriate to keep them in their units to let them sleep it off, instead of placing inmates in the Special Housing Unit (SHU). This was done to keep the numbers down in the SHU. Because of such decisions, two inmates who were later assessed to be intoxicated at this facility were able to get out of their cells and into the open area of the housing unit where they relentless pursued Correctional Officer Jose Rivera and murdered him.

I realize that hindsight is 20/20 and those staff would probably make a different decision today. However, I fear that some would advocate for similar decisions to be made even in the future. For the record, the inmates who were responsible for Jose's murder had previous assault-on-staff histories, and one had a history of murder and attempted murder. Same with Eric Williams -- the inmate was due to return back to the State to serve prison time for murder. And, although the death of Lieutenant Osvaldo Albarati is still under investigation, it is suspected his murder involves inmates who should have been incarcerated in restrictive housing unit, but were not.

In retrospect, there are inherent hazards associated with a prison environment which can never be completely eliminated. However, you should trust the law enforcement professionals running our prisons – both BOP management and correctional workers - to devise initiatives and create policies to properly manage our inmate population. You can be reassured we do so in a humane way by ensuring their unit team, psychology professionals and other law enforcement professionals working at the prisons routinely visit them while they are confined in restrictive housing. Besides, for this Committee to take only the sentiments of these outside advocacy groups who have never worked under such conditions is improper and wrong-headed.

Segregated housing, however, is not the end-all in this discussion. Both Congress and the BOP leadership have got to take officer safety seriously. Until 2012 an officer was only permitted to carry his keys and a radio body alarm while on duty. Since 2012 the Bureau has consistently expanded its pepper spray pilot program which provides pepper spray to correctional workers in high and medium security installations, as well as medical centers, jail, and detention centers. This program works, and the Bureau should make it permanent.

As I noted earlier, we have had members like Lieutenant Osvaldo Alabarti who were targeted outside of the prison for their work inside. Due to current BOP policy, Lieutenant Alabarti had no weapon available for self-protection when he was ambushed and murdered on his way home. Congress gave federal correctional workers the authorization to carry a concealed firearm for self-protection under the Law Enforcement Officer Safety Act of 2004, yet over ten years later the BOP management has yet to fully implement this provision. Only 33 out of the 122 facilities have an on-site, secure gun locker where employees can store their personal firearms. Unlike other professions, our work doesn't end after we clock out. Correctional workers, like Lieutenants Albarati, are in danger of being targeted simply for doing their jobs – that's unacceptable.

Another valuable safety tool correctional workers have is the Federal Prison Industries (FPI) inmate work program. The FPI prison inmate work program is an important management tool that federal correctional officers and staff use to deal with the huge increase in the BOP prison inmate population. It helps keep approximately 12,000 prison inmates productively occupied in labor-intensive activities, thereby reducing inmate idleness and the violence associated with that idleness. It also provides strong incentives to encourage good inmate behavior, as those who want to work in FPI factories must maintain a record of good behavior and must have completed high school or be making steady progress toward a General Education Degree (GED).

In addition, the FPI prison inmate work program is an important rehabilitation tool that provides federal inmates an opportunity to develop job skills and values that will allow them to reenter—and remain in—our communities as productive, law-abiding citizens. The Post-Release Employment Project (PREP), a multi-year study of the FPI prison inmate work program carried out and reported upon in 1996 by William Saylor and Gerald Gaes, found that the FPI prison inmate work program had a strongly positive effect on post-release employment and recidivism. Specifically, the study results demonstrated that:

- In the short run (i.e., one year after release from a BOP institution), federal prison inmates who had participated in the FPI work program (and related vocational training programs) were: (1) 35% <u>less</u> likely to recidivate than those who had not participated, and (2) 14% <u>more</u> likely to be employed than those who had not participated.

- In the long run (i.e., up to 12 years after release from a BOP institution), federal prison inmates who participated in the FPI work program were 24% <u>less</u> likely to recidivate than those who had not participated in the FPI work program. (*PREP: Training Inmates Through Industrial Work Participation, and Vocational and Apprenticeship Instruction,* by William Saylor and Gerald Gaes, Office of Research and Evaluation, Federal Bureau of Prisons, September 24, 1996.)

It's important that members of this Committee know and understand the importance of the FPI program. Instead of looking at ways to diminish or eliminate FPI, Congress should be actively trying to strengthen the program. In addition to keeping inmates busy and productive, FPI procures raw materials from local small businesses throughout the country. All of FPI's materials come from American businesses; putting millions of dollars back into local economies nationwide.

It should be known that the BOP is not home to large numbers of white-collared criminals as it once incarcerated. Nor should it be still caricatured as "Club-Fed." No State, county or municipality can begin to compare in terms of the volume or the severity of the types of inmates we have system-wide. In fact, they often turn to us to house the ones they cannot handle or control. We have the most violent inmate populations of any correctional system in the world today, and, we do so while ensuring their humane treatment and providing opportunities for self-improvement.

If this Committee is serious about strengthening BOP, it must prohibit the Bureau from increasing its use of private prisons. In recent years, the federal government and some state and local governments have experimented with prison privatization as a way to solve the overcrowding of our nation's prisons—a crisis precipitated by increased incarceration rates and politicians' reluctance to provide more prison funding. But results of these experiments have demonstrated little evidence that prison privatization is a cost-effective or high-quality alternative to government-run prisons.

Proponents of prison privatization claim that private contractors can operate prisons less expensively than federal and state correctional agencies. Promises of 20 percent savings are commonly offered. However, existing research fails to make a conclusive case that private prisons are substantially more cost effective than public prisons.

For example, in 1996, the U.S. General Accounting Office reviewed five studies of prison privatization deemed to have the strongest designs and methods among those published between 1991 and mid-1996. The GAO concluded that "because these studies reported little cost differences and/or mixed results in comparing private and public facilities, we could not conclude whether privatization saved money." (*Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service,* GGD-96-158 August 16, 1996.)

Similarly, in 1998, the U.S. Department of Justice entered into a cooperative agreement with Abt Associates, Inc. to conduct a comparative analysis of the cost effectiveness of private and public sector operations of prisons. The report, which was released in July 1998, concluded that while proponents argue that evidence exists of substantial savings as a result of privatization, "our analysis of the existing data does not support such an optimistic view." Instead, "our conclusion regarding costs and savings is that.....available data do not provide strong evidence of any general pattern. Drawing conclusions about the inherent [cost-effective] superiority of [private prisons] is premature." (*Private Prisons in the United States: An Assessment of Current Practice,* Abt Associates, Inc., July 16, 1998.)

Finally, a 2001 study commissioned by the U.S. Department of Justice concluded that "rather than the projected 20 percent savings, the average saving from privatization was only about one percent, and most of that was achieved through lower labor costs." (*Emerging Issues on Privatized Prisons*, by James Austin, Ph.D. and Garry Coventry, Ph.D., February 2001.)

Proponents of prison privatization also contend that private market pressures will necessarily produce higher quality, safer correctional services. They argue that private prison managers will develop and implement innovative correctional practices to enhance performance. However, emerging evidence suggests these managers are responding to market pressures not by innovating, but by slashing operating costs. In addition to cutting various prisoner programs, they are lowering employee wages, reducing employee benefits, and routinely operating with low, risky staff-to-prisoner ratios.

The impact of such reductions on the quality of prison operations has been obvious. Inferior wages and benefits contribute to a "degraded" workforce, with higher levels of turnover producing a less experienced, less trained prison staff. The existence of such under qualified employees, when coupled with insufficient staffing levels, adversely impacts correctional service quality and prison safety.

Numerous newspaper accounts have documented alleged abuses, escapes and riots at prisons run by the Correctional Corporation of America (CCA), the nation's largest private prison company. In the last several years, a significant number of public safety lapses involving CCA have been reported by the media. The record of Wackenhut Corporation (now The Geo Group), the nation's second largest private prison company, is no better, with numerous lapses reported since 1999.

And these private prison problems are not isolated events, confined to a handful of "under performing" prisons. Available evidence suggests the problems are structural and widespread. For example, an industry-wide survey conducted in 1997 by James Austin, a professor at George Washington University, found 49 percent more inmate-on-staff assaults and 65 percent more inmate-on-inmate assaults in medium- and minimum-security private prisons than in medium- and minimum-security government prisons. (referenced in "Bailing Out Private Jails," by Judith Greene, in *The American Prospect*, September 10, 2001.)

I close with this. There is a mother today crying over her son's grave. She goes to visit his grave almost every day since his murder. Please know that your actions today and in the future could result in others mourning the death of their loved ones in similar fashion. I am asking that members of this Subcommittee to think about that when making decisions to unnecessarily limit restrictive housing.

This concludes my written statement. Thank you for including it in the record of today's hearing. Please keep our fallen officers' families in your hearts and prayers.

Statement of Kevin A. Ring
Director of Strategic Initiatives
Families Against Mandatory Minimums

Submitted to the
Senate Homeland Security and Governmental Affairs Committee for its
Hearing Titled "Oversight of the Bureau of Prisons: First-Hand Accounts of
Challenges Facing the Federal Prison System"
August 4, 2015

Esteemed members of the committee, thank you for allowing me to submit this statement for the record. My name is Kevin Ring, and I serve as director of strategic initiatives for Families Against Mandatory Minimums (FAMM). The observations I want to share with the committee are my own and cover some topics on which FAMM does not take a formal position.

Some unique experiences have given me the opportunity to think about criminal justice reform from wildly different perspectives. In the 1990s, I worked on Capitol Hill as a staffer, both in the House and Senate. I was a counsel on the Senate Judiciary Committee and helped draft anti-crime legislation, including the law that lowered the weight thresholds for methamphetamine-related mandatory minimum sentences. I then observed the legislative process from a different perspective, as a lobbyist.

Ultimately, my work as a lobbyist brought me under federal scrutiny. After two trials and appeals, I was sentenced to serve 20 months in federal prison. I spent 15½ months at the Federal Prison Camp in Cumberland, Maryland. I then served two months of home confinement, during which I was required to wear a GPS monitor. My home confinement period ended less than two months ago. Although I served in just one of the Bureau of Prison's (BOP) 122 facilities, I have good reasons to believe my assessment applies beyond the camp at Cumberland.

Programming in the BOP

First, I saw little to no rehabilitation in prison. There were few useful programs. The institution was either understaffed or uninterested in providing worthwhile programming. Trade apprenticeships, GED classes, drug treatment, and jobs with the National Park Service were the few exceptions. Most people worked menial jobs and collected their 12 to 15 cents-per-hour wages.

If you were not in the Residential Drug Abuse Program (RDAP), you were mostly limited to Adult Continuing Education (or ACE) classes. These classes were taught by other inmates. Offerings at Cumberland while I was there included Movie Review, Jeopardy, and Current Events. The Current Events class was taught by a Nigerian fraudster who hated the United States. A class called Money Smart was taught by a guy serving 14 years for bilking an EPA

clean fuels program. He told the class that it was easy to start your own business and to do it you could simply raise money through crowd-sourcing sites on the Internet. This is not helpful advice for people who need to find realistic ways to support themselves and their families when they get out.

Most inmates skipped classes and would just sign their names to the attendance list during the week so the administration thought they went. The classes were one hour a week for ten weeks. When you completed a class, you got a certificate. The prison officials seemed to know the classes were worthless, but they wanted us to seem busy so they could get credit with the regional and national offices for keeping us busy.

The most glaring deficiency in the area of programming was the lack of any cognitive behavior therapy or anger management counseling. I know some people still hold onto the myth that criminals, drug and white-collar, are rational actors who review the U.S. Code and weigh the costs and benefits before breaking the law. The fact, however, is that the overwhelming majority of inmates are not simply uneducated or poorly educated, but rather, they have terrible social skills and very little impulse control, ability to delay gratification, and risk awareness. The result is bad decision-making. These are the issues they need to address during their time in prison. At Cumberland, however, we had 250 inmates and one psychologist. And despite studies from the National Institute of Justice showing the effectiveness of cognitive therapy, BOP offers a program for this in just two of its 122 institutions.

With regard to the BOP's RDAP program, while I think it is important to provide drug treatment for addicts, I think taxpayers deserve to have the program's effectiveness reviewed more frequently. RDAP is expensive. Moreover, the benefits to inmates who complete the program are great - up to 12 months off their sentence and extra halfway house time eligibility. For these reasons, I think Congress should work with BOP to review the program's eligibility requirements.

Specifically, I urge the committee to examine why, for example, a white-collar offender who developed a dependency on Ambien after his crime qualifies for RDAP, but a true addict whose addiction fueled his crime does not simply because the addict had (but didn't use) a gun when he committed his offense. Shouldn't the program be limited to those inmates whose addiction played a role in their offense?

I also think it makes little sense to have inmates participate in RDAP at the end of their sentences, as is the current practice. The apparent reasoning is that BOP can't afford to give all inmates RDAP so, for budget reasons, they hold off admitting inmates until they are nearing the end of their sentences. But addicts would be better served by getting help when they arrive. Additionally, getting inmates sober at the beginning of their sentences, rather than at the end, seems like a prerequisite for any other programming to be effective. It would also likely reduce incidents of drug and alcohol abuse in prisons, contraband, and the practice of correctional officers bringing in this contraband for inmates. There are currently not enough RDAP programs for all those who need it. Space can be assured by limiting the program to those who truly need help fighting addiction.

Poor Health Care

During my initial screening, the camp's physician assistant advised me to avoid getting hurt at all costs. Over the next 15.5 months, I learned why he gave this guidance: the healthcare provided was very poor. In one incident, a fellow inmate was given the wrong medication by the staff for his high blood pressure and ended up passing out in the TV room. The correctional officers who came through for count time (we are counted throughout the night) said there was nothing they could do until the morning. Early the next morning, the inmate was brought to the hospital and his stomach was pumped and he recovered.

Last fall, we had a terrible outbreak of scabies. A bunch of us were unable to sleep at night because the itching was so bad. The administration called a town hall meeting in the gym and told us it was just a skin rash and we had to practice better hygiene. (Note: scabies has nothing to do with personal hygiene.) This problem lasted much longer than it should have because the prison did not seem to want to treat everyone exposed to it, as experts recommend. In fact, the physician assistant knew it was scabies but the doctor, who rarely saw any patients, resisted. The problem got so bad that the administration was forced to shut down the compound and had all the inmates put all their personal property in garbage bags in the gym for a week.

I saw the dentist when I first arrived and was told I had a cavity. I requested an appointment but never heard back. Other inmates told me that there was a two-year waiting list to get a cavity filled. I saw three other inmates have teeth pulled because the pain grew so bad. Instead of filling cavities, the dental staff gives inmates 800mg Ibuprofen (a higher dose than you can buy at the commissary) to deal with the pain. When the pain gets bad enough, the inmates are able to get their teeth pulled. A 70-year-old white-collar offender who slept in the bunk below me had eight teeth pulled during his ten years in prison.

Solitary Confinement Over-use

Before the prison administration finally decided to give everyone a pill to combat the scabies outbreak mentioned above, it treated a group of us with a cream. To quarantine us, the administration had eight of us spend two nights in solitary confinement at the medium security facility down the hill from the camp. Though we were not there for disciplinary reasons, we were treated that way: we never left our cells, were not given clothes (only t-shirts and underwear), and were not allowed any books or paper. I was only in solitary for 40 hours and I thought I was going to go crazy. That relatively short period was long enough for me to fully appreciate how inappropriate it is to use the SHU (segregated housing unit, or solitary) for routine disciplinary infractions, which happens frequently. There seem to be other ways to punish inmates - loss of favorite job, loss of good time, loss of commissary privileges - that would be preferable than being locked in the hole.

Compassionate and Elderly Release

One of the things that disturbed me most was how many inmates over the age of 60 were at Cumberland. Some were in poor health and some were surprisingly fit. None, however, seemed to represent a threat to public safety. They all could have been monitored on home confinement, saving taxpayers not just the high cost of incarceration but also the higher health care costs associated with elderly inmates. Most were taking several medications. Inspector General Michael Horowitz deserves credit for looking into the challenges of our aging prison population, and I was glad when individuals from his office met with an inmate at Cumberland as part of their research into the issue.

Correctional Staff and Oversight

On a related note, the Cumberland inmate who met with the IG's team told me that the IG officials told Cumberland administrators that the meeting was private and that they could not be involved because they wanted the inmate to be candid. I understand the complications of allowing inmates to become whistleblowers; the BOP would be flooded with frivolous and many false complaints. On the other hand, there is little recourse for inmates to share legitimate problems and concerns. Former New York Police Department chief Bernard Kerik wrote, in his book about federal prison, about a correctional officer who was stealing government machinery and property from the prison. Kerik served at Cumberland but left before I arrived. The officer he was talking about was still at Cumberland when I served there, and inmates talked quite often about what this officer was having them steal so that he could give his friends free equipment that was ordered by him for the prison and paid for by taxpayers.

The officer not only stole things, but forced inmates to help him or, at the very least, to look the other way. Consequently, inmates who were supposed to be charting a fresh course in their lives were recruited to commit new offenses by an individual who was partly responsible for the inmate's rehabilitation. While I was there, I met an inmate who had been a correctional officer in a federal prison in Mississippi and had been prosecuted for smuggling contraband into the prison there. Another inmate told me that health care staff at Cumberland recently had been fired for bringing cell phones and cigarettes to inmates in Cumberland in return for money.

These stories are not as shocking as the one we have all read about involving the prison official in New York who let two murderers escape. (I would note that she is facing less prison time for her mistake than many nonviolent drug dealers I served with received.) But they all beg some basic questions: how prevalent is officer misconduct and criminal behavior? How many officers are fired or punished each year for misconduct? What recourse do inmates have to register complaints about abusive treatment? (No inmates trust the administrative remedy process BOP uses because it is not independent – there is also legitimate and prevalent fear of retaliation by prison staff for making complaints.) What type of training do correctional officers receive? Is that training sufficient for professionals who have a difficult job that requires protecting the public and helping to rehabilitate individuals? The recent release of the IFC film about the famous Stanford

Prison Experiment should be a useful reminder of the pitfalls of giving even the best-intentioned individuals control over the basic freedom of others.

I do not think correctional officers, as a group, are worse than any other group of professionals. There are more good apples than bad apples. But abuses occur in all systems that do not have adequate oversight and checks and balances. I think the federal prison system is lacking basic oversight, and the responsibility for that long-lasting failure rests with Congress. That is why I am grateful to this committee for holding this hearing, and I applaud the House Oversight and Government Reform Committee for expressing an interest in conducting more oversight of the BOP, too.

Halfway House Time

Under the Second Chance Act, inmates are supposed to get up to a year of halfway house time and up to 10 percent or 6 months (whichever is less) on home confinement at the end of their sentences. No one gets a year in a halfway house today. Most get 3-6 months if they are serving a long sentence. Those of us with short sentences were being sent out to halfway houses on our "10 percent date" (the date we should have been able to begin a period of home confinement). This meant that every day we were asked to spend in a halfway house should have been a day we spent on home confinement.

Fiscally, the use of halfway houses is not cost-effective because they are just as expensive as prisons. The average annual cost of a halfway house for one person in FY 2014 was $28,999.25 ($79.45 per day), versus $30,619.85 ($83.89 per day) on average to incarcerate a person.[1] Halfway houses are difficult to build because of zoning restrictions and NIMBYism, and existing halfway houses are overcrowded and insufficient to meet demand. It would require enormous appropriations just to meet the existing need for halfway houses under existing law.

From GAO's report on the BOP last September:

> We have previously found that not all inmates are eligible to be sent to an RRC [Residential Reentry Center, or halfway house] prior to their release from prison, and that for those who are eligible, some spend only a portion of the full 12 months' allowable time in an RRC because of a lack of bed space and because of eligibility criteria. According to BOP, an increase in the number of offenders getting the full 12 months' allowable time would necessitate additional bed space, which would require both additional funding and additional RRC contracts. For example, **in fiscal year 2013, BOP reported that it had 9,455 RRC beds available nationwide, but would have required about 30,000 beds to provide the maximum allowable 12 months in RRCs to all participants, or an addition of more than 20,500 beds above its current capacity**. As noted above, and as we have previously reported, BOP officials explained that such an expansion could be challenged by local zoning

[1] 80 FR 12523 (Mar. 9, 2015), https://www.federalregister.gov/articles/2015/03/09/2015-05437/annual-determination-of-average-cost-of-incarceration.

> restrictions and the unwillingness of many communities to accept nearby RRCs. Moreover, if such an expansion were to take place, BOP would need additional funding to pay for the new RRC bed space. For fiscal year 2013, BOP reports that the average daily cost per offender in an RRC was about $73, or $26,645 per year. **This means that an increase of the more than 20,500 beds that would be required to achieve the allowable 12 months for all participants (at current program levels) would cost about $546 million annually.** Expanding RRCs might help reduce recidivism but would require a **substantial funding increase, equal to almost 8 percent of BOP's entire $6.9 billion fiscal year 2015 budget request.**[2]

I applaud the members of Congress who are trying to find a way to reduce prison costs by moving low-risk offenders to halfway houses (and home confinement) sooner. Given the reality revealed by GAO, however, I think members should rethink the value of legislative proposals to make inmates eligible for more of something they already can't get – and are unlikely to get more of in the future.

Another approach to reducing prison costs and recidivism would be to allow inmates to earn time off their actual sentences for participating in recidivism-reducing programs. This approach, which is contained in the SAFE Justice Act (H.R. 2944), would not require Congress to spend billions of dollars to expand halfway house capacity.

Sentencing Reform Needed

Members of the Committee, my time in prison confirmed my belief that Congress must reform federal sentencing laws, especially mandatory minimum sentences, as part of any meaningful criminal justice reform. Yes, prisons need better programming, but you also must ensure that individuals receive sentences that are proportionate to their crimes. Otherwise, the negative effects of warehousing offenders will undermine if not completely eliminate any benefits derived from offering valuable programming.

Excessive sentences can be very counterproductive because prison infantilizes people. I rarely hear people talk about this point, but I think it is very important. Everything we do and everything we need is "on campus." Inmates have very few responsibilities. Within a couple of years, people start to become institutionalized. They know what it takes to get by day-to-day in prison, but lose touch with what it takes to live outside. So while some people absolutely deserve prison time, our goal should be to give them as little as is necessary to accomplish the purposes of sentencing. If society can get its pound of flesh with a three- or five-year sentence, go with that instead of ten years. It's incredibly important to keep in mind that while people are in prison, the world does not stop – technology advances, job markets change, high-demand skill sets change, and the world moves faster. For the inmate, however, whatever skills he brought to prison atrophy and he doesn't learn any new skills while incarcerated. This reality affects his professional future, his ability to support himself and a family, but there are other adverse developments he

[2] GOVERNMENT ACCOUNTABILITY OFFICE, BUREAU OF PRISONS: INFORMATION ON EFFORTS AND POTENTIAL OPTIONS TO SAVE COSTS 35-36 (Sept. 2014), http://www.gao.gov/assets/670/666254.pdf.

encounters. Children age and stop seeing the incarcerated loved one as an authority figure, while spouses and partners bear burdens alone and often move on. I raise these issues not to elicit undue sympathy for those who break the law, but merely to remind you that we should remain mindful that more than 90 percent of prisoners are coming home someday, and we want them to be successful - if not for their sake, for the sake of those of us who want to live in safe communities with less crime.

Conclusion

I am very grateful to the committee for holding this hearing. I am thankful for the opportunity to share these observations and thoughts. Please know that I, as well as all of my colleagues at FAMM, am willing to help this committee and Congress in any way possible.

August 3, 2015

Senator Ron Johnson
Chairman
Homeland Security and Governmental Agencies Committee
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Johnson:

My son, Federal Corrections Officer Eric J. Williams, was murdered on February 25, 2013 by an inmate. Eric was doing the evening lockdown in a housing unit at Canaan Penitentiary when the attack took place. My son was stabbed over two hundred times and had his skull crushed by this inmate. The attack took a full eight minutes, and then Eric lay there for another twenty minutes before anyone even discovered him. All of this while one hundred and twenty-five high security inmates stood by and watched.

The initial shock of Eric's death was bad enough, however, when we learned that he was working alone, unarmed, and managing so many inmates we, his family, were shocked. We thought that this must be a mistake. It was not. This was standard procedure for managing a housing unit for the BOP. Perhaps the Federal Government found this to be an acceptable working condition, but our family finds it to be insanity. We then began working with corrections officers, members of the AFGE and Council of Prisons Local 33 to pursue changes in the safety conditions of the corrections workers.

Senators Toomey and Casey have introduced the Eric Williams Corrections Officers Protection Act to allow for pepper spray to be used to protect the workers. Senator Toomey as introduced the Osvaldo Albarati Correctional Officers Self-Protection Act in memory of Lieutenant Osvaldo Albarati who was murdered the day after Eric. This allows for gun lockers to be utilized for officers to be able to carry personal weapons to and from work. These bills have been reintroduced into the 114th Congress into the Senate Judiciary Committee where they still sit.

With further investigation I have learned that staffing levels are still not appropriate, and the claims made by the BOP are not accurate at all

according to the correctional workers union. The BOP is using a program called augmentation to cover slots that should be covered by Corrections Officers. Augmentation allows them to take non-correctional support staff and place them in housing units to do the duty of a corrections officer. They are even doing this in Special Housing units to save money. I have also seen evidence that the BOP is actively reducing the number of inmates in the Special Housing Units not based on behavioral management, but based on how much money and overtime they can save. The inmate that killed my son was sentenced to Special Housing and was not placed there. This deferment of punishment happened not once, but twice. IF he had received the proper consequences he would not have been free to kill Eric.

Understaffing, overcrowding, manipulating staff strength figures, tying the placement of inmates into Special Housing units (SHU) to money, the outright danger of augmentation, and the distrust of the BOP by its workers who walk in harm's way are all issues that lend themselves to calling for a committee on BOP oversight to be convened.

The recent decision of the US Attorney assigned the Jose Rivera Case to accept a plea bargain from a Joe's killers who were already doing life has outraged the corrections community and the families of the fallen alike. I truly fear the same scenario can happen in my son's case. Not one of the killers of the last four Federal Corrections Officers murdered has faced a trial at all. There seems to be no justice. A political advocacy group I recently started called Voices of J.O.E. is calling for the Attorney General to do a retrospective review on the case of Jose Rivera, which has been a travesty of justice since it's outset in 2008. What that family was put through is a blatant dismissal of Victim Rights. We would like these findings reported. For full details please refer to the face book page Voices of JOE and link to the website.

The "truth" of the safety issues facing the corrections workers is known by the people with the" boots on the ground" and by the families of the fallen. Please hear our voices. Please help us.

Yours truly
Don Williams
Don Williams, Father of Federal Officer Eric Williams EOW 2/25/13
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Post-Hearing Questions for the Record
Submitted to Ms. Piper Kerman
From Sen. Ron Johnson

"Oversight of the Bureau of Prisons: First-Hand Accounts of Challenges Facing the Federal Prison System"

August 4, 2015

1. Your testimony brought attention to the unique issues facing female inmates and you suggested that the BOP "adopt gender-responsive correctional approaches that interrupt cycles of unnecessary suffering."
   a. How are women uniquely affected by the cycle of the criminal justice system?
   b. How do the unique risk-factors female inmates are subject to impact the efficacy of BOP programming? In your view, does the BOP devote enough attention to the unique requirements of its female inmate population?

   a. Women are uniquely affected by the cycle of the criminal justice system because their crimes are often grounded in victimization – at least 80% of incarcerated women have been victims of sexual or physical abuse – and they suffer disproportionately from mental illness and addiction. Additionally a high percentage of women in the system are mothers of minor children, and often are single mothers; their incarceration has a seismic affect on their families, in a way that is not equally true for incarcerated fathers (although children suffer greatly when a father is incarcerated too).

   b. The Bureau of Prisons does not use gender-responsive policies or programs. Women are typically 7% or less of the population of correctional systems, and easily controlled prisoners from a security perspective. BOP policies and programs do not consider the gender-related factors that contribute to women's crimes as the Bureau makes its limited rehabilitative efforts, nor do they take needed steps to ensure that women with minor children are proximate to their families within the stated 500-mile goal. The BOP could study and implement policies like Washington State and could participate substantively in the Adult and Juvenile Female Offenders conference and network of correctional practitioners http://www.ajfo.org in order to learn and apply proven best practices for women in confinement.

2. During your time at the Danbury Correctional Facility, you stated that there was only one psychiatrist available for more than 1,400 women.
   a. Were there any other mental support services or programs available to you and your fellow inmates aside from the single psychiatrist assigned to Danbury?
   b. As you stated, 65% of women in the federal prison system experience some kind of mental illness. How does the transition from civilian life to prison life impact

the remaining 35% and are there services to assist inmates in the mental transition of life behind bars?

c. Since your release, you have worked extensively with criminal justice reform groups to advocate for the incarcerated and their families. Would you say that the psychiatrist to inmate ratio during your time at Danbury was unique to the facility, or have you encountered other facilities that operate with similar ratios?

   a. While I was incarcerated at Danbury FCI here is what I observed: one psychiatrist, Dr. Parr, was available to treat up to 1,400 women. Physician's assistants delivered most daily healthcare and there were no individual talk therapies or group therapies. Treatment for mental health problems in the regular unit was limited to medication. There was a special unit in the prison that was a "step-down unit" (often called Residential Treatment Units in correctional settings). To be moved to this step-down unit women's mental deterioration had to be quite acute.
   b. There are no support services for healthy women to navigate the transition from free citizen to prisoner. When I was incarcerated inmates were assigned a case manager, responsible for administering your sentence, and a counselor, responsible for all aspects of prison life – housing & work assignment, visiting list, etc. Counselors did not provide mental health counseling.
   c. It is hard for me to speculate on the ratios based on my visits to many state prisons and city and county jails. What is clearly apparent on any such visit is that the mental health needs of incarcerated people are acute and often unmet, and that correctional settings are very ill suited to successful treatment. What is very clear on all my personal visits is that women prisoners are uniquely neglected by U.S. correctional systems, because they are less likely to be violent and thus pose a lower security challenge, and because they are consistently less than 7% of total prison populations. However American women account for almost 30% of the world's female prisoners – nowhere on earth is female incarceration more acute http://www.prisonpolicy.org/global/women. Rehabilitation in correctional settings is often grounded in a person's offense (rather than in the holistic root causes of their criminal behavior) – so for example someone with a violent offense may participate in anger-management or cognitive-behavior therapy. Women are overwhelmingly convicted of drug offenses or property crimes, and correctional systems are less likely to devote resources towards rehabilitation for minor crimes – these prisoners are effectively warehoused.

3. In your written and oral testimony, you focused on the ill effects of incarcerating people, particularly women, far from their homes, and isolating them from their home communities. Specifically, you criticize the BOP's decision to re-designate the FCI in Danbury as a men's prison and highlight the negative impacts that decision has had on

the women who had previously been incarcerated in Danbury. Despite Congressional demand for better decision-making for female federal prisoners, the BOP has failed to provide adequate correctional settings for women in the Northeast.

a. Setting aside the reasons behind BOP's failure, how has the lack of movement on BOP's part impacted female inmates and their families and what, if anything, can be done to counteract the ill effects of such separation?

    a. All prisoners benefit from proximity to their families and communities, and prisoners who have been able to maintain connections with a network of caring people on the outside have been shown to be less likely to be incarcerated again. When a parent is incarcerated children's social wellbeing is harmed, their performance in school suffers, and they are more likely to someday be incarcerated themselves. When a mother of minor children is incarcerated, her children are five times more likely to enter the foster care system than when a father is locked up – this is because women in the criminal justice system are disproportionately likely to be single mothers and sole heads of household.

    Children who are able to maintain contact with their mother and visit with them do better than children who are cut off from their parent. In the BOP particularly women are overwhelmingly likely to be incarcerated for a drug offense or some sort of fraud, and very unlikely to have committed a crime of violence. The Bureau's failure to provide proximate housing for women in the Northeast fails these families and worsens children's future prospects. It also compromises female prisoners chances for successful reentry, because any program activity or community engagement while incarcerated will not be connected to the community to which the women will return.

    All prisoners should be designated as close to home as possible, and certainly within the BOP's stated policy of 500 miles from home. Parents of minor children should get special consideration for proximate placement, in my opinion. The fact that the BOP built a costly new women's prison in a remote corner of rural Alabama far from any transportation options for indigent families clearly communicates the agency's low prioritization of the rehabilitation of female prisoners.

4. During the hearing, BOP Director Samuels testified that only 10,000 inmates out of nearly 210,000 inmates are able to participate in vocational training programs. Both Director Samuels and IG Horowitz agreed on the importance of such programs in reducing recidivism, but stated that the Bureau's limited resources limits the number of classes available to inmates.

   In your testimony said that you were shocked by the quality of the mandatory reentry classes taken by inmates to prepare for life after prison. In your written testimony, you

wrote about your stay at the Chicago MCC, where you experienced even fewer resources, and discussed the disparity of program access among female and male prisoners.

In light of the Director and the IG's statements about limited resources being to blame for the limited programming available to inmates:

a. In what other instances have you encountered as an inmate and as an advocate where reentry and rehabilitative programs suffer from a lack of resources, and how do those limitations affect the inmates you have lived and worked with?
b. Based on your personal experience with the BOP's program opportunities, are you at all concerned by the quality of the training provided to those fortunate enough to make it off UNICOR waitlists?

a. In correctional settings what rehabilitation is provided tends to be grounded in a person's offense, such as sex offender treatment or cognitive behavior therapy, or tied to conduct within the prison, such as anger management training (known as "the Cage of Rage"). Re-entry programs are often conducted separately in a limited way very close to release, but planning for re-entry should really begin much earlier. Successful re-entry requires safe and stable housing, access to healthcare, meaningful work at a living wage and a caring network of people with a stake in your success. Too often people exit prison disconnected from their families, bearing unaddressed traumas and addictions, and confronting homelessness after spending years mopping hallways or working in the prison commissary.

The blunt truth is that while we spend billions on incarceration it's an investment that yields us little, and the policies that have driven the U.S. prison population so high often stem from an inability or unwillingness to address problems in other areas. Insufficient access to mental health care is a clear driver of incarceration, as we have lacked the will to treat the poor in our communities. Educational deficit is another obvious driver of incarceration – when a child drops out of school, his or her chances of being incarcerated skyrocket. 80% of Americans accused of a crime are too poor to afford to hire a lawyer to represent them in court, and their prospects for exiting poverty are worse if they are convicted of a felony.

Part of the problem with inefficiency in correctional systems is grounded in American reliance on harsh punishment. It has been proven to be more effective and less costly to hold a low-level offender accountable in the community than to hold them in prison. We could incarcerate a more serious offender for five years rather than ten, provide better rehabilitation during their sentence, and likely get a better and more efficient result for the same or lower cost. In terms of public safety, harsh punishment yields little benefit in comparison with smart justice.

b. I think that UNICOR training quality is variable based on the site – different locations do different kinds of work, and how much the experience will translate to outside work varies accordingly. But the work is more likely to be skilled than most other prison labor – cleaning bathrooms or doing maintenance work – and UNICOR workers are held to a higher standard of conduct which is helpful preparation for work in the outside world. Unfortunately prisoners who most need those skills and discipline are less likely to be selected for UNICOR. I would advocate passionately for programs in all 50 states modeled on Texas' Prison Entrepreneurship Program www.pep.org, which has won the admiration and support of U.S. Senator John Cornyn. I think programs like PEP both build skills and also foster realistic future plans for people who will carry the mark of a felony conviction with them long after they have paid their debt to society.

Post-Hearing Questions for the Record
Submitted to Ms. Piper Kerman
From Sen. Tammy Baldwin

"Oversight of the Bureau of Prisons: First-Hand Accounts of Challenges Facing the Federal Prison System"

August 4, 2015

1. In your testimony, you stated that women are the fastest growing prison population. In some of my work in prisons in Wisconsin during the 1990s, we examined the treatment of inmates based on their gender. For example, we noticed there were gender differences in how behavioral issues were dealt with among inmates, including the overmedication of women as opposed to solitary confinement. Are there gender differences in the discipline and treatment of women in prisons that we should still be concerned about? If so, what are specific issues we should be examining regarding the treatment of women in prisons? You also discussed the vast number of women in prison who struggle with addiction and mental health issues. In your opinion, how should these issues be taken into account when treating and disciplining female inmates?

I believe there are a small but significant set of differences when considering female incarceration and gendered differences regarding crime and accountability. The main drivers of crime and incarceration among women are well known: mental illness, substance abuse and prior experience of significant trauma – usually sexual abuse or other physical abuse prior to incarceration.

All of these problems clearly factor into men's involvement in crime and their incarceration as well, but the incidences are substantially higher among women and girls in the criminal justice system. The majority of incarcerated women are locked up for drug offenses and property crimes. Violent crimes by women are often committed under coercion and duress, or as a response to domestic violence. Women are less likely to be involved in traditional organized crime, such as gangs and other extensive criminal enterprises.

Yet women have been the fastest-growing part of the American criminal justice system for decades, in large part because of U.S. drug policies and a dearth of public health options for addressing substance abuse and mental illness. The three biggest providers of mental health services in the U.S. are the Los Angeles County Jail, the Cook County Jail in Chicago and Rikers Island in New York – a profoundly disturbing, costly and counterproductive way to deliver mental health services to overwhelmingly poor people. In this sense women and girls in the system can be seen as simply crystallizing examples of the poor policy choices that have continued to drive the U.S. prison population up even as crime rates have declined precipitously since the turn of the new century. In other words, women in the system offer a particularly clear example that it is not crime rates that drive incarceration, but rather policy choices. For some of the newest data on female incarceration rates please see the Prison Policy Institute's new report: http://www.prisonpolicy.org/global/women. The report puts our policy choices in context as it

reveals starkly that while only 5% of the world's female population lives in the U.S., American women are nearly 30% of the world's incarcerated females.

While women have been the fastest-growing part of the prison population, they still usually account for only about 7% of correctional systems – systems built for (and by) men in every sense of the word, from physical plant to provisioning to adoption of policies and evaluations. It's my opinion that in many ways female inmates are easier for correctional systems to control, because they prevent fewer security challenges. Women in prison are far less likely to be incarcerated for a violent crime or to use physical violence while incarcerated; they are far less likely to be gang-involved; they are less likely to be involved in "rackets" while incarcerated such as drug-dealing or gambling. Correctional systems have incentives to direct their resources, including program activities, towards their most challenging populations who are almost always male, with the result that female prisoners experience profound neglect in those systems.

Some examples of this neglect in comparison with male prisoners that I have personally observed both while incarcerated and in subsequent years include more limited access to computers, more limited opportunities to work and job training, and more limited opportunity to educational opportunity. It is rare for a correctional system to adopt proven approaches that are tailored to female inmates, rather than relying on outside volunteer organizations to "pick up the slack". This is true despite the fact that there has been a largely self-organized and self-funded network of corrections practitioners studying and promoting best practices since 1985, the Adult and Juvenile Female Offenders conference http://www.ajfo.org. Washington State is the only state that has adopted fully gender-responsive policy and programs within their correctional system. It would have a profound impact on the field if the federal Bureau of Prisons were to adopt gender-responsive policies and programs, especially in light of the distance from home that the BOP typically imposes on prisoners throughout the system.

I think the most important aspects of gender responsive policies and programs in correctional settings take women's experience with violence and issues regarding the integrity of the body into account. At least 80% of incarcerated women and girls report experiencing sexual assault or other physical abuse prior to their incarceration. American prisons and jails are places that are deeply grounded in dominance, inequality between prisoner and jailer, and the threat and promise of violence. This is true in terms of how these institutions are structured and run, and prisoners conform to these realities, sometimes in deeply damaging ways. Gender-responsive policies take a step towards recognizing that for people who are survivors of trauma, prisons will get better results behind the walls by doing things like banning cross-gender searches, limiting strip searches, and changing communications policies to provide for more and better information for prisoners. A woman who worked as a warden in both men's and women's prisons in Massachusetts told me that it took her three times as long to cross the yard in a women's facility, because relational interactions and communications are exponentially more important to female prisoners.

Getting to the heart of the matter on gendered differences in prisons and jails, the experience of pregnancy, labor, and motherhood is the most profound difference between male and female prisoners that we should consider. It is estimated that about 10% of the female prison population at any given

time is pregnant. Some of these pregnant women do not receive adequate medical care during their incarceration, and some systems will put pregnant women in solitary confinement. In many prisons pregnant women will be shackled during their pregnancy and during labor, even when states have banned the practice by statute. Most women who give birth in custody are returned to prison immediately after childbirth; if they are fortunate a family member can take responsibility for the baby. These are examples of the ways in which the things that most determine prisoners' identity as women often become the most traumatizing aspects of their incarceration.

Most women in prison are mothers, and most of those mothers have minor children under the age of 18. When we choose to put any parent in prison, it's very likely that their children and families will also be punished directly and indirectly. This includes the profound cost and difficulty of visiting with or communicating with a parent in prison, a loss of income and greater instability for households that are often already struggling, and the grief, confusion and stigma that accompanies the loss of a parent into prison or jail. Women in the criminal justice system are disproportionately likely to be single parents and sole heads of household, and so when we choose to incarcerate them, their children are five times more likely to be put into the foster care system than when a father is locked up. In the case of single mothers, many states move to terminate parental rights within a year or two of separation, and prisoners are by and large incapable of meeting the requirements of family courts. They are helpless to provide for their children, and even helpless to maintain any legal role in their lives during or after their sentence.

In closing I draw your attention to past testimony on women and solitary confinement before the U.S. Senate Subcommittee on the Constitution, Civil Rights, and Human Rights, which I've included as an attachment. It contains a great deal of specific examples and abundant citations on female incarceration and gendered concerns about solitary confinement in prisons and jails. Solitary confinement, total isolation, is the harshest punishment we have in this country other than a penalty of death. Solitary confinement is used in every prison and jail in this country with an estimated 80,000 people currently in isolation, and disproportionately is directed at mentally ill prisoners, LGBT prisoners, and other people who may in fact be most vulnerable while incarcerated. Like the death penalty, solitary confinement is deeply symbolic of American reliance on harsh punishment, without enough consideration for the harm that is reaped from our reliance on exclusion and marginalization of those who we consider transgressive.

In summary, here are policy considerations that would make a great deal of difference in relation to women and girls in the system:

- Responses to crime and accountability measures that do not rely on incarceration have not been well developed or sufficiently studied. Alternative courts – drug courts, mental health courts, veterans courts - are among the only alternatives to incarceration that have been undertaken, and they are widely held to be successful. We need more development and support of upstream interventions that reduce reliance on prisons and jails, and if we succeed in identifying and helping victims we will in turn reduce female incarceration.

- Changes in drug policy focused on reducing addiction and demand will reduce female incarceration. If we want a healthier, safer and more just society, it's essential to move drug policy spending and action into the public health system and away from the criminal justice system.

- Access to mental health services in the community and increased recognition of and response to trauma will help prevent female incarceration. 80% of Americans accused of a crime are too poor to hire a lawyer to defend them in court. It is hoped that the expansion of access to healthcare for the poorest Americans will include more access to mental health services where there is acute need.

- When women or girls are incarcerated, it's critical that the staff that work with them are trained on gender differences that are relevant to reproductive health care, mental health and past experience of trauma and abuse. It's also essential that incarcerated females receive the same quality and volume of rehabilitative opportunities as male prisoners, despite the fact that it will be more costly and time-consuming for correctional systems to do so. Following the leadership of Washington state and adopting system-wide gender responsive policies is something that every correctional system should do to ensure the rehabilitation and safety of vulnerable prisoners.

- Finally, correctional systems must enact policies that provide for connection between mothers of minor children and their families on the outside. This includes designating parents close to home, holding visiting hours seven days a week, planning for transportation options for low-income families, and providing access to legal services for family court. Prisoners who are able to maintain lifelines to family are less likely to reoffend and return to prison; children who are able to maintain contact with their parents do better in the community, and may have a better shot at staying out of prison themselves.

Thank you for the opportunity to provide further information regarding women and girls who are incarcerated. The federal Bureau of Prisons is widely regarded as backward in its dealings with gendered questions, and so there is great opportunity for improvement.

Testimony of Piper Kerman
Hearing before the Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights
"Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences"
Tuesday, February 25, 2014

Chairman Durbin, Ranking Member Cruz, and distinguished members of the Subcommittee, I want to thank you all for this opportunity to address you and for organizing this important hearing.

I spent 13 months as a prisoner in the Federal Bureau of Prisons system from 2004-2005, with most of my time served at the Federal Correctional Institution in Danbury, Connecticut. From my first hours of incarceration, whispers and warnings about solitary confinement – better known as the SHU – came with frequency and from all quarters, prisoners and staff alike. One of the first women to befriend me in prison had just spent a month in the SHU for a minor infraction. Solitary confinement is a prison within a prison. But unlike the hive-like communities of people that exist behind prison walls, which have conflicts but also opportunities for redemption, 24-hour lockdown leaves you completely alone in a six-by-eight foot cell for weeks, sometimes months and even years. Here, the terror and the lasting damage of incarceration may be increased a thousand fold. This is unproductive for individuals, the institutions and the outside communities, to which the vast majority of prisoners will return.

If you are familiar with my book, *Orange is the New Black*, you know I'm the first to acknowledge that unlike many prisoners, I have the resources and support to take my own experiences in prison and use them to try to make critical improvements to this country's criminal justice system. Since my release, I have worked with many criminal justice-involved women who need help advocating for the changes they need to be safe and to get back on their feet. I am here today in that capacity.

If you've watched the Netflix original series adapted from my book, you may recall an episode in which the character that is based on me spends time in the SHU. Although today I will share many stories about solitary confinement, I mercifully did not spend any time in solitary. However, the way solitary confinement is handled on the show is an accurate depiction and the silencing effect of the SHU is very real.

Women in Solitary Confinement

When we think of solitary confinement, most of us don't picture *women* being subjected to this form of extreme punishment. But the truth is that women prisoners are routinely subjected to solitary confinement in jails, prisons and detention centers across the United States.[i] Increasingly, the American public and our leaders are learning about the profound negative psychological impacts of solitary confinement and the excessive number of people held in these conditions, but I want to talk about the unique harms and dangers of subjecting women prisoners to this practice.

Women are the fastest growing population in the criminal justice system and their families and communities are increasingly affected by what happens behind bars. At least 63% of women in prison are there for a nonviolent offense.[ii] However, some of the factors that contribute to these women's incarceration can also end up landing them in solitary confinement. Mental health problems are overwhelmingly prevalent in women's prisons and jails, which have a much higher percentage of mentally ill prisoners than in men's facilities.[iii] High incidences of sexual and physical assault[iv] are a reality for women in prison, jail, and immigration detention centers, both before and during their incarceration.[v] These facts are very important in relation to the use of solitary. It is critical for our criminal justice system to address

the unique situation of women in prison—especially those women subjected to the social and sensory deprivation of solitary confinement.

While I was in prison, I saw many women sent to the SHU for minor infractions such as moving around a housing unit during a count, refusing an order from a correctional officer, and possession of low-level contraband like small amounts of cash (which is largely useless in prison) or having women's underwear from the outside rather than prison-issued underwear. All of these infractions drew at least 30 days in solitary. Sometimes women are sent to the SHU immediately upon their arrival in prison because there aren't any open beds. This is especially terrifying if a woman has never been in prison or jail before, which is often the case. Stories about the SHU are rampant – some told directly by the women who experienced solitary first hand, but often passed along from prisoner to prisoner. They all evoke terror and a conviction to keep your head down and report nothing that you see, hear or experience for fear that you may be locked down in isolation.

I have submitted for the record the full written testimony of Jeanne DiMola, who spent one year of her six-year sentence in solitary. She describes with chilling detail the neglect and abuse she endured while in the SHU and the impact the experience of extreme isolation still has on her as she works hard to get her life back on track. Jeanne writes: "When you have no one to talk to inside a grey, dingy cell with its blacked out window, you start talking to yourself, then you think your inner self at least deserves an answer, so I began answering myself. I asked myself what if I got swallowed into this black hole in my cell and just disappeared. I asked myself if it would be better off for my family if this thorn in their side went away for them so they can truly forget me. The best way I can describe being in this small box when life is going

on without you is you are dead and the cell is your coffin. Everything goes on without and around you. But you stay the same...stagnant."

Mental Illness

Mental health experts tell us that solitary confinement is psychologically harmful, especially for people with pre-existing mental illness. Serious mental illness can also result from prisoners' experiences in solitary confinement. In studies of prisoners held in solitary confinement for 10 days or longer, people deteriorated rapidly, with elevated levels of depression and anxiety, a higher propensity to suffer from hallucinations and paranoia, and a higher risk of self-harm and suicide.[vi] In solitary confinement units, some prisoners can be found sitting in puddles of their own urine, others smeared in their own feces. The sounds of prisoners shrieking in their cells and banging their fists or heads against the walls is nothing out of the ordinary. Extreme and grotesque self-mutilation is also all too common, such as prisoners who have amputated parts of their own bodies or, in one particularly disturbing case, a prisoner who sewed his mouth shut with a makeshift needle and thread from his pillowcase. Others attempt to or succeed in committing suicide. Regular correctional staff is simply not equipped to deal with the medical issues that are so prevalent within solitary confinement units.

Nearly 75% of women in prison are diagnosed with mental illness. The conditions of confinement are especially difficult for mentally ill people, as adherence to prison rules is simply more difficult for them. This leads to destructive and intense cycles of infractions and punishment. Prisoners with mental illness suffer in ways that make their behavior difficult to manage. They often end up in solitary confinement as a result of behavior that is beyond their

control. They are essentially punished for their illness.[vii] Putting women with mental illness in solitary confinement only exacerbates a pre-existing illness. They often leave prison in far worse shape than when they went in. Women with mental illness will have great difficulty getting back on their feet and returning successfully to the community unless we mandate through all correctional systems that mentally ill women should not be held in solitary confinement, and should instead be appropriately managed with full medical care.

Consider the story of Jan Green. A 50-year-old grandmother and mother of four,[viii] Jan was sent to Valencia County Jail in New Mexico on a domestic violence charge that was later dropped.[ix] Staff at the jail knew she had mental health issues when she came in, but instead of giving her treatment, they pepper sprayed her for refusing to wear jail-issued clothing, and eventually put her in solitary confinement where she spent nearly two years in an 8-by-7-foot cell with a mattress on the floor for a bed.[x] Because the water in her cell did not work properly, Jan was unable to wash her hands or shower.[xi] Not only did her shower head not work, it dripped constantly.[xii] The jail refused to give her toilet paper or sanitary napkins for long periods of time to the point where she was forced to wipe herself with paper bags from her sack lunch.[xiii] When her family picked her up from jail, she was soiled from dried menstrual blood that had accumulated over several months.[xiv]

Jan's mental health deteriorated from the constant water drips, being deprived of sanitation, and endless hours of isolation to the point that she spiraled into total psychosis and was ultimately deemed incompetent to stand trial.[xv] Her daughter's ongoing attempts to get medical care for her mother failed. Not once was she seen by a psychiatrist or medical doctor.[xvi] After months in solitary, Jan's lack of exercise and the poor hygiene caused her sock

to rot into an open wound on her foot.[xvii] After nearly two years in solitary, the criminal charges against Jan were finally dismissed and she was released from custody.[xviii] Her daughter describes the mother she used to know as "outgoing and outspoken," but solitary confinement "shattered her as a person."[xix] When asked about Jan Green, the warden responded: "We're just not equipped with dealing with mental health populations," stating that it was an "economic decision not to provide mental health care."[xx]

Physical and Sexual Abuse

The effects of physical and sexual abuse are also worsened by solitary confinement. I have a vivid memory from early in my prison sentence: a woman who had done a lot of time shared a cautionary tale. She told me about a friend of hers who had gone home not long before; her friend had been sexually abused by a correctional officer, and the abuse was discovered. She told me: "They had her in the SHU for months during the investigation. They shot her full of psych drugs – she blew up like a balloon. When they finally let her out, she was a zombie. It took a long time for her to get back to herself. They do not play here."

Fear of being put in solitary as "protective custody" has a chilling effect on women prisoners' willingness to report sexual abuse, which is commonplace and sometimes rampant in prisons, jails, and detention centers. Another long-time prisoner warned me about a specific correctional officer, calling him a predator; her warning came with a reminder – if a woman ever reported him, she would be locked in the SHU. The terrible threat of isolation makes women afraid to report abuse and serves as a powerful disincentive to ask for help or justice.

In addition, solitary confinement itself can compound the impact of past physical and sexual abuse. A majority of women in state prisons across America report being victims of past physical or sexual abuse.[xxi] In many prisons across this country, women in solitary confinement are watched by male guards during showers, when undressing and when using the toilet. For the majority of women prisoners who have been victimized by men in the past, being watched by male guards during their most private moments can cause acute psychological suffering.[xxii]

A recent Equal Justice Initiative investigation into sexual abuse at Alabama's Tutwiler Prison for Women found that women who report sexual abuse, "are routinely placed in segregation by the warden."[xxiii] In the notorious Otter Creek Correctional Center in Kentucky, a woman who saved evidence from her sexual assault (an epidemic problem within the prison with multiple victims) was reportedly placed in segregation for 50 days.[xxiv] At the Dwight Correctional Center in Illinois, a woman alleged in court documents that she was repeatedly raped by prison staff, eventually resulting in a pregnancy and the birth of her son.[xxv] When the woman tried to report the assaults, she was placed in solitary confinement, and threatened with a longer sentence.[xxvi]

Women who are sexually abused by prison guards are forced to decide between reporting the attack and risking placement in solitary, where they will suffer extreme pain and psychological deterioration, or staying silent and risking further abuse of themselves or others. The use of solitary confinement for "protective custody" perpetuates the cycle of abuse and makes women's prisons more dangerous for the women who live behind their walls.

Impact on Children and Families

In addition to the damaging effects solitary confinement has on women prisoners, children and families also suffer. Solitary confinement impedes access to important pre-natal and women's health care services. In fact, pregnant women in solitary confinement often receive no medical care.[xxvii] Yet pregnant prisoners in America are still sent to the SHU.

I want to tell you about a female inmate in Illinois who I'll call Meghan out of respect for privacy. She had battled depression for years, and found herself pregnant behind bars. Because of her pregnancy, Meghan had to discontinue some of her mental-health medications. She also needed extra sleep. One day, a guard decided Meghan didn't get up fast enough for mealtime and sent her to solitary confinement as punishment. In solitary, Meghan didn't get her prenatal vitamins. Her requests for water were denied — sometimes for several hours, despite the heat in her isolation cell and the known danger of dehydration during pregnancy. Worse yet, the extreme social isolation in solitary further hampered her fight against clinical depression.

Solitary confinement can also cause lasting damage to families and children. The majority of women in prison were their children's primary or sole caregiver prior to incarceration.[xxviii] When these women are incarcerated, maintaining any semblance of a relationship with their children largely depends on regular visitation.[xxix] A child's need to see and hold his or her mother is one of the most basic human needs. Yet visitation for prisoners in solitary confinement is extremely limited, with contact visits often forbidden, and often all visitation privileges revoked. This is true even if the infraction is minor, like possession of contraband or disobeying an order.

These visitation restrictions mean that, when a mother is held in solitary confinement, her children's visits are either limited to interactions through a physical barrier, such as a glass partition, or eliminated altogether.[xxx] Through a partition, a child cannot give his or her mother a hug, or hear her voice clearly. The separation is clear. Solitary punishes innocent children.

Conclusion

For many female prisoners, solitary confinement exacerbates the mental health issues and histories of trauma and abuse with which they already struggle. Most women in prison have not committed violent crimes and are not prone to resort to violence while incarcerated. Solitary confinement is an extreme form of punishment, yet its use within women's prisons is routine – sometimes even sinister when it serves to silence women who are being victimized.

We should all share the same goal here: to curb the unnecessary use of solitary confinement in any form. This is possible, and it happens when correctional leaders and staff do the right thing. Last week, I visited the Marion Correctional Institution, a medium security men's state prison in Ohio. It houses a little more than 2,600 men. Since 2011, they have reduced the number of beds at Marion Correctional needed for "administrative segregation" – long-term solitary confinement – by 48 beds, from 175 to 127. They have cut one SHU unit and converted those beds into different, more productive housing. They did this along with an increase in population of approximately 900 men. This change was not the result of a special initiative focused on the SHU. Rather, within the entire institution, the warden and his staff increased prisoners' access to meaningful activities and rehabilitation, to work opportunities, and to incentive-based programs, and in the process they saw solitary confinement numbers

come down. This is good for the institution as a whole – prisoners, staff and administration – and proves the point of getting good outcomes in correctional systems: it is always a question of strong leadership and recognition that it is human beings that fill our prisons and jails.

Isolation should only be used when a prisoner is a serious threat to her own safety or that of others; it should never be a long-term solution. When isolation is necessary, the conditions must be humane and rehabilitative. We must ensure that women with mental illness and pregnant women are never subject to solitary. And we must prevent women from being sent to solitary for reporting abuses.

As the Federal Bureau of Prisons pursues an independent assessment of its solitary practices, I urge it to include an assessment of practices at a women's facility, such as the FCIs at Tallahassee, Dublin or Alderson, and take action to limit the use of solitary on women. I ask the assessors to visit as many women's facilities as possible, and to include in the assessment confidential discussions with the women who are incarcerated in those facilities.

I am exceptionally proud to say that last week, my home state of New York announced sweeping reforms of the use of solitary confinement, including the prohibition of placing pregnant women in disciplinary solitary confinement. New York is the first state to agree to this important provision, and the Bureau of Prisons and other states should adopt the same set of sensible comprehensive reforms.

Thank you for the opportunity to participate in this important hearing and to help the Subcommittee address this very significant issue. I am hopeful that it will mark the next step in urgently needed and long-term oversight and reform.

[i] *See* Joane Martel, *Telling the Story: A Study in the Segregation of Women Prisoners*, 28 SOC. JUST. 196, 196-197 (2001) (giving an overview of the literature on solitary confinement and finding almost no literature on women in solitary confinement); Cherami Wichmann & Kelly Taylor, *Federally Sentenced Women in Administrative Segregation: A Descriptive Analysis* (2004) (first quantitative study on segregation of federally sentenced women in Canada). *See also infra* at 19 and accompanying text.

[ii] In 2010, 37% of women in state prison were held for a violent offense, compared with 54% of men. E. ANN CARSON & WILLIAM J. SABOL, BUREAU OF JUST. STAT., PRISONERS IN 2011 9 TBL. 9 (2012), *available at* http://www.bjs.gov/content/pub/pdf/p11.pdf.

[iii] DORIS J. JAMES & LAUREN E. GLAZE, BUREAU OF JUST. STAT., MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES 1 & 4 Tbl. 3 (2006), *available at* http://www.bjs.gov/content/pub/pdf/mhppji.pdf ("An estimated 73% of females in State prisons, compared to 55% of male[s] had a mental health problem[]. In Federal prisons, the rate was 61% of females compared to 44% of males; and in local jails, 75% of females compared to 63% of male[s].").

[iv] In state prison, 57.6% of women reported past physical or sexual abuse, compared to 16.1% of men. In federal prisons, 39.9% of women reported past abuse, compared to 7.2% of men. In jails, 47.6% of women reported past abuse, compared to 12.9% of men. CAROLINE WOLF HARLOW, BUREAU OF JUST. STAT., PRIOR ABUSE REPORTED BY INMATES AND PROBATIONERS 1 (1999), *available at* http://www.bjs.gov/content/pub/pdf/parip.pdf. More than a third of women in state prisons or local jails reported being physically or sexually abused before the age of eighteen.

[v] Human Rights Watch, *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons* (1996), *available at* http://www.hrw.org/legacy/reports/1996/Us1.htm [hereinafter *All Too Familiar*] ("One of the clear contributing factors to sexual misconduct in U.S. prisons for women is that the United States, despite authoritative international rules to the contrary, allows male correctional employees to hold contact positions over prisoners, that is, positions in which they serve in constant physical proximity to the prisoners of the opposite sex.").

[vi] *See* Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124 (2003); Stanley L. Brodsky & Forrest R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REP. 267 (1988); Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHOL. 1450 (1983); Holly A. Miller & Glenn R. Young, *Prison Segregation: Administrative Detention Remedy or Mental Health Problem?*, 7 CRIM. BEHAVIOR & MENTAL HEALTH 85 (1997). *See generally* HANS TOCH, MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON (1992).

[vii] *Id.* (describing how some of the women in the California SHU were placed in solitary for behavior that can be a sign of mental health problems).

[viii] Compl. at 2, 13, *Green v. Chavez*, No. 12-CV-1260 MV/KBM, (D. N.M. 2012).

[ix] *Id.* at 3.

[x] *Id.*

[xi] Chris Ramirez, *4 On Your Side Exposes County Jail Shortcomings*, EYEWITNESS NEWS 4KOB, Feb. 14, 2014, *available at* http://www.onenewspage.us/video/20140208/1612385/On-Your-Side-exposes-county-jail-shortcomings.htm.

[xii] Compl. at 9; Ramirez, *supra* note 6.

[xiii] Compl. at 10-11.

[xiv] *Id.* at 11; Ramirez, *supra* note 6.

[xv] *Id.* at 4.

[xvi] *Id.* at 3, 7, 15, 17.

[xvii] *Id.* at 5.

[xviii] *Id.*

[xix] Ramirez, *supra* note 6.

[xx] *Id.*

[xxi] BUREAU OF JUSTICE STATISTICS, PRIOR ABUSE REPORTED BY INMATES AND PROBATIONERS, *supra* note 11, at 1; *see also* LAPIDUS ET AL., CAUGHT IN THE NET, *supra* note 8, at 47-48 (describing the vulnerabilities of women in prison and in particular the phenomenon of re-traumatization experienced by incarcerated women who have been victims of physical and sexual abuse prior to their incarceration).

[xxii] *See supra* note 12 and accompanying text; *supra* note 49 and accompanying text.

[xxiii] *See* Equal Justice Initiative, Findings: Equal Justice Initiative Investigation Into Sexual Violence at Tutwiler Prison for Women 2 (May 2012), *available at* http://www.eji.org/files/EJI%20Findings_from_Tutwiler_Investigation.pdf.

[xxiv] *See* Kevin Dayton, *Incident Leads to Changes at Prison*, HONOLULU ADVERTISER, Oct. 2, 2008 (detailing the reports of abuse, and noting that the victim was from Hawai'i); *see also* Gary Hunter, *Sexual Abuse by Prison and Jail Staff Proves Persistent, Pandemic*, PRISON LEGAL NEWS, Feb. 21, 2014, *available at* https://www.prisonlegalnews.org/21225_displayArticle.aspx (summarizing many recent cases of sexual assault and rape in prisons across the country).

[xxv] *See* Complaint at 3-5, Doe v. Denning, No. 1:08-cv-01265, Doc. 1 (Mar. 3, 2008, N.D. Ill. E. Div.), *available at* http://ia600402.us.archive.org/31/items/gov.uscourts.ilnd.217697/gov.uscourts.ilnd.217697.1.0.pdf.

[xxvi] *See id.* at 4

[xxvii] *See* Testimony by the Correctional Association of New York Before the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights and Human Rights, *supra* note 32, at 4 ("[I]solation can compromise women's ability to fulfill their particular needs related to reproductive health care, for instance by impeding pregnant women's access to critical obstetrical services, preventing them from getting the regular exercise and movement vital for a healthy pregnancy. Similarly, women in isolation may be dissuaded from requesting care related to sensitive gynecological issues because they are required to inform correction officers about details of their medical problem, may have serious difficulty accessing appropriate medical staff when they do reach out, may be shackled during gynecological appointments that do occur, and will often interact with medical providers in full view of correction officers and/or receive superficial evaluations through closed cell doors."); Interview with Gail Smith, Exec. Dir. CLAIM IL (May 15, 2013).

[xxviii] GLAZE & MARUSCHAK, *supra* note 17, at 4.

[xxix] SUSAN D. PHILLIPS, THE SENTENCING PROJECT, VIDEO VISITS FOR CHILDREN WHOSE PARENTS ARE INCARCERATED: IN WHOSE BEST INTERESTS? 1-2 (2012), *available at* http://sentencingproject.org/doc/publications/cc_Video_Visitation_White_Paper.pdf (describing the importance of and barriers to visitation of incarcerated parents).

[xxx] *Id.*, at 3-5 (recognizing that video visitation is not a substitute for face-to-face visits, but can be useful when used in addition to face-to-face visits); THE UNIVERSITY OF VERMONT, PRISON VIDEO CONFERENCING 2 (noting in-person visitation is most effective and advising that virtual visitation should be used to increase parent-

child contact, not to replace in-person visitation); *Graham v. Graham*, 794 A.2d 912, 915 (Pa. Super. Ct. 2002) (noting virtual visitation is not equivalent to in-person visitation for a parent).

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September 18, 2015

Senator Ron Johnson
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Re: Post-Hearing Questions for the Record to Udi Ofer

Dear Senator Johnson and Senator Baldwin:

On behalf of the American Civil Liberties Union and our one million supporters living across the United States, we thank you for holding the August 4th hearing on challenges facing the federal prison system. Your leadership on this issue comes at a time when Americans yearn for a smarter and more humane criminal justice system, and we look forward to continuing to work with your offices on creating a criminal justice system that is fair, emphasizes prevention, and uses incarceration only as a last resort.

We write this letter in response to the six questions we received from you following the hearing. We address each question individually.

Post-Hearing Questions for the Record
From Sen. Ron Johnson

1. Your testimony focused largely on the issue of Solitary Confinement in the Federal Prison system. You stated that:

> **Approximately five percent of federal prisoners are in Solitary Confinement. That means that on any given day, 11,000 people in Federal prisons are confined to a 6'X9' cell and deprived of basic human contact, with little to no natural light, and minimal, if any, constructive activity for 22-24 hours a day.**

Later in the hearing, BOP director Samuels responded to questioning on the issue of solitary confinement by saying "We do not practice solitary confinement." He went on to say:

> **"we only place an individual in a cell alone if we have good evidence to believe that the individual could cause harm to another individual and if we have our medical or mental health staff giving the evaluation that it would be a benefit to an individual to be placed in a cell alone.**
>
> **We do not under any circumstances nor have we ever had a practice of placing an individual in a cell alone."**

The DOJ, however, defines solitary confinement as "the state of being confined to one's cell for approximately 22 hours per day or more, alone or with other prisoners that limits contact with others." Given that definition, do you agree or disagree with Director Samuels' testimony?

Could you elaborate on the definition of Solitary Confinement and Director Samuels' testimony?

There are several commonly accepted definitions of solitary confinement. As noted above, the U.S. Department of Justice (DOJ) defines the terms "isolation" or "solitary confinement" as "the state of being confined to one's cell for approximately 22 hours per day or more, alone or with other prisoners that limits contact with others. . . . An isolation unit means a unit where all or most of those housed in the unit are subjected to isolation."[1] Similarly, the United Nations Special Rapporteur on Torture has referred to the definition set forth in the Istanbul Statement on the Use and Effects of Solitary Confinement:

> The Istanbul Statement on the Use and Effects of Solitary Confinement defines solitary confinement as the physical isolation of individuals who are confined to their cells for 22 to 24 hours a day. In many jurisdictions, prisoners held in solitary confinement are allowed out of their cells for one hour of solitary exercise a day. Meaningful contact with other people is typically reduced to a minimum. The reduction in stimuli is not only quantitative but also qualitative. The available stimuli and the occasional social contacts are seldom freely chosen, generally monotonous, and often not empathetic.[2]

The American Bar Association defines solitary confinement, which it refers to as "segregated housing," as "housing of a prisoner in conditions characterized by substantial isolation from other prisoners, whether pursuant to disciplinary, administrative, or classification action. 'Segregated housing' includes restriction of a prisoner to the prisoner's assigned living quarters.[3]

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[1] Letter from U. S. Dep't. of Justice, to the Honorable Tom Corbett, Governor of Pennsylvania (May 31, 2013) (Re:

[2] Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* 8, ¶ 77, U.N. Doc. A/66/268 (Aug. 5, 2011), *available at* http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf (citing the Istanbul Statement on the Use and Effects of Solitary Confinement, Adopted on December 9, 2007 at the International Psychological Trauma Symposium, Istanbul (2007)), *available at* http://solitaryconfinement.org/uploads/Istanbul_expert_statement_on_sc.pdf.

[3] ABA, Standards for Criminal Justice: Treatment of Prisoners 2 (2010) (Standard 23-1.0(r)), *available at* http://www.abanet.org/crimjust/policy/midyear2010/102i.pdf.

[. . . .] The term "long-term segregated housing" means segregated housing that is expected to extend or does extend for a period of time exceeding 30 days."[4]

Experts and scholars in the field, such as Craig Haney, Professor of Psychology at the University of California, define solitary confinement as:

> [S]egregation from the mainstream prisoner population in attached housing units or free-standing facilities where prisoners are involuntarily confined in their cells for upwards of 23 hours a day or more, given only extremely limited or no opportunities for direct and normal social contact with other persons (i.e., contact that is not mediated by bars, restraints, security glass or screens, and the like), and afforded extremely limited if any access to meaningful programming of any kind.[5]

This definition is similar to the one employed by the National Institute of Corrections (NIC) in a standard reference work on solitary-type confinement that was sponsored and disseminated by DOJ. The NIC has further defined solitary or "supermax" housing as occurring in a "freestanding facility, or a distinct unit within a freestanding facility, that provides for the management and secure control of inmates" under conditions characterized by "separation, restricted movement, and limited access to staff and other inmates."[6]

Under all of these definitions, the federal Bureau of Prisons (BOP) practices solitary confinement in its Special Housing Units (SHUs), Special Management Units (SMUs), and at the Federal Admax at Florence (ADX). Director Samuels' failure to acknowledge this fact is a common semantie argument that the ACLU has encountered with corrections officials around the country who do not want to admit to practicing solitary confinement in their facilities. Some have argued that access to mail, medical care, the ability to yell at other prisoners through air vents, or the fact that officers deliver meals through an opening in the door every day means that the type of housing in their systems is not solitary confinement. For perhaps obvious reasons, total and absolute "solitary confinement"—literally complete isolation from any form of human contact—does not exist in prison and never has. But this is a distinction without a difference because the type of conditions in American prisons and jails defined above are the very same conditions that decades of research has found to profoundly harm human beings.[7]

Director Samuels' denial that BOP practices solitary confinement may also be based on the fact

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[4] *Id.* at Standard 23-1.0(o).

[5] Craig Haney, *The Social Psychology of Isolation: Why Solitary Confinement is Psychologically Harmful*, Prison Service Journal, 12 at n.1 (January, 2009), *available at* http://www.probono.net/prisoners/stopsol-reports/attachment.212648.

[6] U.S. Dep't of Justice, Nat't Inst. Of Corr. Chase Riveland, *Supermax Prisons: Overview and General Considerations* 3, (Jan. 1999), *available at* http://static.nicic.gov/Library/014937.pdf.

[7] *See, e.g.*, Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450 (1983); R. Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 SOC. JUST. 8 (1988); S.L. Brodsky & F.R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REP. 267 (1988); Craig Haney, *Mental Health Issues in Long- Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQUENCY 124 (2003); Holly A. Miller & G. Young, *Prison Segregation: Administrative Detention Remedy or Mental Health Problem?*, 7 CRIMINAL BEHAV. AND MENTAL HEALTH 85 (1997); Hans Toch, *Mosaic of Despair: Human Breakdowns in Prison* (1992).

that the Bureau so over-uses this type of incarceration that it is forced to double-cell many of the prisoners it subjects to such isolation. But double-celled prisoners experience the same isolation and idleness, withdrawal and anxiety, anger and depression as do prisoners living alone in solitary confinement. These prisoners must endure the constant, unabated presence of another person in a small space – about the size of a parking spot – where they must eat, sleep, and defecate together for 22, 23, 24 hours a day for weeks, months, and years at a time. The detrimental effects of housing two people in a cell for 24 hours a day have been documented.[8] These effects have also been recognized by the courts. In *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995), a seminal federal case examining conditions of extreme isolation at California's Pelican Bay State prison where "[r]oughly two-thirds of the inmates [were] double celled," the court cited testimony from experts Professor Haney and Dr. Stuart Grassian in observing:

> [Double-celling] does not compensate for the otherwise severe level of social isolation ... The combination of being in extremely close proximity with one other person, while other avenues for normal social interaction are virtually precluded, often makes any long-term normal relationship with the cellmate impossible. Instead, two persons housed together in this type of forced, constant intimacy have an 'enormously high risk of becoming paranoid, hostile, and potentially violent towards each other.' The existence of a cellmate is thus unlikely to provide an opportunity for sustained positive or normal social contact.

Id. at 889 F. Supp. at 1229-30. Indeed, because of their extreme isolation from the mainstream prisoner population, their near or complete exclusion from prison activities and programs, and the fact that they are confined in their cells virtually around-the-clock, prisoners in "isolated confinement" who are double-celled may suffer some of the worst effects of extreme isolation. In some ways, these prisoners have the worst of both worlds: "crowded" and confined with another person inside a small cell, but simultaneously deprived of even minimal freedoms, access to programs, and "normal" and meaningful forms of social interaction.

Regardless of the reasons underlying Director Samuel's testimony about solitary confinement in the federal system, by any definition, he is wrong.

2. You also spoke about the mental and physical consequences of long-term solitary confinement. As noted above, the DOJ includes individuals confined to cells for approximately 22+ hours a day, both alone, and with other prisoners.

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[8] *See, e.g., Reassessing Solitary Confinement: the Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcommittee on the Constitution, Civil Rights, and Human Rights of the Senate Committee on the Judiciary*, 112th Congress (2012) (statement of Craig Haney, Professor of Psychology, University of California, Santa Cruz) ("[Double-celled prisoners] are ... simultaneously isolated and overcrowded. They ... really can't relate in any meaningful way with whom they're celled, and so they basically develop a kind of within cell isolation of their own. And it adds to the tension, and the tensions then can get acted out on each other. It creates hazards for the people who are forced to live that way. It creates hazards for the correctional officers who have to deal with prisoners who are living under those kinds of pressures.")

a. How does the double housing of inmates in solitary units still qualify as solitary confinement and has that always been the case?

See answer to #1 above.

b. Does the presence of a second inmate in a solitary housing unit reduce the mental and physical effects of solitary in any meaningful way?

See answer to #1 above. As noted in the expert testimony and observations of the federal courts, double-celling in solitary housing units can actually have even more negative physical and mental health effects than single-celling units.

3. Proponents of solitary confinement would argue that it is a necessary tool for corrections officers and BOP staff to protect themselves and the inmate population. In your testimony you stated, "physical separation may sometimes be necessary for safety and security; isolation is not."

a. Short of abolishing the practice of solitary, what alternative measures would effectively maintain the safety and security of the inmates and staff, while protecting the rights of an individual who would otherwise be placed in solitary confinement?

Numerous states have taken steps to investigate, monitor, reduce, and reform their use of solitary. These reforms have resulted from agency initiative, litigation, public pressure, and legislative action. **A growing number of state corrections officials have taken direct steps to regulate the use of solitary confinement, especially as it relates to mental health issues and potential litigation**. Responding to litigation that was settled in 2012, the Massachusetts Department of Correction rewrote its mental health care policies to exclude prisoners with severe mental illness from long-term segregation and designed two maximum security mental health treatment units to divert the mentally ill out of segregated housing.[9] In Colorado, as of December 2013, all state wardens have been directed that any prisoners with "major mental illness" are no longer to be placed in administrative segregation.[10] By the end of 2013, facing mounting public scrutiny of its overuse of solitary confinement, the New York City Department of Correction had reassigned all detainees with mental illness in "punitive segregation" at Rikers Island jail to units

[9] *See* Press Release, Disability Law Ctr., Inc. U.S. District Court Approves Settlement Reached in Five-Year Litigation Over Solitary Confinement of Mentally Ill Prisoners (Apr. 12, 2012), *available at* http://www.dlc-ma.org/prisonsettlement/index.htm ("As a result of the litigation, DOC already has implemented significant systemic reforms, including a mental health classification system, a policy to exclude inmates with severe mental illness from long-term segregation, and the design and operation of two maximum security mental health treatment units as alternatives to segregation."); *Disability Law Ctr., Inc. v. Mass. Dep't of Correction, et al.*, Civil Action No. 07-10463 (settlement agreement)

[10] *See* Memorandum from Lou Archuleta, Interim Director of Prisons, Colorado Department of Corrections, to Wardens, Offender Services (Dec. 10, 2013) (directing wardens to no longer refer prisoners with "major mental illness" or "MMI Qualifiers" to administrative segregation, reproducing the wording of a new administrative code section describing the policy, and noting that the Department is "working to move" MMI prisoners out of administrative segregation), *available at* http://aclu-co.org/sites/default/files/Memo%20Mental%20Health%20Qualifiers%20Ad%20Seg%20MEMO%20%282%29.pdf.

with more therapeutic resources.[11] In 2007, a New York State solitary confinement law went into effect; the law excludes prisoners with serious mental illness from solitary confinement, requires mental health monitoring of all prisoners in disciplinary segregation, and creates a non-disciplinary unit for prisoners with psychiatric disabilities where a therapeutic milieu is maintained and prisoners are subject to the least restrictive environment consistent with their needs and mental status.[12]

State correctional leaders have also undertaken more comprehensive reforms to their use of solitary confinement. Earlier this month, the Association of State Correctional Administrators issued a statement regarding a joint report on the use of "administrative segregation" in U.S. prisons done with the Liman Program, Yale Law School. That statement noted, "Prolonged isolation of individuals in jails and prisons is a grave problem in the United States."[13] The release further noted, "Correctional leaders across the country are committed to reducing the number of people in restrictive housing and alternating what it means to be there."[14] This statement is supported by the reform efforts of increasing numbers of jurisdictions. Last year, the New York State Department of Corrections and Community Supervision announced an agreement with the New York Civil Liberties Union to reform the way solitary confinement is used in New York State's prisons, with the state taking immediate steps to remove youth, pregnant women, and the developmentally disabled and intellectually challenged prisoners from extreme isolation.[15] With the agreement, New York State becomes the largest prison system in the country to prohibit the use of punitive solitary confinement against prisoners under 18.[16] In January 2013, Illinois shuttered its notorious supermax prison, Tamms Correctional Center, a move that will reportedly save the state over $20 million per year.[17] In November 2013, New Mexico's corrections secretary outlined a plan to relocate nonviolent prisoners out of

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[11] *See* Sean Gardiner, *Solitary Jailing Curbed: New York City Department of Correction Stops Solitary Confinement for Mentally Ill Inmates Who Break Rules*, WALL ST. J., Jan. 5, 2014, *available at* http://online.wsj.com/news/articles/SB10001424052702304617404579302840425910088?mod=rss_newyork_main.

[12] *See* N.Y. MENTAL HYGIENE LAW § 45.07(z) (2011); N.Y. CORRECTION LAW §§ 137, 401, 401(a) (2008).

[13] Press Release, Ass'n of State Correctional Adm'r, New Report on Prisoners in Administrative Segregation Prepared by the Association of State Correctional Administrators and the Arthur Liman Public Interest Program at Yale Law School(September 2, 2015), *available at* http://www.asca.net/system/assets/attachments/8895/ASCA%20LIMAN%20Press%20Release%208-28-15.pdf?1441222595.

[14] *Id.*

[15] *See*, Peoples v. Fischer, Docket No. 11-CV-2694, , (S.D.N.Y. Jan. 24, 2014) (stipulation for a stay with conditions), *available at* http://www.nyclu.org/files/releases/Solitary_Stipulation.pdf.

[16] *See* Press Release, NYCLU, NYCLU Lawsuit Secures Historic Reforms to Solitary Confinement, (Feb. 19, 2014), *available at* http://www.nyclu.org/news/nyclu-lawsuit-secures-historic-reforms-solitary-confinement; Benjamin Weiser, *New York State to Limit Use of Solitary Confinement*, N.Y. TIMES, Feb. 19, 2014, *available at* http://www.nytimes.com/2014/02/20/nyregion/new-york-state-agrees-to-big-changes-in-how-prisons-discipline-inmates.html.

[17] *See* Amnesty International, Tamms Supermaximum Security Prison Now Closed, (Jan. 10, 2013), http://www.amnestyusa.org/our-work/latest-victories/tamms-supermaximum-security-prison-now-closed; Steve Mills, *Quinn's Prison Plan Causes Stir*, CHICAGO TRIBUNE, Feb. 23, 2012, *available at* http://articles.chicagotribune.com/2012-02-23/news/ct-met-illinois-state-budget-prisons-20120223_1_super-max-maximum-security-prison-maximum-security-inmates; Dave McKinney and Andrew Maloney, *Gov. Pat Quinn: Close super-max downstate Tamms prison*, CHICAGO SUN TIMES, February 22, 2012, *available at* http://www.suntimes.com/news/politics/10785648-418/gov-pat-quinn-close-super-max-downstate-tamms-prison.html.

segregation, and to relocate "protective custody" prisoners to a separate general-population cluster, cutting the state's segregation population by half over the next year.[18] Almost 10 percent of New Mexico's 7,000 prisoners are currently held in segregated housing, and a recent ACLU report condemned the state's overuse of segregation.[19] In 2012, the Colorado Department of Corrections undertook an external review by the NIC; the resulting reforms led to the closure of a 316-bed supermax facility, and projected savings of millions of dollars.[20] Other correctional reforms have emerged in recent years from Mississippi,[21] Maine,[22] and Michigan.[23]

Reforms to the use of solitary confinement in juvenile justice facilities are also underway. In June 2013, the governor of Nevada signed into law new restrictions on the isolation of youth in juvenile facilities; the law places reporting requirements on the use of isolation, and forbids holding a child in room confinement for longer than 72 hours.[24] In 2012, West Virginia's governor signed into law an outright ban on the use of punitive isolation in juvenile facilities.[25] And on August 10th, New Jersey Governor Chris Christie signed into law a bill that eliminates the use of solitary confinement as a disciplinary measure in juvenile facilities and detention centers, and places time limits on the use of solitary confinement for reasons other than punishment, such as safety concerns.[26]

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[18] Associated Press, *New Mexico Prisoner Segregation Under Review*, LAS CRUCES SUN-NEWS, Nov. 24, 2013, http://www.lcsun-news.com/las_cruces-news/ci_24592049/new-mexico-prisoner-segregation-under-review.

[19] N.M. Ctr. On Law and Poverty & ACLU of N.M., *Inside the Box* (Oct. 2013), *available at* http://nmpovertylaw.org/WP-nmclp/wordpress/WP-nmclp/wordpress/wp-content/uploads/2013/10/Solitary_Confinement_Report_FINALsmallpdf.com_.pdf.

[20] Colo. Dep't of Corr., Report on Implementation of Administrative Segregation Plan 1-2 (2012), *available at* https://www.aclu.org/prisoners-rights/report-co-docs-implementation-administrative-segregation-plan; *see also* Denise Maes, *Guest Column: Solitary Confinement Reform is Welcome Sign of Progress*, COLORADO SPRINGS GAZETTE, Jan. 27, 2012, *available at* www.gazette.com/common/printer/view.php?db=colgazette$id=132524; News Release, Colo. Dep't of Corr., The Department of Corrections Announces the Closure of Colorado State Penitentiary II (March 19, 2012), *available at* http://www.doc.state.co.us/sites/default/files/Press%20release%20CSP%20II%20close%20%20Feb%201%202013.pdf.

[21] The state of Mississippi saved $8 million annually and saw a 70% reduction in violence levels when it closed an entire solitary confinement unit. *See* Terry A. Kupers et al., *Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 CRIM. JUST. &BEHAV. 1037, 1041 (2009); John Buntin, *Exodus: How America's Reddest State – And Its Most Notorious Prison – Became a Model of Corrections Reform*, 23 GOVERNING 20, 27 (2010).

[22] In Main, tighter controls and approval requirements on the use of SMUs, as well as expanded programming options, led to SMU population reductions of over 50%. See Lance Tapley, *Reform Comes to the Supermax*, PORTLAND PHOENIX, May 25, 2011, *available at* http://portland.thephoenix.com/news/121171-reform-comes-to-the-supermax/.

[23] In Michigan, new segregation parameters have led to fewer violent incidents. See Jeff Gerritt, *Pilot Program in UP Tests Alternatives to Traditional Prison Segregation*, DETROIT FREE PRESS, January 1, 2012, *available at* www.frep.com/fdcp/?unique=1326226266727.

[24] *See* Nev. SB 107, *available at* http://www.leg.state.nv.us/Session/77th2013/Reports/history.cfm?billname=SB107.

[25] *See* Associated Press, *W.Va. Ends Solitary Confinement for Juveniles*, TIMES W.V., Apr. 26, 2012, *available at* http://www.timeswv.com/westvirginia/x130096856/W-Va-ends-solitary-confinement-for-juveniles.

[26] Dustin Racioppi, *Christie signs bills setting overhauls for imprisoned youth*, THE RECORD, August 10, 2015, *available at* http://www.northjersey.com/news/christie-signs-bills-setting-overhauls-for-imprisoned-youth-1.1390227.

State legislatures are calling for studies to address the impact of solitary confinement. In May 2013, the Texas legislature passed a bill requiring an independent commission to take a comprehensive look at the use of solitary confinement in adult and juvenile facilities across the state.[27] In 2011, the Colorado legislature required a review of administrative segregation and reclassification efforts for prisoners with mental illness or developmental disabilities.[28] In 2011, the New Mexico legislature mandated a study on solitary confinement's impact on prisoners, its effectiveness as a prison management tool, and its costs.[29] Similarly, in 2012 the Lieutenant Governor of Texas commissioned a study on the use of administrative segregation in the Texas Department of Criminal Justice, including the reasons for its use, its impact on public safety and prisoner mental health, possible alternative prison management strategies, and the need for greater reentry programming for the population.[30] In 2012, the Virginia Senate passed a joint resolution mandating a legislative study on alternative practices to limit the use of solitary confinement, cost savings associated with limiting its use, and the impact of solitary confinement on prisoners with mental illness, as well as alternatives to segregation for such prisoners.[31]

Recognizing the inherent problems of solitary confinement, the **American Bar Association** approved *Standards for Criminal Justice, Treatment of Prisoners* to address all aspects of solitary confinement (the Standards use the term "segregated housing").[32] The solutions presented in the Standards represent a consensus view of representatives of all segments of the criminal justice system who collaborated exhaustively in formulating the final ABA Standards.[33]

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[27] S.B. No 1003, Sess 83(R) (Tex. 2013), *available at* http://www.capitol.state.tx.us/billlookup/Text.aspx?LegSess=83R&Bill=SB1003#.

[28] S. B. 176, 68th Gen. Assem., Reg. Sess. (Colo., 2011).

[29] H. Mem. 62, 50th Leg., 1st Sess. (N.M. 2011).

[30] Press Release, Office of the Lieutenant Governor, Lt. Governor Dewhurst Issues Select Interim Charges Relating to Transportation, Homeland Security and Criminal Justice (Jan. 13, 2012), *available at* http://www.ltgov.state.tx.us/prview.php?id=337.

[31] S. J. Res. 93, 2012 Leg., Reg. Sess. (Va. 2012).

[32] ABA, ABA. Standards for Criminal Justice: Treatment of Prisoners 2 (2010)(Standard 23-1.0(r)), *available at* http://www.abanet.org/crimjust/policy/midyear2010/102i.pdf.

[33] *Id.* Numerous other professional organizations—medical, correctional, psychological experts, as well as human rights organizations and others—oppose the practice of long-term solitary confinement, particularly as it is used to warehouse prisoners who suffer from mental illness and those who are vulnerable due to their age or other characteristics. See Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc A/66/268, ¶¶ 76-78 (Aug. 5, 2011) (asserting that solitary confinement for longer than 15 days constitutes torture, and that juveniles and people with mental illness should never be held in solitary confinement); American Academy of Child and Adolescent Psychiatry, Policy Statements: Solitary Confinement of Juvenile Offenders (Apr. 2012), available at http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders; American Psychiatric Association, Position Statement on Segregation of Prisoners with Mental Illness (2012), *available at*, http://www.psychiatry.org/File%20Library/Learn/Archives/Position-2012-Prisoners-Segregation.pdf; American Public Health Association, Solitary Confinement as a Public Health Issue (NOV. 2013),*available at* https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/14/13/30/solitary-confinement-as-a-public-health-issue; Mental Health America, Seclusion and Restraints, Policy Position Statement 24, *available at* http://www.mentalhealthamerica.net/positions/seclusion-restraints; National Alliance on Mental Illness, Public Policy Platform 69 (Nov. 2014) (Section 9.8), *available at* http://www2.nami.org/Template.cfm?Section=NAMI_Policy_Platform&Template=/ContentManagement/ContentDisplay.cfm&ContentID=163086, Society of Correctional Physicians, Position Statement, Restricted Housing of Mentally Ill Inmates (July 2013), *available at* http://societyofcorrectionalphysicians.org/resources/position-

These solutions include the provision of adequate and meaningful process prior to placing or retaining a prisoner in segregation (ABA Treatment of Prisoners Standard 23-2.9 [hereinafter cited by number only]); limitations on the duration of disciplinary segregation and the least restrictive protective segregation possible (23-2.6, 23-5.5); allowing social activities such as in-cell programming, access to television, phone calls, and reading material, even for those in isolation (23-3.7, 23-3.8); decreasing sensory deprivation by limiting the use of auditory isolation, deprivation of light and reasonable darkness, and punitive diets (23-3.7, 23-3.8); allowing prisoners to gradually gain more privileges and be subject to fewer restrictions, even if they continue to require physical separation (23-2.9); refraining from placing prisoners with serious mental illness in segregation (23-2.8, 23-6.11); careful monitoring of prisoners in segregation for mental health deterioration and provision of appropriate services for those who experience such deterioration (23-6.11).

b. Is there any benefit for subjecting violent or disruptive inmates in solitary units?

Despite its pervasive use in U.S. prisons, jails, youth facilities and detention centers, there is little evidence on the utility or cost-effectiveness of solitary confinement as a corrections tool.[34] In particular, there is little evidence that solitary confinement, supermax institutions or administrative segregation units significantly reduce prison violence or deter future crimes.[35] A 2006 study found that opening a supermax prison or special housing unit (SHU) had no effect on

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statements/restricted-housing-of-mentally-ill-inmates; New York State Council of Churches, Resolution Opposing the Use of Prolonged Solitary Confinement in the Correctional Facilities of New York State and New York City (2012), *available at* https://sites.google.com/site/nyscouncilofchurches /priorities/on-solitary-confinement; Presbyterian Church (USA), Commissioners' Resolution 11-2, On Prolonged Solitary Confinement in U.S. Prisons (2012), *available at* https://pc-biz.org/MeetingPapers/(S(em2ohnl5h5sdehz2rjteqxtn))/Explorer.aspx?id=4389 (urging all members of the faith to participate in work to "significantly limit the use of solitary confinement"); Rabbinical Assembly, Resolution on Prison Conditions and Prisoner Isolation (2012), *available at* http://www.rabbinicalassembly.org/story/resolution-prison-conditions-and-prisoner-isolation?tp=377 (calling on prison authorities to end prolonged solitary confinement, and the solitary confinement of juveniles and of people with mental illness); ABA. Standards for Criminal Justice: Treatment of Prisoners (2010) (Standards 23-2.6-2.9, 23-3.8, 23-5.5) , *available at* http://www.americanbar.org /publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html (limiting acceptable rationales for segregated housing and long-term segregated housing, stating that no prisoners with serious mental illness should be placed in segregation, requiring monitoring of mental-health issues in segregation, and requiring certain procedures for placement in long-term segregation, generally characterizing segregated housing as a practice of last resort, and requiring social interaction and programming for those placed in segregation for their own protection); N. Y. State Bar Ass'n, Committee on Civil Rights Report to the House of Delegates: Solitary Confinement in New York State 1-2, (2013) (see Resolution), *available at* http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26699 (calling on state officials to significantly limit the use of solitary confinement, and recommending that solitary confinement for longer than 15 days be proscribed); National Communication Association, Resolution Regarding Extended Solitary Confinement and Torture (2010), *available at* http://www.natcom.org/uploadedFiles/About_NCA/Leadership_and_Governance/Public_Policy_Platform/PDF-PolicyPlatform-Resolution_Regarding_Extended_Solitary_Confinement_and_Torture.pdf ("condemn[ing] any use of torture or extended solitary confinement").

[34] Daniel P. Mears, Urban Inst., *Evaluating the Effectiveness of Supermax Prisons* 1-2 (2006).

[35] Leena Kurki & Norval Morris, *The Purposes, Practices, and Problems of Supermax Prisons*, 28 CRIME AND JUST. 385, 391 (2001).

prisoner-on-prisoner violence in Arizona, Illinois and Minnesota.[36] The same study found that creating such isolation units had only limited impact on prisoner-on-staff violence in Illinois, none in Minnesota, and actually increased violence in Arizona.[37] A similar study in California found that supermax or administrative segregation prisons had increased rather than decreased violence levels.[38]

Some proponents of solitary confinement assert that isolating "the worst of the worst" creates a safer general population environment where prisoners will have greater freedom and access to educational and vocational programs.[39] Others defend solitary confinement as a general deterrent of disruptive behavior throughout the prison system.[40] However, there is only anecdotal support for these beliefs.[41] Indeed, some researchers have concluded that more severe restrictions imposed on prisoners in solitary confinement increase levels of violence and other behavioral and management problems.[42]

Not only is there little evidence that the enormous outlay of resources for these units makes prisons safer, there is growing concern that such facilities are actually detrimental to public safety. A blue ribbon commission chaired by the Hon. John J. Gibbons and Nicholas de B. Katzenbach raised concerns regarding the overuse of solitary confinement, particularly the practice of releasing prisoners directly from segregation settings to the community.[43] One study of prisoners held in solitary confinement noted that such conditions may "severely impair . . . the prisoner's capacity to reintegrate into the broader community upon release from imprisonment."[44] The pervasive use of solitary confinement means that thousands of prisoners are now returning to the community after spending months or years in isolation. This means that society must face the huge problem of re-socializing individuals who are poorly prepared to return safely to the community.

In most systems, many prisoners in solitary confinement are released directly to the community. In California, for example, nearly 40 percent of segregated prisoners are released directly to the community without first transitioning to lower security units.[45] Colorado also releases about 40% of its supermax population directly to the community.[46] Mental health experts have noted the problems with direct release from isolation and called for prerelease programs to help prisoners held in solitary confinement transition to the community more safely.[47]

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[36] Chad S. Briggs, et al., *The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence*, 41 CRIMINOLOGY 1341, 1341-42 (2006).
[37] *Id.* at 1365-66.
[38] Keramet Reiter, *Parole, Snitch, or Die: California's Supermax Prisons & Prisoners*, 1987-2007 44-46 (2010).
[39] Kurki & Morris, *supra* note 35, at 391.
[40] *Id.*
[41] *Id.*
[42] *See* H. MILLER & G. YOUNG, *Prison Segregation: Administrative Detention Remedy or Mental Health Problem?* 7 CRIM. BEHAV. AND MENTAL HEALTH 85 (1997).
[43] Commission on Safety and Abuse in America's Prisons, Confronting Confinement 55 (2006), *available at* http://www.vera.org/download?file=2845/Confronting_Confinement.pdf.
[44] Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. & Pol'y 325, 333 (2006).
[45] Reiter, *supra* note 38, at 2.
[46] Maureen L. O'Keefe, Colo. Dep't of Corrections, Analysis of Colorado's Administrative Segregation 23 (2005).
[47] Terry Kupers, *What To Do with the Survivors? Coping with the Long-term Effects of Isolated Confinement*, 35 CRIM. JUST. & BEHAV. 1005 (2008).

Although there is not yet comprehensive national research comparing recidivism rates for prisoners released directly from solitary with those released from general population, preliminary research in California suggests that the rates of return to prison are at least 20 percent higher for solitary confinement prisoners.[48] Similarly in Colorado, two-thirds of prisoners in solitary confinement who were released directly to the community returned to prison within three years, but prisoners who transitioned from solitary confinement into the general prison population before community re-entry experienced a six percent reduction in their comparative recidivism rate for the same period.[49]

A 2001 study found that 92 percent of Connecticut prisoners who had been held at the state's supermax prison were rearrested within three years of release, while only 66 percent of prisoners who had not been held in administrative segregation were rearrested in the same time period.[50] These findings are consistent with a recent study in Washington State that tracked 8,000 former prisoners upon release. The study found that not only were those who came from segregation housing more likely to commit new offenses upon release, they were also more likely to commit violent crimes. Significantly, it was prisoners released directly from segregation who had much higher recidivism rates compared to individuals who spent time in a conventional prison setting before return to the community (64 percent compared with 41 percent).[51] This finding suggests a direct link between recidivism and the extreme and debilitating conditions in segregation.[52]

In any system, there may be a handful of prisoners who are violent, but there are not hundreds or thousands of such individuals. What we now know is that solitary confinement does not solve the problem. Once all the prisoners who do not need or should not be in a segregation setting are removed from such units, the few remaining prisoners may need segregation from the general population for safety reasons, but solitary is never necessary. Solitary confinement hurts people and negatively impacts both prison and public safety.

4. In your testimony, you expressed that individuals who have committed crimes, but who suffer from mental illness and/or drug addiction don't belong in prison. Could you elaborate on the alternative within the federal prison system for such offenders, and speak to the costs associated with those options?

When an individual who violates the law suffers from mental illness and/or drug addiction, incarceration is not an effective response to address the underlying cause, and in fact incarceration often exacerbates mental illness or fails to ensure appropriate treatment for drug addiction. For such individuals, it is incumbent upon both prosecutors and lawmakers to ensure that prison is not the only available response to a crime. In 2012, then Deputy Attorney General James Cole said:

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[48] Reiter, *supra* note 38, at 50.
[49] O'Keefe, *supra* note 46, at 25.
[50] Legislative Program Review and Investigations Committee, Recidivism in Connecticut 41 (2001).
[51] Commission on Safety and Abuse in America's Prisons, *supra* note 43, at 55.
[52] *Id.*

> ...there are... individuals whom we can hold accountable in the community and consider giving a chance to meaningfully turn their lives around. These offenders don't present the same public safety risks as the serious offenders. And imprisonment does not serve the same deterrent effect. Giving them the chance to overcome an addiction or providing them with the opportunity to get help before sending them directly to prison, could result in the avoidance of a criminal conviction that can affect employment, family, education and housing prospects for years to come. By supporting and expanding drug court, reentry and other related programs, we not only improve public safety and public health, but protect and leverage taxpayer dollars, safeguard communities in need and assist individuals and families in crisis.[53]

Yet at the federal level, mental health and substance abuse treatment is rarely available as an alternative to incarceration as it is in some state and local jurisdictions. Of course, federal prosecutors may always exercise discretion to decline to prosecute, and in fact, in 2013 the Attorney General explicitly instructed U.S. Attorneys that "charges always should reflect an individualized assessment and fairly represent the defendant's criminal history."[54] In a few locations, U.S. Attorneys' offices do work with drug court programs to reduce or eliminate federal prison time for some individuals with drug addictions.[55] The Department of Justice is best placed to address questions of cost and effectiveness.

Fundamentally, however, individuals with mental health or substance abuse problems should receive medical care. Our criminal justice system, which includes drug courts, must not be the nation's default response to every societal challenge.

5. Despite the recent reduction in the federal prison population and continued increase in operating costs, reentry programming has continued to suffer due to a "lack of resources." While the financial cost of reentry programming is quantifiable, the value of such resources is less apparent. Is there a way the ACLU quantifies the financial benefits of successful reentry programming?

The financial benefits of reentry programming can be quantified by examining the financial benefits of the consequent reduction in recidivism. Reduction in recidivism has two primary financial benefits: 1) reduction in taxpayer costs for incarceration and 2) reduction in the nation's poverty rate due to an increase in productive employment. Alongside these significant financial benefits, it is important to recognize the benefits of recidivism reduction that are not explicitly financial – individuals who can avoid cycling back into the criminal justice system are able to

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[53] Deputy Attorney General James M. Cole, Remarks on Alternatives to Incarceration Program: the Use of "Drug Courts" in the Federal and State Systems (May 21, 2012), *available at* http://www.justice.gov/opa/speech/deputy-attorney-general-james-m-cole-speaks-alternatives-incarceration-program-use-drug.

[54] Memorandum from Attorney Gen. Eric Holder to U.S. Attorneys and Assistant Attorney Gen. for the Criminal Div. 2 (Aug. 12, 2013), *available at* http://www.justice.gov/sites/default/files/ag/legacy/2014/04/11/ag-memo-drug-guidance.pdf.

[55] Deputy Attorney General James M. Cole, Remarks on Alternatives to Incarceration Program: the Use of "Drug Courts" in the Federal and State Systems (May 21, 2012), *available at* http://www.justice.gov/opa/speech/deputy-attorney-general-james-m-cole-speaks-alternatives-incarceration-program-use-drug.

pursue full and rewarding lives as free men and women and contribute to our communities as parents, spouses, and leaders.

Incarceration costs U.S. taxpayers almost $80 billion annually.[56] Recidivism reductions associated with reentry programming will inevitably lead to a significant reduction in incarceration expenditures. Furthermore, scholars have found that the nation's poverty rate would have been reduced by 20 percent between 1980 and 2004 if not for mass incarceration.[57] The male employment rate in the United States is reduced by 1.5 to 1.7 percentage points when formerly incarcerated men are unable to find jobs. This reduction in employment correlates to a loss to the U.S. economy as high as $65 billion annually.[58]

But increased funding for reentry programming, however important, is not enough to realize the financial benefits suggested by these figures. Lawmakers must also reduce the legal barriers to employment, housing, higher education, and temporary public assistance faced by formerly incarcerated people, and pass meaningful sentencing reforms that maintain public safety but avoid unnecessary incarceration in the first place. For specific recommendations regarding reentry, collateral consequences, and sentencing reform, please see the ACLU's statement for the record submitted to the House Committee on Oversight and Government Reform in July 2015.[59]

Post-Hearing Questions for the Record
From Sen. Tammy Baldwin

In your testimony, you discussed a number of racial disparities within the state and federal prison system in the United States. I am very concerned about this issue and I want to be sure we keep this in mind as we discuss the very complex and challenging reforms within our criminal justice system. Can you please describe what you believe are some of the root causes of the racial disparities we see in federal and state prisons? In your testimony, you also discuss some of the reforms New Jersey has taken to reduce the overall prison population, such as reducing harsh mandatory minimums and reducing re-incarceration for technical parole violations. Do you think some of these efforts would help address the racial disparities we see at both the federal and state level if implemented across the board? If not, are there other specific reforms we should be thinking about long-term that would help address the racial disparities we see in our criminal justice system?

The racial disparities in the nation's criminal justice system are a product of many factors, including reasons that go well beyond the criminal justice system, such as economic inequality disparities in housing and health care, and inadequate educational and employment opportunities

[56] U.S. Dep't of Justice, Smart on Crime: Reforming the Criminal Justice System for the 21st Century 1 (2013), *available at* http://www.justice.gov/sites/default/files/ag/legacy/2013/08/12/smart-on-crime.pdf.
[57] Ctr. for Am. Progress, One Strike and You're Out 1 (2013), *available at* https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf.
[58] Ctr. For Economic and Policy Research, Ex-offenders and the Labor Market (Nov, 2010), *available at* http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf.
[59] *See Criminal Justice Reform Hearing Before the H. Comm. On Oversight and Government Reform, 114th Cong. (2015) (statement for the record of the American Civil Liberties Union), available at* https://www.aclu.org/sites/default/files/field_document/house_cj_reform_testimony_final_7.15.15.pdf.

in communities of color. We will focus our response on the disparities created by the various components of the criminal justice system.

Within the criminal justice system, there are a variety of factors that lead to racial disparities, with each serving as a building block for further inequities. It begins with law enforcement practices, and specifically aggressive policing practices in low income communities of color, including for minor offenses that often would go unnoticed in more affluent and whiter communities. It continues with inadequate access to counsel once arrested, unfair bail practices that punish people for being poor, overly aggressive prosecutorial practices, punitive sentencing policies and substandard conditions of confinement, and collateral consequences that prevent the formerly incarcerated from being reintegrated into society and make any future interaction with the criminal justice system more likely to lead to a prison term.

An illustration of this phenomenon is the prosecution of the so-called War on Drugs. Drugs are used at comparable rates across races,[60] yet it is Black Americans who face the disproportionate brunt of the War on Drugs. This entanglement begins with policing practices on the streets, where low income communities of color see a much larger police presence in their communities and hyper-aggressive enforcement, such as through stop-and-frisk practices and "broken windows" policing, which lead to arrests, including for drugs. Whiter, more affluent communities do not face the same type of aggressive enforcement of the War on Drugs.

A specific example may be found in marijuana arrest practices. Even though the majority of Americans support marijuana legalization,[61] there are more than 800,000 arrests a year for marijuana in the United States (New Jersey alone makes more than 21,000 arrests a year).[62] According to government studies, Blacks and Whites use marijuana at similar rates.[63] Yet Black

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[60] For example, according to the Substance Abuse and Mental Health Services Administration ("SAMHSA"), in 2009, 15.3 percent of Whites and 15.9 percent of Blacks aged 12 or older reported using illicit drugs. In 2010, 15.3 percent of Whites, and 16.8 percent of Blacks reported doing so. Substance Abuse and Mental Health Serv. Admin., Illicit Drug Use in Lifetime, Past Year, and Past Month among Persons Aged 12 or Older, by Demographic Characteristics: Percentages, 2009 and 2010, tbl. Table 1.19B, http://www.samhsa.gov/data/sites/default/files/NSDUHNationalFindingsResults2010-web/2k10ResultsTables/NSDUHTables2010R/HTM/Sect1peTabs1to46.htm#Tab1.19B (last visited Sept. 18, 2015).

[61] An April 2015 poll conducted by CBS News found that 53 percent of Americans believe that marijuana should be legal. This represented an all-time high since CBS News began asking this question in 1979. Sarah Dutton, Jennifer De Pinto, Anthony Salvanto, and Fred Backus, *Poll: Support for legal marijuana use reaches all-time high*, CBS News, April 20, 2015, *available at* http://www.cbsnews.com/news/poll-support-for-legal-marijuana-use-reaches-all-time-high/.

[62] ACLU, *The War on Marijuana in Black and White*, 37,39 (June 2013), *available at* https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf (hereinafter "ACLU Marijuana Arrests Report").

[63] Of individuals surveyed by SAMHSA in 2009 and 2010, slightly more Blacks than Whites reported using marijuana over the past year (12.5 percent vs. 11.6 percent in 2009, and 13.7 percent vs. 11.6 percent in 2010), but over the span of a lifetime, more Whites used marijuana than Blacks (46.0 percent vs. 38.6 percent surveyed in 2009, 45.9 percent vs. 40.6 percent surveyed in 2010). Among 18- to 25-year-olds, marijuana use was higher among Whites than Blacks over the past year (33.2 percent vs. 27.3 percent in 2010, and 33.9 percent and 29.9 percent in 2009). Substance Abuse and Mental Health Serv. Admin., Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, by Demographic Characteristics: Percentages, 2009 and 2010 tbls. 1.26A & 1.26B, http://www.samhsa.gov/data/sites/default/files/NSDUHNationalFindingsResults2010-web/2k10ResultsTables/NSDUHTables2010R/HTM/Sect1peTabs1to46.htm#Tab1.26A (last visited Sept. 18, 2015).

Americans are close to four times more likely than Whites to be arrested for marijuana despite similar usage rates.[64] And if you look at all drugs, the disparities can get even worse.[65]

Once arrested for drugs or other offenses, Black Americans are also more likely to be jailed pending trial because they cannot afford or are not granted bail.[66] This often means that they tend to receive harsher sentences because they become more willing to accept a bad deal. Moreover, prosecutors have wide discretion in charging and plea-bargaining decisions, which can often lead to racially skewed practices.

Once in confinement, Black Americans tend to face harsher conditions, such as solitary confinement (see my written testimony), and little to no rehabilitative services, which leads to greater recidivism rates. And once out of prison or jail, they are stuck with a criminal record that makes it difficult to impossible to find housing and a job, to access higher education, and to receive temporary public assistance to help them get back on their feet. For these reasons, they may find themselves back in communities facing the same discriminatory enforcement practices by the police, and once again the cycle begins.

Reforms such as those implemented in New Jersey, including reducing harsh mandatory minimums and overhauling the bail system, will benefit Black and Latino communities to a greater extent because they are disproportionately impacted by the broken criminal justice system. Therefore, restoring discretion to judges by eliminating mandatory minimum laws and reforming the money bail system and implementing a risk-based system are civil rights imperatives.

However, focusing solely on solutions to individual segments of the criminal justice system will likely not fix the overall problem of racial disparities. It will reduce the incarcerated population, and make a person's time while incarcerated more humane, but the racial disparities will likely continue until broader reforms are implemented, including reforms that go well beyond the criminal justice system.

Take New Jersey, for example, where the incarcerated population has been dropping due to the reforms outlined in the ACLU's written testimony, yet racial disparities have persisted. In 1999, 30,263 people were under the control of the New Jersey Department of Corrections, and 34

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[64] ACLU Marijuana Arrests Report *supra* note 62, at 17-21.

[65] Racial disparities also exist when looking at DEA arrests for powder and crack cocaine. For powder cocaine, 60 percent of those arrested are Latino, 25.4 percent are Black, and 13.8 percent are White. For crack cocaine, 10.7 percent are Latino, 80.4 percent are Black, and just 8.3 percent are White.

[66] For example, a 2013 study commissioned by the Drug Policy Alliance found that Blacks and Latinos comprised 71 percent of the jail population in New Jersey and that nearly three-fourths of the jail population were held pretrial. More than 5,000 of the jail inmates, or 38.5 percent of the total population, had an option to post bail but were held in custody solely because of their inability to pay. Twelve percent were held because they could not pay bail amounts of $2,500 or less. The average pretrial detainee was held for 314 days. Marie Van Nostrand, Drug Policy Alliance, *New Jersey Jail Population Analysis* (March 2013), *available at* http://www.drugpolicy.org/sites/default/files/New_Jersey_Jail_Population_Analysis_March_2013.pdf.

percent were there for drug-related charges.[67] Sixty-four percent were Black, 17 percent were White, and 18 percent were Latino.[68]

By 2015, the state's prison population had dropped by 29 percent to 21,486, with 18 percent of the inmate population in correctional facilities for drug-related charges.[69] A primary reason for the drop in the incarcerated population was changes to the state's mandatory minimum laws. Yet the racial disparities persisted, remaining almost identical. In 2015, 61 percent of individuals incarcerated are Black, 22 percent are White, and 16 percent are Latino.[70]

Looking at arrests practices in the nation's largest city, New York City, reveals similar results. The number of marijuana arrests has decreased dramatically under Mayor Bill de Blasio as compared to the period under former Mayor Michael Bloomberg. This came in response to a policy decision made by the de Blasio administration to issue summonses rather than arrest individuals for marijuana possession in New York City,[71] essentially implementing the 1977 New York State law that decriminalized possession of marijuana for personal use.[72]

Under the new policy, arrests for marijuana possession plunged by 58 percent from January 2015 through March 2015 when compared to the same months in the previous year; 2,960 arrests compared to 7,110.[73] But the racial disparities persisted. Black New Yorkers represented 50 percent of marijuana arrests during the first quarter of 2015, while Latinos represented 38 percent, accounting for a combined 89 percent of all marijuana arrests in New York City.[74] White New Yorkers represented 8 percent of marijuana arrests during this period.[75] Compare this to the period before the reduction in marijuana arrests, and it is not all that different. In the first quarter of 2014, 47 percent of marijuana arrestees were Black, 39 percent were Latino, and 9 percent were White.[76]

The reforms we discussed at the hearing will help reduce the prison population and end some of the harshest prison practices. And inherently this will mean that Blacks and Latinos will benefit most from these changes. But unfortunately, the racial disparities will likely continue until there are broader reforms. This includes changes to law enforcement practices in communities of color and implementation of strategies that do not rely almost entirely on arrest and prosecution as a way to keep communities safe.[77] But it will also need to include reforms that address the other

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[67] New Jersey Department of Corrections, *Offender Characteristics Report* (January 11, 1999), *available at* https://mobile.njstatelib.org/xmlui/bitstream/handle/10929/19084/Corrections_Offender_Characteristics_1999.pdf.
[68] *Id.*
[69] N. J. Dep't of Corrections, *Offender Characteristics Report* (Jan. 2, 2015), *available at* http://www.state.nj.us/corrections/pdf/offender_statistics/2015/Entire%20Offender%20Characteristics%202015.pdf
[70] *Id.*
[71] Press Release, City of New York, "Reactions to Mayor de Blasio, Commissioner Bratton's Announcement of Policy Change to Reduce Marijuana Possession Arrests, (Nov. 10, 2014), *available at* http://www1.nyc.gov/office-of-the-mayor/news/509-14/reactions-mayor-de-blasio-commissioner-bratton-s-announcement-policy-change-reduce.
[72] Marihuana Reform Act of 1977, Public Law 360, 1977-1978.
[73] Victoria Bekimpis, *Whites Just 8% of New York City's Marijuana Arrests* Newsweek, June 12, 2015, *available at* http://www.newsweek.com/how-do-misdemeanor-marijuana-arrests-affect-violent-crime-341145.
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] Independent and strong civilian oversight of the police is also a key reform needed to end policing practices that

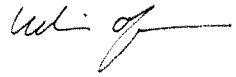
factors that are outside the criminal justice arena, such as better economic, educational, housing, health care and employment opportunities, as well as greater access to social services.

One reform pending before the Senate that does create an important vehicle to tackle racial disparities in the criminal justice system is the End Racial Profiling Act of 2015 (S.1056), which was introduced by Senator Benjamin Cardin and co-sponsored by Senator Baldwin and 17 of her colleagues. The legislation would prohibit any law enforcement agency from engaging in racial profiling; create a private right of action for disparate impact claims related to racial disparities in the criminal justice system; and would require law enforcement agencies to maintain policies and procedures to eliminate racial profiling. Moreover, it would allow for the collection of data relating to racial profiling and the development of best practices. We encourage Senators to support this legislation as a means to addressing racial disparities in the nation's criminal justice system.

Finally, for a comprehensive list of recommendations to reduce racial disparities in the criminal justice system, ranging from law enforcement, pretrial and prosecutorial practices, to jail, prison, parole and probation policies, we recommend reviewing the 2008 report and manual compiled by the Sentencing Project that includes a long list of reform items for both practitioners and policymakers: http://www.sentencingproject.org/detail/publication.cfm?publication_id=194.

Thank you again for your commitment to reforming our nation's troubled criminal justice system. We look forward to working together to creating a system that is smart, fair, effective, and humane.

Sincerely,



Udi Ofer
Executive Director
ACLU of New Jersey

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contribute to racial disparities in the criminal justice system. Newark, New Jersey's s recently created civilian police review board provides a good model. *See* Heather Haddon, *Newark Unveils Civilian Police-Review Board*, Wall St. J., April 30, 2015, *available at* http://www.wsj.com/articles/newark-unveils-new-civilian-police-review-board-1430421423.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 20, 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of Charles E. Samuels, Jr., Director of the Federal Bureau of Prisons, on August 4, 2015, before the Senate Committee on Homeland Security and Governmental Affairs, at a hearing entitled, "Oversight of the Bureau of Prisons: First-Hand Accounts of Challenges Facing the Federal Prison System." We hope that this information is of assistance to the Committee.

Please do not hesitate to contact this office if we may be of additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

Peter J. Kadzik
Assistant Attorney General

Enclosure

cc: The Honorable Thomas R. Carper
Ranking Member

Questions for the Record
Charles E. Samuels, Jr.
Director, Federal Bureau of Prisons
U.S. Department of Justice
Before the Committee on Homeland Security and Governmental Affairs
United States Senate
"Oversight of the Bureau of Prisons: First-Hand Accounts of Challenges Facing the Federal Prison System"
August 4, 2015

Questions Posed by Senator Tammy Baldwin

1. **According to an October 2014 Department of Justice Inspector General report on the implementation of the Prison Rape Elimination Act of 2003 (PREA), DOJ needs to make improvements in its mechanism for overseeing PREA compliance by DOJ law enforcement components that investigate sexual abuse in confinement settings. The IG also acknowledged several potential issues regarding PREA audits at BOP institutions, including "likely difficulties implementing the cross-gender patdown standard, challenges locating outside organizations capable of providing sexual assault support services at BOP institutions, and inconsistencies among independent PREA auditors' preliminary assessments of BOP institutions." Can you please explain what actions have been taken to ensure that sexual abuse allegations are being properly investigated? Can you also explain any additional efforts the Bureau is taking to comply with PREA standards, particularly with regard to vulnerable populations, including LGBT inmates?**

Response:

The Bureau of Prisons (BOP) has always taken allegations of sexual abuse very seriously even before the passage of the Prison Rape Elimination Act (PREA). The majority of the PREA statutory and regulatory requirements, including the focus on training, detection, prevention, and response, reflect longstanding priorities of BOP in this area. Following enactment of PREA we modified, and in some cases enhanced, our policies and provided training to our staff to ensure they understood the procedures and are appropriately sensitized to the importance of this issue. To ensure sexual abuse allegations are properly investigated, we require all staff assigned to the Special Investigations Offices to complete annual training offered by the National Institute of Corrections entitled, "Prison Rape Elimination Act (PREA): Investigating Sexual Abuse in a Confinement Setting." Additionally, training specific to PREA has been added to new investigative staff training. In addition, BOP's computerized database has been modified to ensure a Report of Sexual Assault is completed on all sexual assault incidents. This information is monitored at the institution, as well as at BOP Regional Offices and Headquarters. Finally, to ensure sexual assault investigations are completed accurately and in a timely manner, staff at

BOP headquarters track the progress of sexual assault allegations via the computerized database and provide guidance to field investigators when needed.

BOP has taken steps to address the challenges associated with locating outside organizations capable of providing sexual assault services at institutions. In November 2014, BOP met with representatives from the Office of Violence Against Women, the Department of Homeland Security, and national sexual assault victim advocacy organizations. The purpose of the meeting was for the participants to learn more about each other's roles and responsibilities in responding to sexual assault in federal correctional facilities. Following this interaction, BOP revised it's Gratuitous Services Agreement template to better comport with the needs of sexual assault victims as outlined by advocacy organizations. Since that time, BOP has participated in several meetings with these sexual assault victim advocacy organizations, and recently provided these organizations with a point of contact for BOP facilities that are still seeking partnerships with a community-based provider.

To monitor compliance with PREA standards, BOP institutions undergo audits every three years. The first audit was conducted in August 2013; to date, 71 federal institutions have been audited. Sixty-four audit reports have been issued with 100% compliance, and those reports are publicly posted on BOP's website, www.bop.gov. The remaining seven audit reports are either not yet complete or under appeal with the PREA Management Office at the Department of Justice to determine compliance. Once those reports are finalized, they will also be posted to BOP's public website.

Additionally, the National PREA Coordinator meets quarterly with internal auditors from BOP's Program Review Division to review any PREA-related findings in the past quarter's audits. Regional and National Administrators from disciplines involved in PREA compliance review these findings, and corrective action plans are developed when needed.

To ensure BOP is addressing the concerns of Lesbian, Gay, Bisexual, Transgender, and Intersex inmates, we have hosted meetings with stakeholder and advocacy groups, such as the American Civil Liberties Union, to understand any PREA-related concerns. Additionally, management officials have worked in partnership with union leaders to successfully develop and implement updated agency policy in compliance with the cross-gender patdown standard, to include the proper methods of searching transgender inmates.

2. **According to a May 2015 Department of Justice Inspector General report on BOP's aging inmate population, older inmates often experience significant delays in receiving medical care, such as seeing a cardiology or urology specialist. The report also found that the physical infrastructure at BOP facilities does not adequately accommodate aging inmates. The IG made eight recommendations to improve the BOP's management of its aging inmate population. These recommendations include developing programs to address the needs of aging inmates during their incarceration and as they prepare for release, and studying the impact of the aging**

inmate population on infrastructure. Can you please explain the Bureau's progress and plans to address these recommendations? Is there anything you need from Congress to ensure that older inmates are able to receive healthcare and other services while incarcerated?

Response:

BOP has assembled a task force to address the findings of the recent Office of Inspector General audit. The task force is examining infrastructure options for aging offenders, to include the creation of specialized housing units or institutions targeted to serve the needs of this population. In consultation with the Administration on Aging, the task force is identifying enhanced programming targeted toward the specific needs of aging inmates within BOP's population. We are also developing new guidelines for inmate companion programs and a training course for all staff to assist them in better serving this population. Finally, the President's Budget Request for Fiscal Year 2016 included funds to expand the number of BOP social workers. This expansion would allow us to provide enhanced reentry services for aging offenders.