

**OVERSIGHT OF THE BUREAU OF PRISONS
AND COST-EFFECTIVE STRATEGIES
FOR REDUCING RECIDIVISM**

HEARING

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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CONTENTS

November 6, 2013, 10:03 A.M.

STATEMENTS OF COMMITTEE MEMBERS

	Page
Blumenthal, Hon. Richard, a U.S. Senator from the State of Connecticut	6
Grassley, Hon. Chuck, a U.S. Senator from the State of Iowa	4
Hirono, Hon. Mazie, a U.S. Senator from the State of Hawaii	7
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont	3
prepared statement	102
Sessions, Hon. Jeff, a U.S. Senator from the State of Alabama	5
Whitehouse, Hon. Sheldon, a U.S. Senator from the State of Rhode Island	1
prepared statement	104

WITNESSES

Witness List	39
DeLisi, Matt, Ph.D., Professor and Coordinator, Criminal Justice Studies, Iowa State University, Ames, Iowa	21
prepared statement	84
La Vigne, Nancy G., Ph.D., Director, Justice Policy Center, The Urban Institute, Washington, DC	28
prepared statement	69
Samuels, Charles E., Jr., Director, Federal Bureau of Prisons, Washington, DC	7
prepared statement	40
Sedgwick, Jeffrey, Ph.D., Managing Partner and Co-Founder, Keswick Advisors, Richmond, Virginia	30
prepared statement	95
Tilley, Hon. John, Chair, House Judiciary Committee, Kentucky House of Representatives, Hopkinsville, Kentucky	26
prepared statement	53
Wetzel, John E., Secretary, Pennsylvania Department of Corrections, Harrisburg, Pennsylvania	24
prepared statement	49

QUESTIONS

Questions submitted to Matt DeLisi, Ph.D., by Senator Grassley	111
Questions submitted to Nancy G. La Vigne, Ph.D., by:	
Senator Blumenthal	108
Senator Grassley	112
Senator Whitehouse	123
Questions submitted to Charles E. Samuels, Jr., by:	
Joint questions submitted by Senators Blumenthal and Leahy	116
Senator Franken	109
Senator Grassley	113
Follow-up questions submitted by Senator Leahy	119
Senator Sessions	122
Questions submitted to Jeffrey Sedgwick, Ph.D., by Senator Grassley	114
Questions submitted to Hon. John Tilley by Senator Whitehouse	124
Questions submitted to John E. Wetzel by:	
Senator Grassley	115
Senator Whitehouse	125

IV

ANSWERS

	Page
Responses of Matt DeLisi, Ph.D., to questions submitted by Senator Grassley	126
Responses of Nancy G. La Vigne, Ph.D., to questions submitted by:	
Senator Blumenthal	132
Senator Grassley	134
Senator Whitehouse	128
[Note: At the time of printing, after several attempts to obtain responses to the written questions, the Committee had not received any communication from Charles E. Samuels, Jr.]	
Responses of Jeffrey Sedgwick, Ph.D., to questions submitted by Senator Grassley	136
Responses of Hon. John Tilley to questions submitted by Senator Whitehouse	142
Responses of John E. Wetzel to questions submitted by:	
Senator Grassley	141
Senator Whitehouse	140

MISCELLANEOUS SUBMISSIONS FOR THE RECORD

American Civil Liberties Union (ACLU), Washington, DC, statement	158
Arthur Liman Public Interest Program, Yale Law School, New Haven, Connecticut, statement	145
Families Against Mandatory Minimums (FAMM), Washington, DC, statement	178
National Disability Rights Network (NDRN), Washington, DC, statement	155
Tierney, John, <i>The New York Times</i> , "For Lesser Crimes, Rethinking Life Behind Bars," December 11, 2012, article	182
Wall, A.T., "Rhode Island Halts Growth in the Inmate Population While Increasing Public Safety," article	173

**OVERSIGHT OF THE BUREAU OF PRISONS
AND COST-EFFECTIVE STRATEGIES
FOR REDUCING RECIDIVISM**

WEDNESDAY, NOVEMBER 6, 2013

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m., in Room SD-226, Dirksen Senate Office Building, Hon. Sheldon Whitehouse, presiding.

Present: Senators Whitehouse, Leahy, Durbin, Klobuchar, Blumenthal, Hirono, Grassley, Sessions, and Lee.

**OPENING STATEMENT OF HON. SHELDON WHITEHOUSE,
A U.S. SENATOR FROM THE STATE OF RHODE ISLAND**

Senator WHITEHOUSE. The hearing will come to order. I am very grateful that the Chairman of the Judiciary Committee has joined us, Chairman Leahy, as well as Senator Durbin of Illinois and Senator Blumenthal of Connecticut. I am sure others will join us. Senator Grassley will be joining us very shortly, but he has important business in the Finance Committee right down the hall, so he will be along as soon as he has cleared that.

Welcome, everybody. Today's hearing is "Oversight of the Bureau of Prisons and Cost-Effective Strategies for Reducing Recidivism." We will be exercising our legislative responsibility to conduct oversight of the Bureau of Prisons, but perhaps more importantly, we will be exploring with Director Charles Samuels and with the second panel of witnesses what can be done to improve our Federal corrections system so that we better protect the public while reducing costs. This is an area that has attracted broad and bipartisan interest within our Committee, and I think there is real reason for optimism about being able to legislate effectively in this area.

Continued growth in Federal spending on prisons and detention poses a significant threat to all other Federal law enforcement activities. During the last fiscal year, the costs of detaining Federal inmates ate up more than 30 percent of the Justice Department's budget. Since 2000, costs associated with Federal prisons and detention have doubled. If nothing is done, these costs will continue to consume an ever larger share of the Department's budget, squeezing out other activities.

While spending on Federal prisons has continued to grow, the system nevertheless remains dangerously over capacity. The inmate-to-staff ratio in our Federal prisons has increased significantly over the past decade, and each year we ask the men and women who guard our prisons—who walk the toughest beat in the

State, as we say in Rhode Island—to do more with less. If we let these trends continue, we will be putting these brave men and women at serious and unnecessary risk.

Fortunately, States across the country have shown that it is possible to rein in corrections costs while improving public safety and reducing recidivism.

My home State of Rhode Island enjoys the leadership of A.T. Wall, the Director of our Department of Corrections and the dean of corrections directors around the country. With his leadership, we enacted a package of reforms that increased recidivism reduction programming, focused greater attention on high-risk offenders, and expanded investments in successful community reentry. As a result of these reforms, our State's prison population declined for the first time in years.

Other States have had similar successes. Today we will hear from witnesses from Pennsylvania and Kentucky who helped lead their States in enacting and implementing significant reforms of their corrections systems that cut costs while better protecting the public.

These examples—and others from around the country—show that it is time for the Federal Government to learn from these States.

As a former State and Federal prosecutor, I recognize that there are no easy solutions to this problem. Inmates in our Federal prisons are there because they have committed serious offenses and because the law enforcement officers across their country did their jobs in seeing that they were arrested and prosecuted. And we must never try to save money at the expense of public safety.

But what the States have shown us is that it is possible to cut prison costs while making the public safer—if we are willing to be guided by what works.

To achieve this goal, we must be willing to look at all aspects of our sentencing and corrections system:

We should be willing to reevaluate mandatory minimum sentences, an area in which Chairman Leahy and Senator Paul and Senator Durbin and Senator Lee have begun important work together.

We should be willing to explore whether the Federal Sentencing Guidelines are still working effectively nearly 30 years after they were first enacted.

We should ask whether we are doing enough to provide drug and alcohol treatment for those inmates who need it and whether we are collecting accurate information about substance abuse and addiction from the pre-sentence report right through the criminal justice process.

We should ask whether there is more to be done to prepare inmates for reentering their communities and more to help the communities with their reentry. In Rhode Island, under the leadership of Director Wall, we passed reforms that allowed inmates to earn credit toward their sentences if they were willing to participate in programs that meaningfully reduced their criminal risk factors.

And finally, we should ask if we can do a better job of supervising ex-offenders after they are released. Many States, led by Senator Hirono's home State of Hawaii's example, the HOPE pro-

gram, have implemented parole systems that impose “swift and certain” sanctions for violations of the terms of supervision, with very promising results so far. So from the pre-sentence report through post-release supervision, there is room for improvement.

Let me conclude with one point that I think is not debatable, and that is that doing nothing about this problem is no longer an option. If we do nothing, we are choosing to let the corrections budget take away from the FBI’s ability to disrupt terrorist groups. If we do nothing, we are allowing the cost of corrections to prevent us from stopping the next generation of cyber threats. We would be choosing to spend less enforcing the Violence Against Women Act. We would be choosing to give less to our partners in State and local law enforcement agencies.

Those are not choices my colleagues wish to make. Those are not smart choices. So I look forward to hearing from Director Samuels and today’s other witnesses and to working with the Members of this Committee to address this critical issue.

I now recognize our Chairman, Patrick Leahy. Thank you, sir.

**OPENING STATEMENT OF HON. PATRICK J. LEAHY,
A U.S. SENATOR FROM THE STATE OF VERMONT**

Chairman LEAHY. Thank you, and thank you, Chairman Whitehouse. I will be brief. I will put my full statement in the record because I agree so much with what Senator Whitehouse has just said.

This is the second hearing this fall in which we have turned our attention to the unsustainable growth in the Federal prison population, with a 700-percent increase, I believe, in the last 30 years. And that means the Bureau of Prisons’ budget takes more and more of the resources from the Department of Justice. We are losing prosecutors. We are losing agents necessary to investigate and charge crimes. We are cutting support for critical work with our local and State law enforcement.

I think the main drivers of this prison growth are front-end sentencing laws that were enacted by us in Congress, like the proliferation of mandatory minimum sentences. I am hoping that many, including the people who voted for those, are looking at it now in retrospect and realize it was a bad mistake. And I am committed to addressing sentencing reform this year, and I am pleased by the fact that both Republicans and Democrats are joining in that effort. It is a problem that Congress created, but it is also a problem that Congress can fix, and it is high time we do so. And I think public safety demands that we do so.

We can also do such things as change the calculation on good time credit to the 54 days a year which Congress intended instead of the 47 days that BOP actually credits. That is a change that I included in the Second Chance Reauthorization Act, and I believe, Senator Whitehouse, you are going to be doing that in some of your legislation.

I want to find out what is being done on programs to reduce recidivism. I know it is an interest shared by Members of this Committee—Senators Whitehouse, Senator Cornyn, and others. More than 90 percent of Federal inmates are going to be released at

some time back to our communities. What chance do they have to make it in the community when they are released?

Last, and one of the main reasons I also wanted to be here, is, Director Samuels, just to say publicly to you, I want to thank you for the prompt attention to concerns that I have raised and Senator Blumenthal and others have raised regarding the proposed closing of the only secure facility for female inmates in the Northeast. I understand you have taken those concerns to heart, and I want to thank you for that. I know that people in my State of Vermont thank you, and Senator Blumenthal, who has raised this question, certainly will.

So I will put my full statement in the record. As I told Senator Whitehouse, I am supposed to be at another hearing, but thank you for doing this. It is a subject we have to talk about—and, Director Samuels, thank you for your service.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Senator WHITEHOUSE. Thank you very much, Chairman Leahy. I now turn to our distinguished Ranking Member, Senator Grassley.

**OPENING STATEMENT OF HON. CHUCK GRASSLEY,
A U.S. SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. I always welcome the opportunity to have oversight of the Justice Department. It is a very important function of this Committee, and the Bureau of Prisons, of course, is a large component of the Department's budget. And, of course, the Bureau's work is very, very important.

We all know with the budget deficits we have that the Federal Government spends too much money, so it is nice to have this administration find some places to save money. But the Bureau of Prisons is one of the few places where they are trying to do that.

We should be very careful about any action we take in changing sentencing laws, whether based on cost or other concerns. It is hard to think of another example of a more successful domestic policy accomplishment over the past 30 years than the reduction of crime rates that we have had. This policy was achieved through multiple policy changes: policing techniques, prison construction, longer sentences, and many others that I will not name.

Crime rates are now at their lowest level in 50 years. Many people have earned the right to be proud of these results. At the same time, we must remember that these were hard-won gains, and I am concerned that we are hearing many of the same kind of voices that headed us toward greater crime starting back in the 1960s.

For instance, we hear that prisoners should have their sentences retroactively reduced. We heard that mandatory minimum sentences should be eliminated, that we should no longer have truth in sentencing, that fewer drug prosecutions should be pursued, that all of these proposals would save money and not raise crime. Obviously I am skeptical. Reducing prison sentences will bring prisoners out in the streets sooner. The deterrent effect of imprisonment would be reduced. Many so-called nonviolent drug offenders happen to have violent records. Some of these released offenders will commit additional crimes. Somehow cost analyses of the Bu-

reau of Prisons do not include costs to victims, including injuries, economic losses, psychological and emotional harms.

One organization represented here today notes that most prison costs are fixed, and the real costs of adding or subtracting an inmate is closer to \$10,000 than the \$25,000 figure that is often used. That changes the calculus as well. The cries for increased judicial discretion are actually—cover language for leniency, and too many judges are already too lenient. They can do serious damage.

I note here the Second Circuit's unanimous ruling last week that a district judge had violated judicial ethics in her zeal to issue rulings against successful crime reduction practices that led to increased imprisonment. Rather than contemplate her rebuke for multiple actions and changing course away from the apparent bias, I regret that this district judge quickly issued a press release statement contending that she had done nothing wrong.

Of course, we welcome State officials who will testify today. We can always consider what States are doing, but State and Federal offenders often have committed different kinds of crimes. What works in one context may not work in the other. We also need to proceed with caution because as States are letting more prisoners out earlier, crime rates are rising.

It is too early to fully establish the causes of this increase in crime, but the Bureau of Justice Statistics just announced that property and violent crime rates rose significantly in 2012. The violent crime rate rose from 22.6 victimizations per 1,000 in 2011 to 26.1 in 2012. The rate of property crimes rose 10 percent in 1 year.

Funds are not unlimited. I would be willing to examine some balanced mix of sentencing reforms. It is well worth considering releasing very sick prisoners or prisoners of such advanced age or other situations as to be assessed as a very low risk to commit new crimes. But leniency for the sake of leniency is ill advised. It is an especially bad idea as crime rates are rising, as we see in the last couple years.

I look forward to today's hearing. Thank you.

Senator WHITEHOUSE. Thank you, Senator Grassley.

Senator Durbin, would you like to make an opening statement?
Senator Sessions.

**OPENING STATEMENT OF HON. JEFF SESSIONS,
A U.S. SENATOR FROM THE STATE OF ALABAMA**

Senator SESSIONS. Mr. Chairman, thank you, and this is an important subject. Mr. Samuels and I have talked before. I believe in terms of cost we spend too much per prisoner in the Federal system. It is more than 2 times what the average States are probably spending on their prisons, number one.

Number two, we have had an increase in violent crime rates, and my sense is with the budget difficulties the last 3 or 4 years, States where maybe 90 percent of the prisoners are confronted by the criminal justice system are softening their punishments, and the Federal Government sort of sets the standard and leads sometimes in those issues.

Senator Durbin and I did work together on legislation to ease some of the sentences for crack and other penalties, really, so I think we took a step in the right direction. But Senator Grassley

is correct. We have seen a substantial increase in crime, 15 percent violent crime last year, and the fact is that long-term sustained reduction in crime in America from the consistent violent times of the 1970s when I was a young prosecutor to half that today. The murder rate is half what it was. A lot of that is driven by the fact that there are not that many people who commit murders. Not that many people commit rapes. And the more of those who are in jail, the fewer murders and rapes you are going to have. That is just fact. And people do not need to go back to the time when we do not think realistically about the value of prison in terms of reducing crime.

And with regard to recidivism, Mr. Chairman, I think some programs work better than others, but anybody that knows anything about the criminal justice system over a long period of time knows there is no cure, no plan yet ever devised, but someone always has something they say will change the course of criminal history, but it has not happened yet, and we have tried thousands of different programs.

So we have got to be modest achievement in reducing recidivism; 10, 15 percent is worthy of us giving great consideration to. But these ideas and promotions that we are going to have 50 percent or 60 percent reduction in crime, you are going to have to prove it to me, because I have been watching this for over 30 years, and it is not happening in any program I have seen. If it would, I am for it.

Thank you, Mr. Chairman.

Senator WHITEHOUSE. I appreciate it, Senator Sessions.

Senator KLOBUCHAR, do you care to make an opening statement?

Senator KLOBUCHAR. No. I am actually looking very forward to hearing our witness, so thank you.

Senator WHITEHOUSE. Senator Lee. Senator Blumenthal.

**OPENING STATEMENT OF HON. RICHARD BLUMENTHAL,
A U.S. SENATOR FROM THE STATE OF CONNECTICUT**

Senator BLUMENTHAL. Just to thank you, Mr. Chairman, for having this hearing, and to respond briefly to the remarks made by the Senator from Alabama. Between the two of us, I think perhaps we have close to 70 years in the justice system, and I want to agree with him that in an ideal world we would, first of all, have no crime; but, second, treat criminals without regard to the dollar cost. But there are very severe dollar costs to incarceration. In fact, the cost of incarcerating an individual is now in excess of what it costs to send a young person to college in many universities across the country, and I would just point out that many States are taking very innovative and important steps toward reducing their prison populations in part because of wiser incarceration policies. And I hope we can explore some of those policies with the Bureau of Prisons here so that we keep dangerous people in prison, the ones who are likely to recommit serious and harmful crimes, physically dangerous people, and at the same time work to rehabilitate them. And I am going to be focused on the recent decision of the Federal correctional institution at Danbury, which unfortunately a number of us had to stop, which would have resulted in transfers of women prisoners away from their families, which in my view is bad prison

policy. No matter how long people are kept in prison, they should be nearer to their children, especially if they are mothers of those children, and nearer to their families. And I am glad that we were able to prevail with the help of the Attorney General in changing that decision. I want to thank the Director of the Bureau of Prisons for his wisdom in doing so, and I look forward to asking him questions about other prisons and other prisoners and what can be done to keep them nearer to their persons, whether they are women or men.

Thank you, Mr. Chairman.

Senator WHITEHOUSE. Thank you.

Senator Hirono, do you care to make an opening statement?

**OPENING STATEMENT OF HON. MAZIE HIRONO,
A U.S. SENATOR FROM THE STATE OF HAWAII**

Senator HIRONO. Very briefly, Mr. Chairman. Prison overcrowding is a huge issue at both the Federal and State level, so thank you for this hearing. And I will be very interested in hearing from our witnesses what we can do regarding the front end that has to do with sentencing and at the back end, because the recidivism is another major issue, so front-end and back-end issues relating to prison overcrowding.

Thank you.

Senator WHITEHOUSE. Thank you.

Mr. Samuels, would you stand to be sworn? Do you affirm that the testimony you are about to give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SAMUELS. I do.

Senator WHITEHOUSE. Thank you and welcome.

Charles E. Samuels, Jr., is our Director of the Federal Bureau of Prisons, a position he has held since December 2011. As Director, he is responsible for the oversight and management of all Federal Bureau of Prisons institutions and for the safety and security of thousands of inmates under the agency's jurisdiction. Prior to his appointment, he served as the Assistant Director of the Correctional Programs Division, where he oversaw all inmate management and program functions, including intelligence and counterterrorism initiatives, case management, community corrections, mental health, and religious services. Director Samuels began his career at the Bureau of Prisons as a corrections officer in 1988. We are pleased to have him.

Please proceed, Director Samuels.

**STATEMENT OF CHARLES E. SAMUELS, JR., DIRECTOR,
FEDERAL BUREAU OF PRISONS, WASHINGTON, DC**

Mr. SAMUELS. Good morning, Chairman Whitehouse, Ranking Member Grassley, and Members of the Committee. I am pleased to appear before you today to discuss the Federal Bureau of Prisons.

I cannot begin without acknowledging that this past February, the Bureau suffered tragic losses with the murders of two of our staff. Officer Eric Williams, from the United States Penitentiary in Canaan, Pennsylvania, was stabbed to death by an inmate while working in a housing unit. Lieutenant Osvaldo Albarati was shot

and killed while driving home from the Metropolitan Detention Center in Guaynabo, Puerto Rico. We will always honor the memories of these two law enforcement officers, and their loss underscores the dangers the Bureau staff face on a daily basis.

I know we all share a commitment to our Nation's criminal justice system. We are proud of the role we play in supporting the Department of Justice public safety efforts. But we understand that incarceration is only one aspect of the overall mission. I am sure you share my concerns about the increasing costs associated with operating the Nation's largest correctional system. Those costs make up one-quarter of the DOJ budget. We are optimistic the Attorney General's "Smart on Crime" initiative will reduce the Federal population in the years ahead.

I know that several of you have bills that have the potential to possibly impact the Bureau's population and crowding through sentencing reform and sentence credit incentives. I appreciate your work and your interest in this important topic, and I look forward to working with you going forward.

The Bureau of Prisons is responsible for the incarceration of over 219,000 inmates. Our prisons are crowded, averaging 36 percent more inmates than they were designed to house. We are most concerned about the 52 percent crowding at higher security facilities and 45 percent crowding at medium security facilities. I am grateful for the support Congress recently provided to activate new facilities in Berlin, New Hampshire; Hazelton, West Virginia; Yazoo City, Mississippi; and Aliceville, Alabama. When fully activated, these facilities will assist with reducing overall crowding rates by about 4 percent.

I know you have expressed a great deal of interest in the mission change at FCI Danbury. This change will decrease crowding from 48 percent to 23 percent in low-security female facilities and from 38 percent to 36 percent in low-security male facilities, while also bringing many women and men closer to their homes.

Reentry is a critical part of public safety. Our approach in the Bureau of Prisons is that reentry begins on the first day of incarceration. Preparation for release includes treatment, education, job skills training, and more that takes place throughout an inmate's term.

Over the past 20 years, there has been a significant evolution and expansion of our inmate reentry program. Several of our most significant programs are proven to reduce recidivism. Federal Prison Industries, or FPI, is one of our most important programs. FPI participants are 24 percent less likely to recidivate than non-participating inmates. We were recently given new authorities to seek repatriated work and to pursue potential projects under the Prison Industries Enhancement Certification Program for FPI, and we are working diligently to maximize these opportunities.

We currently have more than 450 inmates working on repatriation projects. We agree with many experts that inmates must be triaged to assess risk and to determine appropriate programming to reduce such risk.

High-risk offenders are our first priority for treatment as they pose the greatest public safety risk when released from our custody. The safety of staff, inmates, and the public are our highest

priorities. I have made several recent changes to Bureau operations that will help us enhance safety and security. Let me highlight some recent advantages.

We expanded the availability of pepper spray for our staff to use in emergency situations at all high-security prisons, detention centers, and jails. We have developed plans to add an additional correctional officer to each high-security housing unit during evening and weekend shifts using our existing resources. We have made significant advances in reviewing and reducing our use of restrictive housing, and we are expanding residential drug abuse programming.

The mission of the Bureau of Prisons is challenging, but maintaining high levels of security and ensuring inmates are actively participating in evidence-based reentry programs, we serve and protect society.

Chairman Whitehouse, this concludes my formal statement. I thank the Members of the Committee for your continued support, and I would be happy to answer any questions.

[The prepared statement of Mr. Samuels appears as a submission for the record.]

Senator WHITEHOUSE. Thank you, Director Samuels. You said in your testimony that reentry should begin the first day, reentry planning should begin the first day. What further steps, in addition to what you are already undertaking, do you think would be most helpful for this Committee to consider?

Mr. SAMUELS. Mr. Chairman, I think the next steps for the Committee to consider, as I have stated in written testimony and in my oral statement, we are doing everything possible when inmates enter our system to begin the reentry process, and it is not just something that should start from the initial onset and stop. It needs to continue throughout their entire term of incarceration.

Since 1980, our population has exploded. In 1980, we had approximately 26,400 inmates in our care, 10,000 staff to manage that population, and only 41 institutions at that time. As of to date, as I have indicated, our population is at 219,000. We have approximately 38,000 staff. That is an increase of 830 percent just with the inmate population alone.

Safety and security is very, very important to manage a correctional facility. We are utilizing staff who have been hired to provide programming, in some cases, to provide security, because security is paramount to ensure that you have an environment where you can provide the appropriate programming. And we are on a path of unsustainability, and it is a significant issue that I think everyone needs to be concerned about, because the men and women who work for the Bureau of Prisons, who are dedicated law enforcement officers, are putting their lives on the line every single day.

We believe that reentry is very, very important because it is a significant part of our mission. Our mission is not just to warehouse individuals, but to ensure that we are providing them everything necessary when ultimately they are released. Ninety-five percent of the inmates in our care will at some point in time be released back to communities.

Reentry is also important because for us to manage these individuals, we have to ensure that we are actively ensuring that they

are engaged in programs within the institution, and this is accomplished by our reentry efforts.

I can report that, despite all the challenges we have faced over the last 30 years, we are at a point where 80 percent of the inmates who are released from the Bureau of Prisons do not recidivate within 3 years. And I give credit to the staff who are working under these difficult situations and at the same time ensuring that we are maintaining safe, secure facilities for the American public.

So if any consideration could be given, I think it is looking at the growth that we have no control over. As you all are aware, the Bureau of Prisons, we do not control the number of inmates who enter the system. We have no control over their sentence limit. But what we do have a duty and an obligation to do is to ensure that for those individuals who are ultimately released do not return to prison, because on average about 45,000 inmates are released back into the communities. And with the recidivism issues and concerns, I tell our staff day in and day out that it is up to us to do what we can control and it is making sure we provide effective programs so they do not return.

Senator WHITEHOUSE. Is one of them the Residential Drug Abuse Program? The Residential Drug Abuse Program, do you—tell me a little bit about that and how effective you believe that is and how it fits into the improvement of non-recidivism upon reentry?

Mr. SAMUELS. Yes. The Residential Drug Abuse Program is modeled after our cognitive behavioral therapy model that research has shown, with experts looking at this, that it does reduce recidivism as well as relapse. And so within the Bureau we have been very, very successful with RDAP.

We have taken it a step further. We have used the cognitive behavioral therapy model to place programs throughout the Bureau for other segments of our population. I will give you an example. We have a challenge program that also uses CBT for high-security inmates. We have a BRAVE program that we use for young male inmates. We have a Resolve program that is very beneficial for female offenders who have experienced traumatic incidents within their life. We have the sex offender treatment program, which is also very successful. And for chronically mentally ill inmates, we have a Step-Down program, we have a Stages program that we utilize for individuals who are suffering from paranoid issues, and overall we believe that this is very important. We have to continue to do it. But the challenge is with the resources and focusing on high-risk need offenders, and we have to ensure that that is where we are putting the focus for the efforts that we have put in place.

Senator WHITEHOUSE. Thank you, Director.

Senator Grassley.

Senator GRASSLEY. Thank you, Mr. Samuels, for being here, and thank you, Mr. Chairman. We have testimony before us that 25 percent of the Federal prisoners are foreign citizens. Anyone who is concerned about reducing prison costs should make lowering that number a priority. What can your agency do, the Bureau do more effectively to use the International Prisoner Transfer Program to make more of the foreign citizens serve their sentences in their home countries rather than at U.S. taxpayer expense?

Mr. SAMUELS. Thank you, Senator Grassley, for this question. As you stated, 25 percent of our population comprises non-U.S. citizens. That number equates to 55,000 criminal aliens in our population. And we have a Treaty Transfer Program that we are actively using, and there is room to ensure that we are increasing the numbers as far as the participants for the program. We are reaching out throughout the Bureau to ensure that our staff are explaining this program in its entirety to the inmates who would benefit from being removed from within the Bureau of Prisons and given an opportunity to serve their time through the agreements that we have with the international community where the agreements are in place. And that would, in effect, as you have stated, give us some cost reductions within our population.

Senator GRASSLEY. One way to reduce prison crowding is to build more prisons. Congress has authorized building four additional Federal prisons. At the same time the Federal Government bought a State prison in Thompson, Illinois, and is spending additional money to renovate it. I would like to know the current status of Thompson Prison and what is the amount of the money being spent on it. And then, last, so it is really a three-part question: Is the spending on Thompson slowing down the opening of the four additional prisons that have been authorized and their status?

Mr. SAMUELS. Okay. The current four facilities that we have that are in the activation process, the purchase of the Thompson facility has not in any way impeded our progress in moving forward to activate the facilities that you make reference to. We have the New Hampshire facility as well as the facility at Aliceville, Alabama. We have hired the staff, which we are continuing to hire, and we are also gradually moving forward to build the population for the institutions.

The facilities that are still pending for full activation, which we have the facility at Hazelton, West Virginia, and the penitentiary in Yazoo City, and at this point we are trying to hire, and hopefully, depending on funding that will potentially hopefully be provided in Fiscal Year 2014, we would be put in a situation to determine how soon we can move inmates into the facility for activation.

For the Thompson facility, I can assure you there has always been great need within the Bureau of Prisons for this type of facility. We have not in the Bureau of Prisons brought on any type of high-security ADX beds similar to what we have in ADX Colorado since 1994. If you looked at our population in 1994 compared to where we are today, these beds are premium. We have had to do our best with limited resources to prioritize the inmates that we place at the ADX. So I am looking forward to being able to fully activate the Thompson facility because, as I mentioned, at the high-security level, with crowding within the Bureau of Prisons, we are facing significant challenges that are ultimately putting our staff at risk, putting the inmates at risk, and the community at risk. So we desperately need those beds.

Senator GRASSLEY. Can you submit a figure that is being spent on Thompson Prison in writing?

Mr. SAMUELS. Yes, sir.

Senator GRASSLEY. Thank you.

[The information referred to appears as a submission for the record.]

Senator GRASSLEY. My last question. Twenty-five percent of the Federal prisoners are gang Members. Prisoners can more easily maintain their ties to crime if they are gang Members. That can make prisons more dangerous and make it harder for inmates to avoid committing new crimes when they are released.

What specifically does your agency do to reduce gang Membership in prisons? And is Membership so high because prisoners who did not previously belong to gangs join them after they are in prison?

Mr. SAMUELS. Thank you. Within the Bureau of Prisons, which, as you have acknowledged, we do have a significant number of gang Members, many of these individuals long before entering the prison system have gang affiliation, and this is one of the reasons why the unsustainability for safety and security within our facilities with the large numbers that we are dealing with, we have had to put innovative strategies in place to target these individuals.

We are able to manage and maintain control by using the number of prisons that we have to spread out influence. The Bureau of Prisons for well over 30 years has used a risk assessment tool, and with this assessment tool, we look at criminogenic factors, which being a gang member would fall within static, which is a factor where you cannot change it. And we have dynamic factors that we also weigh in because gang Membership, misconduct, criminal history, these are good predictors of institution misconduct as well as recidivism.

So by targeting and looking at these individuals' history, and particularly those who have gang affiliation, we are doing everything that we can to get these individuals involved in evidence-based programs to ensure that we are trying to at least explore with them alternatives with their criminal thinking to put them on the right path to move away from any belief that they need to belong to a gang, especially within the correctional environment, because it is our responsibility to protect these individuals, and they should not believe for a moment that they should join a gang for any type of safety. And that is why command and control within the prison system is very important to defuse those types of issues.

Senator WHITEHOUSE. Senator Durbin.

Senator GRASSLEY. Mr. Chairman, I have to go down to Finance, and I will come back for the second round.

Senator WHITEHOUSE. Very well.

Senator GRASSLEY. Thank you.

Senator DURBIN. Thank you, Mr. Chairman. Before he leaves, I want to thank Senator Grassley for his shared interest in the Thompson Federal Prison. We both realize that this is going to create good-paying jobs for people living in his home State of Iowa and my home State of Illinois, and, as you said, is going to lessen the overcrowding and provide critical beds that are necessary for the protection of the men and women of your Bureau who work so hard. And I thank Senator Grassley for those questions. I thought that he took away some of my thunder here on that Thompson Prison.

Director Samuels, it has been a little over a year, maybe a year and a few months, since we had a hearing that you attended in this room relative to solitary confinement segregation and the impact it has on people serving time in prison. We had many witnesses before us, including a man who had spent more than 10 years on death row in isolation in Texas. He came to testify before us. I will never forget his testimony as long as I live. It was heart-breaking, and it reflected the fact that many of the people in segregation in an isolation situation 23 hours a day in a cell, 1 hour by themselves outside, ultimately many of them will come out of that prison, and the question is: What is left of them after they have gone through that life experience?

We had testimony at that hearing from the Director of Corrections from the State of Mississippi, and he talked about an assessment Mississippi had done after suicides in these circumstances in which they concluded they were wasting money with more and more isolation and segregation. And Mississippi, the Director of Corrections there, really was a leader in saying we are going to change this. We can save money, we can keep everyone safe in a prison, and we can avoid these terrible outcomes, the mental degradation of people who are faced with isolation and segregation.

I asked you at the time whether you believe that putting people in segregation or separate facilities had any ultimate impact on their mental health, and you demurred, as we say in law school, from answering. I would have said yes, clearly yes, but you demurred. But to your credit, you said, "I will look at this situation for the Federal Bureau of Prisons."

So now I would like to ask you two things. What have you done in over a year? And, number two, what can we look forward to? Is there a way for us to save money, not degrade the mental condition of those who are put in isolation, and still protect the men and women who serve in the Bureau of Prisons?

Mr. SAMUELS. Thank you, Senator Durbin, and I do want to commend you on taking the lead on this very, very important issue. When I attended the hearing in June 2012, it was a very significant issue for the Bureau, and I would also say for this Nation, because I have had many conversations with my peers in the field of corrections, directors and secretaries, relative to this issue.

Since the hearing at the time, there were well over 13,500 individuals in some form of restrictive housing within the Bureau of Prisons, and I can report today that the number is now approximately 9,300-plus. So we have had a significant reduction in that area. And what we have done throughout this agency is put a focus on the issues relative to restrictive housing. I have had many conversations with the senior leaders within this agency, specifically the wardens who are responsible for the day-to-day operations of our prisons, and stressed the fact that we have to be just as aggressive getting individuals out when we put them in restrictive housing, and realizing that we only use it when absolutely necessary, which for the men and women, to include the inmates in our institutions, we always must keep the focus on safety and security.

We have some very dangerous inmates in our system, as I know you are aware, and we have to ensure that we are protecting everyone in the correctional environment. But at the same time, we have

a duty and an obligation, as you have mentioned, to ensure that when we are placing individuals in restrictive housing, that we are maintaining the highest level of quality care relative to their physical as well as mental health.

Senator DURBIN. I am sorry to interrupt you, but I only have a few seconds left, and I would like to ask a question, a pointed question on a different topic. We spend somewhere between \$1.5 million a year to \$2 million for each and every inmate being held at Guantanamo, \$1.5 million plus a year. What is the maximum amount per inmate cost at, say, Florence, Colorado, our highest-security Federal prison?

Mr. SAMUELS. Per inmate?

Senator DURBIN. Per inmate, annual cost.

Mr. SAMUELS. For the complex, it would be equal to approximately \$75 per day, and it varies from facility, but if we look at it specifically for the—

Senator DURBIN. And that is the highest-level maximum security prison in the Bureau of Prisons system?

Mr. SAMUELS. Yes, sir.

Senator DURBIN. Has anyone ever escaped from there?

Mr. SAMUELS. No, sir.

Senator DURBIN. Thank you very much, Director.

Senator WHITEHOUSE. Senator Sessions.

Senator SESSIONS. What is the average cost per inmate in the Federal penitentiary?

Mr. SAMUELS. The average annual cost, \$29,000 a year.

Senator SESSIONS. Alabama would be less than half of that, which is a low-cost State, but a lot of other States are much less. And I think we invest a lot of money because the Federal Government wants to have the highest and best prison system and benefit the prisoners the most we can. But I do think we have to look at that cost figure. Other States are just not costing that much.

With regard to the 25 percent that are foreign born that are in prison, those do not include the people being detained in immigration institutions for deportation. These are individuals who have been tried by a Federal judge for some sort of crime like drugs or assaults of that kind. Is that correct?

Mr. SAMUELS. Yes, sir. We have more than 100,000 individuals in our custody who have been sentenced for drugs, which 77,000 are U.S. citizens and 23,000 criminal aliens.

Senator SESSIONS. I noticed in your numbers I have here that the prison population went up about 2,000 between 2012 and 2013. At least that was the projected increase. That would be about a 1-percent increase, which is below the population increase. So at this point, we are not seeing a surge of prisoners above the normal population increase in the country, are we?

Mr. SAMUELS. Senator Sessions, I am glad that you raised this point. For Fiscal Year 2013, we had a net gain of 611 inmates, and although the number appears to be small compared to recent years where we have been averaging 6,000-plus inmates, you have to realize that at the same time we processed within the Bureau of Prisons well over 70,000 inmates, which these are individuals who have to go through screening for physical and mental health and everything else that it takes to manage that large-scale number of

inmates going into our system. And when you look at the overall trend, even for a 10-year period, we have had a 40-percent increase. So the 611 continues to demonstrate that we are having more and more inmates, and we are not planning at this point to build any new prisons. So 600—

Senator SESSIONS. When you say more and more, it is a net 600 increase, though, right?

Mr. SAMUELS. The net is 611, and even with that number, you are still looking at a third of a prison. So we have to take those 611, and we are put in a situation right now throughout this country where we are triple-bunking.

Senator SESSIONS. I just would say to my colleagues I think there is a decline in Federal and State incarceration rates from the time 1981 when I was made United States Attorney. In the early 1980s, this Congress, Senator Kennedy and Senators Thurmond, Leahy, Biden, Grassley, Hatch did the mandatory sentencing, eliminated parole, had the mandatory sentencing provisions, and it was a revolution in prison and in prosecution. I saw it before and after. States began to follow mandatory sentences. We have seen a decline in murder rates by one-half. People in the 1970s were constantly fearful of their homes being burglarized, being assaulted, their cars broken into, all kinds. And you just have seen this rather substantial improvement.

So all I would say to our colleagues is there is no doubt in my mind that moving from a revolving door where people would come in and they would be given probation and then they would be released on bail for the second, third, and fourth offense and tried another year later, and given probation again, too often this was driving the crime rate.

So we achieved a lot, and that is why I was willing to support and work with Senator Durbin to maybe reduce some of the mandatory sentences, because I think we can be smarter about it. I do not have any doubt we can be smarter about it. But it would be naive and a big error if we were to think we can just walk away from incarcerating dangerous people. You are worried for your guards. You are talking about gangs and your guards. A lot of the people are just dangerous, and we have just got to be real careful about that.

And I think we need to watch the cost. The Federal prison system cannot be the greatest system, most expensive in the whole world—which it is. We just cannot—we have got to look for ways to reduce cost, and we have got to be cautious about adopting the belief that there has been some new recidivism program that is going to solve the recidivism rate. If we can reduce it even a little bit, I am willing to support a good program. But a lot of the programs just have never produced the results we would want them to have. The recidivism rate today is not a lot different than it was in 1980, I do not think. And so we are spending a lot more on it, trying to make it better, and we had a very successful achievement there.

Finally, you and I have talked at Prison Industries. There is no doubt in my mind that people who work in prison prefer it. Prisoners who have work programs are safer, are they not, Mr. Samuels?

Mr. SAMUELS. Yes, sir.

Senator SESSIONS. I think the data shows that clearly. And they probably have a little better recidivist rate. I do not know.

Mr. SAMUELS. They do.

Senator SESSIONS. But we have got to have a breakthrough. More people in prison need to be working. The American people understand this. There have been a lot of attempts, some of them not very smart, to help prisoners work. But I really believe all of us need to look for a way to have more productive work in prisons.

Thank you, Mr. Chairman.

Senator WHITEHOUSE. Thank you, Senator Sessions.

Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Thanks for holding this hearing. I appreciated Senator Sessions' comments about the smart sentencing, and as a former prosecutor, I know how we need to keep dangerous offenders behind bars. My State has one of the lowest incarceration rates in the country, but we also have one of the lowest crime rates. And part of that is triaging these cases and making sure there is some response to low-level offenses, escalating responses. But the length of it can be the matter of dispute, and I think that is part of what we are talking about here.

I came through this, looking at our State, which sometimes people joke we are not just the Land of 10,000 Lakes. We are the Land of 10,000 Treatment Centers. But our focus on going after addiction and some of these things I think has made a difference in the handling of these cases, and in particular drug courts. Drug cases made up about a third of our caseload in the Hennepin County Attorney's Office, which had a population in Hennepin County of over 1 million people, Minneapolis, 45 suburbs, 400 employees. And we really focused a lot on drug courts.

Now, I made some changes when I got in there. I think Senator Sessions would have liked some of them. I took some of the cases out that had guns with them, some of the more violent cases, because I did not think they belonged there. And I think it actually strengthened the drug court and the use of the drug courts.

You know the stats, Director. Three out of every four people who graduate from these programs are not arrested again. Seventy-five percent success rate compared to 30 percent in the traditional system. Saving taxpayers dollars, an average of \$6,000 per person. And I asked Attorney General Holder at our last DOJ oversight hearing about expanding the use of drug courts at the Federal level, and so that is what I wanted to start with, with you, how you see this could work and how we could more effectively lower costs, better rehabilitate offenders, and then also reduce our crime rates like we have seen in our State.

Mr. SAMUELS. Thank you, Senator. I do agree with the drug treatment programs. They do work. We see a lot of benefit just from the behavior that we are quick to witness with the inmates who participate in the programs. Internally within the Bureau, we have the Residential Drug Abuse Program as well as the non-residential, and we also offer drug education in all of our institutions.

As far as a policy issue relative to drug courts, I am not the expert for those types of discussions, and I definitely know that with-

in the Department there are many individuals who are more appropriate to have those discussions on policy issues for the Department that could eventually benefit any reductions, you know, with our population on the front end as well as the back end.

Senator KLOBUCHAR. But you do see it as a way, with now the advent of some Federal drugs courts, of reducing some of the numbers in the prison?

Mr. SAMUELS. I believe the evidence shows that that is very possible.

Senator KLOBUCHAR. Now, you mentioned the Residential Drug Abuse Program and how that has proven effective in reducing recidivism and decreasing institutional misconduct. How many inmates are enrolled in the program? What kind of return on investment do we get?

Mr. SAMUELS. For inmates who participate in the Residential Drug Abuse Program, for every dollar we invest, there is a \$2.60 savings. And the total number of individuals we have participating in residential drug abuse program treatment right now is 16,000 inmates. And we would like to see that number increase, which we, again, as I have stated, know that it is very productive. So our overall plan is to increase the number of programs we have so we can have the maximum number of inmates participating.

Senator KLOBUCHAR. What is your view on awarding inmates good time credits for participating in the intensive recidivism reduction programs or increasing the number of opportunities for inmates to earn these credits through education or vocational programs?

Mr. SAMUELS. The Department as well as the administration have continued to support these legislative proposals. I definitely concur and believe that they are important. When you look at the additional 7 days of good conduct time that can be added to an inmate's credit for time off their sentence—because right now they are receiving 47 days—it is very beneficial to the safety and security of the facility, and it is not where an inmate would be rewarded something for not having good behavior, and it helps us.

For the inmates, we believe we can ultimately get a large number of inmates to participate in evidence-based programs to receive up to 60 days off of their term by participating in more than 180 days within a calendar year, the programs that you mentioned. We believe it is beneficial, and it definitely ultimately helps with public safety, because the majority of these inmates are going to be released, and being exposed to these cognitive behavioral therapy programs only enhances safety.

Senator KLOBUCHAR. Just one last question. In your testimony you acknowledge the tragic deaths of two Federal Bureau of Prisons employees, Officer Eric Williams and Lieutenant Osvaldo Albarati, and I know all of us extend our sympathy to their families. What do you think can be done to improve safety for prison staff while on or off duty?

Mr. SAMUELS. What we need to do to improve safety of our staff, it comes down to a resource issue. We are doing more with less, and the staff are very proud to take on the mission because this is why they have elected to serve this country by working in corrections. But when you are dealing with large numbers on any given

day throughout this country, we have one officer working in our housing units providing oversight for 150-plus inmates. We have recreation specialists who are doing their best to ensure that inmates are actively involved with recreational activities, and you can have in excess of 500 inmates being supervised by one person.

So we are doing everything that we can to put the resources where they need to be, but you can only imagine if there is any type of disturbance within the institutions and you only have a small number of staff to respond, the staff are putting their lives on the line every single day. And this is why the programs are very important, and we believe it is, you know, up to us to do what we can with the limited resources in the capacity that we have to maximize the situation, to put us in the best possible situation to effectively manage our prisons.

Senator KLOBUCHAR. Thank you very much.

Senator WHITEHOUSE. Senator Lee.

Senator LEE. Thank you, Mr. Chairman, and thank you, Mr. Samuels, for joining us today.

As I have expressed many times on previous occasions, in my view the Federal Government has been for decades enacting and subsequently enforcing far too much substantive criminal law. As a result of that, our Federal prison system is overcrowded, and it is extremely costly.

As we have heard today, the Bureau of Prisons consumes a very significant share of the overall budget of the U.S. Department of Justice, using resources that might otherwise be used more effectively in other areas to enhance public safety in the United States.

Although long mandatory minimum sentences for drug offenses do not tell the whole story of the increasing overcrowded Federal prison population, I think they do share a very significant part of the problem of overcrowding, and I think we have to look very closely at our current scheme of mandatory minimum sentences as a result. And I think we have to do that to see whether incremental changes can safely and effectively be made to these sentences to reduce the Federal prison population and to reduce costs while at the same time preserving, if not enhancing, public safety in America.

The legislation that I have cosponsored with Senator Durbin, the Smarter Sentencing Act, S. 1410, would decrease mandatory minimum sentences for certain categories of drug offenders. So my first question for you, Mr. Samuels, is whether this type of legislation, should it succeed, as it is widely expected to do if it were passed, in helping to decrease the Federal prison population over the next few years, over the decade or so following its enactment, what would that do for you? What would that do for the Bureau of Prisons as far as making it easier for you to do your job if we succeeded in reducing the overcrowding problem?

Mr. SAMUELS. Thank you, Senator Lee, and I would start by saying that I agree that reform needs to take place. The specifics of the various bills that are being considered is something that, again, needs to be considered by the appropriate individuals within the Department relative to policy issues.

To your question, what would it do to help the Bureau of Prisons, any reduction within our population that ensures that there is no

threat to public safety obviously helps us effectively run our institutions. And we are not dealing with the competitive issues within the people when you are trying to do as much as you can to stretch resources within the environment, because the increase within the population, which research shows that when you continue to add more and more inmates, the propensity for violence increases, and this puts our staff and the inmates, to include the surrounding communities where our institutions are located, at risk.

Senator LEE. Two of your biggest concerns I would have to imagine would be, one, prison safety, safety within the prison, safety of the prisoners themselves and of your personnel; and also the effectiveness of your programs to minimize recidivism. I would imagine that reducing the overcrowding problem would then have a positive effect on your ability to manage both of those concerns.

Mr. SAMUELS. Yes, sir.

Senator LEE. Good. What programs do you have in place currently to ensure that those released from prison, including those who might be released earlier than they would otherwise be as a result of changes like these, what programs do you have in place to make sure that they do not present a threat to public safety once they are released?

Mr. SAMUELS. As I mentioned earlier, we have numerous cognitive behavioral therapy programs that we have modeled after RDAP because of the research showing that these types of programs are very effective. And we are constantly encouraging inmates to participate in these programs, and we are very successful on many occasions in doing so. But I would share with the Subcommittee here to date that we really need to have some type of incentive to get more of these inmates involved in the programs, and this is why I continue to support, and I believe that the sentencing credits that could be provided, similar to what we have with RDAP—I mean, many of the individuals know that when they participate in RDAP they can get up to a year off their sentence. But at the same time, they are being exposed to the program and they receive the benefit, which ultimately helps them with their transition from prison back into the community. And if we can have an incentive to entice the other inmates within the population who do not have a substance use disorder, then it increases the number of inmates who can be exposed, which over a period of time, when the majority of these individuals are going to be released, this will help public safety.

Senator LEE. Okay. So—

Senator WHITEHOUSE. Senator Hirono.

Senator LEE. Thank you.

Senator HIRONO. Thank you, Mr. Chairman.

You mentioned that the average cost to incarcerate a person in our system is about \$29,000 or almost \$30,000. Is there a difference in average cost in a women's prison facility?

Mr. SAMUELS. For the female facilities, it depends on the number, the mission, but typically the average is going to be the same.

Senator HIRONO. Typically?

Mr. SAMUELS. Yes.

Senator HIRONO. Do the women in these facilities have the same access to the kinds of programs that are available to men in the male facilities?

Mr. SAMUELS. Yes.

Senator HIRONO. There is a growing number of women in our prison population, so you cited some data in your testimony. Does your data reflect differences in recidivism for men and women? And, also, do you have evidence-based programs that work better for men versus women in terms of success and reintegrating into society? I think you talked about one program that is specifically for women, Resolve, but—

Mr. SAMUELS. The Resolve program.

Senator HIRONO. But can you share with me if you do that kind of data collection that distinguishes men and women and how they are treated and what is successful?

Mr. SAMUELS. For the programs that we operate, I mean, we are following typically one model throughout the Bureau. Now, we have not collected any specific data to distinguish between female inmates versus male inmates to identify whether one particular program does not work better based on male or female.

Senator HIRONO. Why is that?

Mr. SAMUELS. Why is that?

Senator HIRONO. Yes. Why do you not have that kind of data? Do you think that there are no differences? Or you just have not done it?

Mr. SAMUELS. I would say for this discussion that there are no differences. But we do not have specific programs specifically targeted for the female inmate population, which this would be consistent with all of corrections, not just within the Federal system. But I would definitely take your question back to have discussions internally with the Bureau to include with my colleagues if there is something that is being done or if you are aware of something specifically for the female inmate population relative to the CBT programs that we provide.

Senator HIRONO. Well, my understanding is that as a general proposition, women are in prison for drug crimes and not violent crimes. So that is a very different profile than dangerous felons in our prison system. So I would ask that you take into consideration those kinds of factors as well as—I think that there may be some programs that will better enable women to reintegrate when they are released than would work for men. And I believe that there are some States who recognize those kinds of factors and plan their programs in a way that reflects that kind of understanding. I think it is very important because, as more and more women, who tend to still be the caregivers for their families, are incarcerated, that has a lot of ramifications to their families, their children, reentry, all of that.

Mr. SAMUELS. And, Senator, I have recently put together a warden's advisory group specifically for the female inmate population to look at what we have done historically and to focus on the types of concerns that you are raising to make sure that if there are any best practices or things that we should consider, that we are moving in a direction to ensure that there is a balance on both sides

so the female inmates within our care are receiving appropriate attention and care relative to the issues that you have raised.

Senator HIRONO. Because my impression is generally that there have been fewer programs for women in our prison system, both in the State level and Federal level, and I understand that your responsibility is on the Federal side.

Thank you very much.

Senator WHITEHOUSE. Thank you, Senator Hirono.

Thank you very much, Director Samuels. We appreciate you being here today, and we appreciate the support for our joint legislative-executive efforts going forward that the Bureau of Prisons is going to continue to show. We will obviously continue to call on you for information and on your staff for expertise, and we look forward to that relationship as we proceed.

You are excused from the Committee. We thank you for your testimony, and I will call up the second panel.

Senator WHITEHOUSE. I welcome our panel.

Professor DeLisi is from Iowa. The Ranking Member represents Iowa, and the Ranking Member has asked that Professor DeLisi testify first so that he has a chance to hear his constituent's testimony before he has to return to his work within the Finance Committee. So, without objection, we will go out of the usual order and begin with Professor DeLisi. But let me first ask all the witnesses to please stand and be sworn. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Professor DELISI. I do.

Mr. WETZEL. I do.

Mr. TILLEY. I do.

Ms. LA VIGNE. I do.

Mr. SEDGWICK. I do.

Senator WHITEHOUSE. Thank you, and please be seated.

Professor DeLisi is a professor and coordinator of criminal justice studies with the Center for the Study of Violence at Iowa State University. He is the editor-in-chief of the Journal of Criminal Justice and the author of nearly 250 scholarly articles. He has received the Fellow Award from the Academy of Criminal Justice Sciences and is a member of the American Association for the Advancement of Science and the Association for Psychological Science. And would you like to make any further recognition of Professor DeLisi or welcome?

Senator GRASSLEY. I guess you have said it all, but I do say welcome to you. Thank you very much.

Senator WHITEHOUSE. Very well. Professor DeLisi, please proceed, and then we will go to Director Wetzel and down the line.

STATEMENT OF MATT DeLISI, PH.D., PROFESSOR AND COORDINATOR, CRIMINAL JUSTICE STUDIES, IOWA STATE UNIVERSITY, AMES, IOWA

Professor DELISI. Thank you very much for this opportunity.

Although reducing the costs of BOP is important, the policy recommendations significantly neglect the antisociality of criminal offenders and the likely recidivism that would result from a large-scale release of BOP inmates. The majority of this testimony at-

tests to the antisociality and behavioral risks denoted by the modal Federal prisoner, with quantitative estimates of additional crimes that could result from the policy recommendations.

The report promulgates the notion that drug offenders are somewhat innocuous and that their antisocial behavior is limited to drug sales and drug use. In fact, criminal offenders, all criminal offenders, tend to be very versatile in their offending behaviors. Thus, a person sentenced for drug crimes is also likely to have property crimes, violent crimes, public order crimes, nuisance crimes, traffic violations, and assorted violations of the criminal justice system. Thus, any discussion of drug offenders should also be understood that they are next week very likely to be property offenders and potentially violent offenders.

Moreover, recent research using a variety of samples has indicated that drug use is one of the prime drivers of overall criminal activity. Meta-analytic research indicates that drug offenders offend at rates approximately 3 to 4 times that of offenders who do not have drug problems. And overall their behavioral repertoires extend far beyond drug offending.

Regarding the safety valves for judicial discretion, current law permits judges to waive mandatory minimum sentencing for a person sentenced for drug offenses with little to no criminal history. Thus, the extant policy is adequate to avoid unnecessary confinement of low-risk offenders. The suggestion to apply the safety valve to all offenders—including those with extensive criminal histories—is not advised. The entire criminal career paradigm demonstrates tremendous continuity in antisocial behavior from childhood to adolescence to adulthood.

As the Director indicated in panel one, 25 percent of BOP inmates are gang Members, and gang Membership is one of the most robust predictors of offending, misconduct while in confinement, and recidivism.

In this way, prison is an important interruption of their criminal careers, but, unfortunately, the preponderance of offenders will continue to commit offenses upon release.

Releasing these types of offenders could likely produce more crime. Research has shown that a one-prisoner reduction in the prison population is associated with a 15 Part I Index crime increase per year. To put this into perspective, releasing 1 percent of the current BOP population would result in approximately 32,850 additional crimes. An independent study by other researchers arrived at the estimate that a one-prisoner reduction increases crime by 17 offenses per year. Thus, to use the same example, releasing 1 percent of the current BOP population would result in 37,230 additional offenses.

The Safety Valve 1 recommendation in the Urban Institute proposal to release 2,000 offenders based on these prior estimate would produce a range of 30,000 to 34,000 new index crimes per year.

In terms of Safety Valve Recommendation 2, the proposal recommends the creation to apply, quoting the report, “beyond drug offenders with minimal criminal histories to drug offenders with more extensive criminal histories, some weapons offenders, armed career criminals, sex abuse offenders, child pornography offenders,

and identity theft offenders.” The release of these offenders with extensive criminal histories could be potentially disastrous to public safety.

Regarding the expanded Incentivize Programming estimates, using, again, the same data, the proposal to potentially release 36,000 inmates over the next 10 years would produce an estimated 540,000 to 612,000 new Index crimes.

The Recommendation 2, to release 12,000 offenders in 1 year, would produce 180,000 to 204,000 new Index crimes.

And proposal number 3 to transfer 34,000 inmates to home confinement could potentially over the next 10 years increase crime by 510,000 to 578,000 offenses.

To wrap things up, the report contains no mention of the various antisocial conditions relating to criminal propensity of Federal offenders. For instance, the prevalence of psychopathy in correctional populations is about 25 fold higher than its prevalence in the general population. Psychopathy is one of the most pernicious and stable antisocial conditions and one of the most robust predictors of recidivism. Thus, any proposed BOP releases would include (depending on the size of the recommendation) the release of hundreds to thousands of clinically psychopathic offenders.

Another important criminological construct is sexual sadism, the prevalence of which is much higher in correctional populations than in the general public. Even after decades of confinement, offenders who are sexually sadistic pose significant risks to the community as exemplified by current Federal death row inmate Alfonso Rodriguez, Jr., who was sentenced to death in 2003 after serving approximately a quarter century for prior predatory criminal convictions.

It is also important to note that these antisocial conditions are not limited to homicide offenders and sex offenders, but are found in offenders convicted of other crimes, including drug-based offenses.

Senator WHITEHOUSE. Professor DeLisi, we are trying to keep our testimony to 5 minutes per witness. If you could sum up.

Professor DELISI. A final point, and I have some questions that are in the testimony if they are asked later—

Senator WHITEHOUSE. The testimony will be in the record.

Professor DELISI. Chairman Leahy indicated that the BOP problem is one that Congress created, but I would also add that the corollary benefit of that legislation was the reduction of crime by the increased use of confinement.

[The prepared statement of Professor DeLisi appears as a submission for the record.]

Senator WHITEHOUSE. Thank you very much, Professor.

Let me now introduce John Wetzel. He is, I would call him, the Director of Corrections for the State of Pennsylvania, but the nomenclature is different in Pennsylvania. He is the Secretary of the Pennsylvania Department of Corrections. He oversees all administrative functions relating to the Pennsylvania Department of Corrections operations, budgeting, personnel, and training. He began his corrections career in 1989 as an officer at Pennsylvania’s Lebanon County Correctional Facility. He has served as a correctional officer, treatment counselor, supervisor of treatment services, train-

ee academy director, and as warden of the Franklin County Jail. He is a member of the American Correctional Association and the American Jail Association and a past president of the Pennsylvania County Corrections Association, and for the record, had very nice things to say about A.T. Wall when we said hello at the beginning.

Secretary Wetzel, please proceed.

STATEMENT OF JOHN E. WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, HARRISBURG, PENNSYLVANIA

Mr. WETZEL. Thank you very much, and thanks for this opportunity to talk about Pennsylvania and the experience we have had in addressing many of the same problems you all face in the Federal system.

Specifically, when Governor Tom Corbett was elected, Governor Corbett was the Attorney General, and before that he was a Federal prosecutor. So he has a very unique perspective, and he has had really a firsthand view of the corrections system. And what he saw over the 24 years before we took over was an average growth in the Pennsylvania Department of Corrections of 1,500 inmates a month. So when we took over nearly 3 years ago, we had 51,000 inmates, and that was a consistent growth over both Republican and Democratic administrations. And the one charge that he gave me when we took over the Department of Corrections was not to willy nilly reduce population, not to willy nilly reduce spending, although both of those things were a priority. The main priority was to improve outcomes and really improve our corrections system and take the perspective that we need to get a better return on our investment for what we are spending in corrections.

How did we do that? The first thing we did is we applied for and received a grant to go through the justice reinvestment process, and we partnered with the Council of State Governments and went through a process that quite specifically was data driven. And Governor Corbett is a hard sell and takes a perspective of many of the folks on the panel in that we are very concerned, the bottom line for us is always going to be crime rate and public safety. And so the process had to be data driven.

So we gathered data through this process, and the most important part of this process is that it was a process that was participatory and had all Members and all stakeholders as part of the group that looked at the policy options.

So we gathered the data. We looked at what the population drivers were, and then we identified policy options looking nationally and internationally at policy options that seemed to work for other jurisdictions. Then we built consensus, and this is the key part of this process where we had, you know, the ACLU and the conservative think tank sitting there having a discussion and coming to agreements on how we can get better outcomes. And some of the focus really needs to be on what the root cause of the crime is.

So it is very easy in this field to paint with broad brushes and say, well, we do not want to open the back door and let a bunch of people run out because that is going to have a negative effect on public safety. We all agree with that.

But what we also all agree with is what we want out of our criminal justice system is that when someone becomes criminally involved, when they come out the back end of our system, what we want them to be is less likely to become criminally involved again. We can all agree with that. And the reality is there is enough research out there that tells us that when we make good decisions from the front end of the system as far as who needs to be incarcerated, who we can deal with in other manners, and more specifically what the root causes of the crime is. So violent offenders, murderers, rapists are different, and we cannot paint with the same brush as someone who the root cause of their crime is addiction.

So it does not matter how long we lock an addict up. If we do not address the addiction, they are going to come out and they are not going to be less likely to commit another crime. So we took that approach. We got consensus on policy options that were legislative, and in 6 months from the first meeting until the legislation was passed, that passed unanimously in both the House and the Senate, which was pretty miraculous itself in Pennsylvania, we came up with policy options. And what those policy options resulted in is that under our 2½ years we have averaged a decline of 70 inmates a year out of 51,000. Not a huge decline, but when you look at consistent 1,500 inmate growth a year, we have eliminated that. We have been able to close a couple prisons, and we have been able to, more importantly, get more people into programming. And that has really been the key.

So our policy options start at the front end, identify groups who—a small group of offenders who were not appropriate to ever come to a State prison. Then we looked at funding risk-based sentencing, so the Sentencing Commission in Pennsylvania is building a sentencing tool so the judge has risk information, not just a presentence investigation but risk. What is the risk of future offense for this offender? And that factored into the sentencing.

Then we looked with the Department of Corrections at areas we just were not doing good. So waiting lists for programs, how can we better deliver programs? And part of that was making sure we are only putting people in programs who need the programs, so making sure we are assessing.

Then the back end of our system we put a lot of focus on. Our community corrections system, we spent \$110 million. When we measured it by recidivism, we saw that 95 percent of those programs were not effective. So we restructured those programs. We looked at who we put in it. And, more importantly, we decided to put a performance measure on the contracts. So the contractors are paid based on their ability to impact recidivism. This process was a good process, and at the same time, our crime rate went down. We have less people coming in, more people getting out, and the crime rate in Pennsylvania continues to go down.

Thank you.

[The prepared statement of Mr. Wetzel appears as a submission for the record.]

Senator WHITEHOUSE. That is a terrific story, Secretary. Thank you very much.

Our next witness is Representative John Tilley, who represents the 8th District of Kentucky in the Kentucky General Assembly.

He has served in the Kentucky General Assembly since January 2007, and he is the Chair of the House Judiciary Committee, where he has been the Chair since 2009. In that role, he worked with other State leaders to form a bipartisan, multi-branch task force with the goal of enhancing public safety, controlling corrections costs, and decreasing recidivism. Representative Tilley is currently the vice chair of the National Conference of State Legislatures' Committee on Justice and the Judiciary. Representative Tilley was a prosecutor prior to joining the legislature, serving for nearly 6 years as Christian County's assistant county attorney, and we are delighted that he is here today.

Thank you, Chairman. Please proceed.

STATEMENT OF HON. JOHN TILLEY, CHAIR, HOUSE JUDICIARY COMMITTEE, KENTUCKY HOUSE OF REPRESENTATIVES, HOPKINSVILLE, KENTUCKY

Mr. TILLEY. Thank you, Mr. Chairman. Thank you, Members, as well. We do have a similar story to Pennsylvania's with a couple of curves on that. I can say with great confidence as well as a former prosecutor, Members, that we can have it all in one sense. We can have better public safety at less cost with less crime and less recidivism, as you heard from the secretary as well. And we can be smart on crime or remaining tough on criminals, which is a concern of this Committee. And we have done that in Kentucky, and that has been an honor to tell you about it, but I will tell you it was no honor when the Pew Charitable Trust in their Public Safety Performance Project made us the poster child for prison growth in about 2008. They released a report called "One in 100," which stood for the proposition that 1 in 100 adults in this country were behind bars. In Kentucky, that rate was 1 in 92.

Just as an aside, there were 1 in 31 adults under some form of correctional control. That is astoundingly high. I think it should be to all of us.

In Kentucky, for the decade ending in 2010, our prison growth rate was almost quadruple the national average. We were at 45 percent, and the rest of the country was hovering around 13 percent, which is also to me an unsustainable figure.

And so to put that even in greater context, let me tell you that we comprise about 4.5 percent to 5 percent of the world's population, but we house about 25 percent of the world's prisoners. So Kentucky was truly the epicenter for prison growth in this country.

So all that begs the question. Did all that translate, all that record spending and record incarceration translate into better public safety? Did it translate to less crime, less recidivism, things that we measure our performance on? And we can tell you in Kentucky that it did not, as many States found as well. All that spending, well over a 200-percent increase in the previous 20 years amounted to very little. Recidivism remained well above the national average. Our crime rate had always been relatively flat. As you have heard, the crime rate has been dropping for some time, but we only enjoyed about a third of that national crime rate drop. We were about 6 percent over the previous decade of our study. The rest of the country was about 19 percent.

And so we have remained flat as well, and I will tell you that our sister State to the south of us, Tennessee, we share the most border, their crime rate, again, we were one of the safer States in the country in the top ten, and they now remain one of the more high crime States, maybe number one, and their prison growth is exploding, is my understanding.

In response, we formed a multi-branch, bipartisan task force, a very small task force with seven Members. I was proud to co-chair that. We received support from the business community, from the retail federations. The Kentucky Chamber of Commerce has taken a national leadership role in this. We received support from all manner of stakeholders in this effort. And what we found was this on that task force: that our prison growth rate was being driven not by crime; it was being driven by the number of arrests and court cases, by drug offenses, by rising incarceration rates for technical parole violators, and low-level offenders were again driving this population. In Kentucky, they were far more likely to go to prison than any other State. We found that to be a 57 percent to 41 percent number there. They were far more likely to go to prison at that rate.

The results, some recommendations, some very comprehensive reform called House Bill 463. I remind you again, in a very bipartisan way, Mr. Chairman. It passed 96–1 in the House and 38–0 in the Senate. The goals, again, better public safety, less cost, less recidivism, getting smarter on crime. How did we do that? I do not have a lot of time to tell you about, about a minute and 42 seconds I see before me. Generally, let me tell you—and I know I want to stick to my time. Focus our most expensive prison beds on the most serious offenders. Fine alternatives for our low-risk, non-violent drug offenders, which we have done. And use those things, use those savings to expand treatment opportunities and supervision opportunities for a number of our low-level offenders who were, again, driving that population.

More specifically, we have strengthened probation and parole and pre-trial. We have seen astounding results from pre-trial alone with not having to arrest and detain as many low-level misdemeanants. We are actually seeing less offenses committed while on release so that has increased our public safety rate. We are seeing them show up to court at a greater rate, even though they are not being housed in county jails. Counties are saving millions and are happy with us on that note.

And I will tell you we have modernized our drug code, which has been a focus today, obviously, from a number of voices. We have had presumptive probation for simple possession. We have deferred prosecution which is a possibility, which must be prosecutor approved for low-level drug offenses. We distinguish between trafficking and peddling, an important distinction I think to make. We had not previously in Kentucky done that.

Again, these are prosecutor-driven things, and I will tell you that not one felony has been reclassified to a misdemeanor in our negotiations in trying to come up with a commonsense way to approach this.

Again, we reinvest these savings, which have been in the millions, to increase drug treatment. I will get to how much more we

have to that in just a minute. And I tell you, in my last few seconds, let me tell you we have achieved, I think, remarkable results, and I will fast forward to those. We now have fewer prisoners at lower cost. At one benchmark, just a few months ago, we were at 3,500 less out of a total of roughly now we are around 20,000 hovering. We had been at 22. We were supposed to be at 24. And just as the secretary said, we are now well below that average and about 3,500 fewer. We have less recidivism. For the first time in a decade, we are well below the national average. We have dropped 5 percentage points. And we have a 500-percent increase in drug abuse capacity, drug treatment capacity available to DOC.

Chairman, Members of the Committee, I look forward to your questions, and we know we have a lot of hard work in front of us, but we have had tremendous results in Kentucky, and we invite you to learn more.

[The prepared statement of Mr. Tilley appears as a submission for the record.]

Senator WHITEHOUSE. Thank you very much, Chairman Tilley. I appreciate your being here, and it is a remarkable success story.

Our next witness is Nancy G. La Vigne. She is the director of the Justice Policy Center at the Urban Institute where she oversees a portfolio of research projects relating to crime, justice, and public safety. Prior to joining the Urban Institute, Dr. La Vigne was the founding director of the Crime Mapping Research Center at the National Institute of Justice in the U.S. Department of Justice. She has written on a variety of subjects, including criminal justice evaluation, prisoner reentry, crime prevention, and the spatial analysis of crime and criminal behavior.

Doctor, welcome.

**STATEMENT OF NANCY G. La VIGNE, PH.D., DIRECTOR,
JUSTICE POLICY CENTER, THE URBAN INSTITUTE,
WASHINGTON, DC**

Ms. La Vigne. Thank you, Mr. Chairman. It is a pleasure to be here. I represent the Urban Institute. We are a nonprofit, nonpartisan research organization. We do not engage in advocacy. Rather, our mission is to bring facts and data and evaluative research to bear on pressing topics like the one we are here to discuss today. It is in that spirit that about a year ago we set out to chronicle the drivers of the Federal prison population and its growth over time and to project the impact of various policies that were on the table to reverse that growth—much in the way that we heard in the models of the States in Pennsylvania and Kentucky, a similar just reinvestment model of identifying drivers of growth.

We also looked at the degree of overcrowding. Members of this Committee have already documented that. The overcrowding is tremendous. It is at great risk to the safety of both staff and inmates. But, importantly, from where we sit in the research we have done looking at the impact of programs designed to prevent recidivism, the crowding in the Federal system creates tremendous challenges for delivering programs and treatment that is so necessary to support the successful reintegration of Federal offenders when they exit prison.

And what we know from our own research and research that we have conducted through the development of the What Works in Reentry Clearinghouse, which is a systematic review of only the most rigorous research out there on various types of prisoner reentry programs, and what we have learned is that there are programs that work. There are many programs that work across a whole host of types of reentry interventions, from substance abuse treatment to employment, education programs, vocational programs, mental health treatment, programs to support family visitation. In each one of those categories, we have identified one if not several of impactful programs that rigorous research says works.

Indeed, even within the Federal Bureau of Prisons, the RDAP program has been rigorously researched and found to be effective as has Prison Industries. So there is a lot of opportunities to provide programming and help support public safety, but those are limited by the crowded prison environment in the Federal system as well as limited resources with which to dedicate to offer such programs.

There are many solutions on the table. Those solutions were not developed by the Urban Institute. They were developed by various congressional staffers in partnership with the Members, and include legislative proposals that are sponsored by Members of this Committee. What we set out to do was to analyze how these different proposals would yield impact on both the prison population and on cost.

When we looked at those projections, we were very conservative in our estimates. We were conservative in two ways:

One, we were fiscally conservative. We chose to use the marginal cost of prison rather than the average cost. I can explain more about the importance of that later. But we thought it was best to be conservative, so some of our estimates are actually lower than others who were trying to project the impact of these various policies.

Similarly, and importantly, our estimates were conservative with regard to how we perceived them being enacted on the ground, and we firmly believe that judges and the BOP will exercise extreme caution in discerning who should benefit from these programs. And as you know, most of these policies look at risk levels, something that was critical in the work that States have done. Risk assessments are very important in determining who really needs to be in prison and who could be subject to early release policies. But for that reason, also our estimates may be lower in terms of potential cost savings than you might hear from other people.

At any rate, you know from our report that we assess a whole host of different types of policy changes. We know that reducing mandatory minimums and giving judges discretion to deviate from mandatory minimums could save literally billions of dollars. We know that earned time credits for program participation can not only relieve crowding in the short run, but it also provides incentives for inmates to take part in programs that are in the interest of public safety.

We have heard examples from the States and not just those represented here, but we know of others—Texas, North Carolina, New York—that have engaged in sweeping reforms and have averted

growth or even reduced their populations without any detrimental impact to their crime rates.

So I think this is a moment of tremendous opportunity, and I thank you for your leadership on it.

[The prepared statement of Ms. La Vigne appears as a submission for the record.]

Senator WHITEHOUSE. Well, we certainly hope it is the moment of tremendous opportunity, and I want to thank you and the Urban Institute for the effort and the professionalism that they brought into that report.

And we will conclude now with Dr. Jeffrey Sedgwick, managing partner and co-founder of Keswick Advisors in Richmond, Virginia. He previously served as Assistant Attorney General for the Office of Justice Programs in the U.S. Department of Justice, where he oversaw activities relating to initiatives such as Project Safe Neighborhoods, Project Safe Childhood, and the Prisoner Reentry Initiative. Prior to his Justice Department service, Dr. Sedgwick taught for 30 years at the University of Massachusetts, Amherst, and he is welcome here today.

Please proceed, Professor.

STATEMENT OF JEFFREY SEDGWICK, PH.D., MANAGING PARTNER AND CO-FOUNDER, KESWICK ADVISORS, RICHMOND, VIRGINIA

Mr. SEDGWICK. Thank you, Chairman Whitehouse.

In its draft report, "Stemming the Tide: Strategies to Reduce the Growth and Cut the Cost of the Federal Prison System," the Urban Institute observes that, "The Federal prison population has escalated from under 25,000 inmates in 1980 to over 219,000 today." And it observes that, "This growth has come at great expense to taxpayers and other important fiscal priorities." I could not agree more with this report on the problems of fiscal austerity confronting public safety budgets; however, I believe we need to be very careful not to oversimplify the tradeoffs in public safety that we need to consider in order to make good decisions and, as a result, may offer cost shifting instead of true cost savings.

A more comprehensive view of the problem we face would cast the issue somewhat differently: we need to reduce not the costs of incarceration (or, indeed, the criminal justice system) but, rather, the total social costs of crime including not only expenditures on public safety, but also the costs of victimization, tangible and intangible, to the public. As we seek to do this, the allocation of funds among components of the criminal justice system should be guided by their demonstrated effectiveness in reducing crime not their absolute or relative size compared to other components of the criminal justice system.

It is all too tempting in the current environment to look to the correctional system, both State and Federal, as sort of a piggy bank or a source of savings in a period of austerity. For example, early last year, CBS aired a segment on its weekly news program "Sunday Morning," entitled, "The Cost of a Nation of Incarceration." The unmistakable implication of the program was that the United States incarcerates too many at too high a cost. But just how large and costly is the prison population? According to the U.S. Bureau

of Justice Statistics, 1,598,780 adults were incarcerated in U.S. Federal and State prisons and county jails at year-end 2011—a 0.9-percent decrease over 2010 and the second consecutive annual decrease. Indeed, the imprisonment rate has declined consistently since 2007 when there were 506 persons imprisoned per 100,000 U.S. residents. The rate in 2011 was comparable to the rate last observed in 2005, which was 492 persons per 100,000 population.

Given that population, in a recent Vera Institute calculated average per inmate cost of incarceration at \$31,286, we could estimate the total cost of incarceration nationwide in 2011 as \$50.2 billion—surely a large sum. But is it either disproportionate in relative terms or too large in absolute terms?

In order to understand that, we would have to bring into the calculation: What did we get in return for that \$50.2 billion? Well, as some have testified previously and noted, and some of the Members of the Committee have noted, according to the FBI Uniform Crime Report, between 1960 and 1992, the number of violent crimes in the United States increased nearly sevenfold, from approximately 288,000 to more than 1.9 million, and the violent crime rate increased nearly fivefold from 160.9 to 757.7 per 100,000 population. But then rather abruptly the crime rate began to decrease, and it decreased for nearly a decade and then plateaued until 2 years ago, when it started to tick up.

Scholars who have looked at this decline and tried to give a reason for it or determine a reason for it—and I would cite Franklin Zimring as the best source on this—has noted that incarceration and the increase in incarceration in the United States played a very large role in this particular decline. In other words, what we got for our \$50.2 billion investment was a decrease in crime, but value is underestimated because it does not include psychic costs of about \$180 billion per year. So I leave it to you to judge whether a \$50 billion investment that gets you a \$180 billion return is a good idea or not.

Now, this is not meant to suggest that nothing can be done to deal with the current fiscal problems afflicting the criminal justice system broadly and the Federal prison system in particular but, rather, to counsel caution in dealing with sweeping claims of cheap, readily available, and highly effective alternatives to Federal incarceration. Rather, we need to do four things.

First, we need to understand characteristics of the Federal prison system, and they are quite different from the State prison systems.

Second, we need to critically evaluate the effectiveness of interventions meant to reduce recidivism.

Third, we need to make use of the voluminous literature on predicting criminality and also identifying markers of its onset and persistence.

And finally, we need to hold tenaciously to the commitment by our actions to reduce the total social costs of crime and eschew the practice of merely getting those costs off our books by shifting them to others.

[The prepared statement of Mr. Sedgwick appears as a submission for the record.]

Senator WHITEHOUSE. Thank you very much, Dr. Sedgwick. I appreciate you all being here.

Let me start with Secretary Wetzel. You are an observer from the outside of the Federal Bureau of Prisons. Corrections is your lifelong profession. You have been very successful in Pennsylvania, and you are showing not only bipartisanship but unanimity and then success in the reform effort.

What would you take out of Pennsylvania's experience and apply as lessons that would be helpful for the Federal Bureau of Prisons? Are there critical differences that we need to acknowledge? What are they? Are there similarities? Where are they? What have been your successes that you think will apply most readily to your Federal colleagues?

Mr. WETZEL. I think from a process standpoint we were able to have people check their "R" or "D" at the door and become part of the process, and we set a goal and acknowledged a goal and put all the partisan stuff aside. So I think that is first and foremost.

Understand that we all wanted the same thing. We all want good outcomes.

And then I think really understanding the dynamics of the population. Certainly the Federal population is, arguably, different than a State population, but I think it is very important to really accurately identify and then build consensus at what group we are comfortable dealing with in another manner.

And then specifically, as we start splitting these different groups out, then look at how we are likely to get the best outcome. And, you know, you are not going to bat a thousand on this, but where are we likely to get the best outcome? The one thing that across the board we had consensus on is that we were not pleased with the outcomes we were getting from our current approach. So business as usual was not going to work, and it was not acceptable. And we came to that consensus early on, that nobody could make the argument that we were happy with the return on the investment we were getting for corrections.

By the same token, we certainly did not want to open up the back door and have an increase in crime because we are trying to do what is expedient. That was not the approach at all. But, you know, I think if your focus is on how we are likely to reduce crime and not necessarily focus on the dollars—we did not necessarily focus on the dollars. We focused on how we were going to get better outcomes, and a by-product of that is a reduction in population. And it was more of a natural by-product than the goal is to—and I think if you take that approach and not say our goal is to reduce spending by X amount but our goal is to get better outcomes and identify folks who we can deal with in another manner that will be more effective and less costly, that is really—and if you keep that as the focus, I think that is the best way to move forward.

Senator WHITEHOUSE. When you are talking about identifying folks, what are the sorts of categories you are looking at? Is it age, gender, drug history, level of incarceration, length of term? What are some of the groups that you picked out of the general population to try to improve the focus? And how did you define those?

Mr. WETZEL. Yes, and we did talk about violent versus non-violent because, as many people pointed out, you know, by the time someone came to the Pennsylvania Department of Corrections, they had an average of eight arrests. And nobody gets locked up for jay-

walking in Harrisburg, Pennsylvania. Okay? So that is not why they are there. So we did not put the focus on that, but we put the focus on actuarial risk, and let us look at, again, actuarial risk tools that allow us to predict future crime and future recidivism, and to try to make to the extent possible good individual decisions and give judges the tools that they have all the information to make those individual decisions.

Senator WHITEHOUSE. So you were dialing it all the way back into the pre-sentence report for judges?

Mr. WETZEL. Yes, well, you know, in Pennsylvania we have an inconsistent level of pre-sentence reports, and under the Rendell administration in 2008, they passed this risk-based sentencing tool that was supposed to be developed by the Sentencing Commission. However, it was not funded. And through our initiative, we were able to fund that so we can give judges actuarial information at sentencing and allow them to make better decisions on real information.

Senator WHITEHOUSE. Where did you get the actuarial information?

Mr. WETZEL. Well, we had the information, and the Sentencing Commission is the group who is charged to take that information and develop a tool specifically for Pennsylvania—

Senator WHITEHOUSE. You were pulling information out of the tracking information on your own inmates, essentially.

Mr. WETZEL. Yes, we have a bunch of different sources of information: the Sentencing Commission, the courts, the different criminal justice agencies. Pull all those together, get the information, develop a tool, test it, pilot it, and norm it for our population, then roll it out across the State.

Senator WHITEHOUSE. Got it. Okay, thanks.

Mr. WETZEL. Thank you.

Senator WHITEHOUSE. Chairman Tilley, same question to you. Can you pick out of what Kentucky has done any particularly successful elements that you would commend to us as areas of focus?

Mr. TILLEY. I think there are a number of measures on the front and back end that work and are translatable to the Federal system. And, again, mind you, I am not expert on the Federal Bureau of Prisons—

Senator WHITEHOUSE. Understood.

Mr. TILLEY. But to me we are talking about folks who are—

Senator WHITEHOUSE. You are expert on what you did in Kentucky.

Mr. TILLEY. Well, I appreciate that. Some would say maybe. I would tell you that it seems to me, though, that being a former prosecutor, I saw a number of Federal cases proceeding and moving along to conviction, and it seems that we actually are doing more of the same kind of work that one might imagine. So I would say focusing on reentry and recidivism, first, let us go to the back end. We have what is called mandatory reentry supervision, and for those who do not achieve parole, we are releasing them into a very controlled environment 6 months prior to the expiration of their sentence, so that, as studies indicate, we can focus on that all-important 6 months, because, again, as experts tell us and as has been validated through science, if you catch that offender in the

first 6 months of reentry, you can hopefully achieve a more successful reentry and then lower recidivism, which is the goal, and that is significant.

The public demands that—again, as has been said today, it is roughly the same in Kentucky, about 95 percent of all our offenders are going to come back to a community, and in that community I think taxpayers and constituents deserve our best effort of making sure that offender does not re-offend. And so that is important and I think very translatable.

There are a number of things we can do and are doing beyond just that. Another example, Chairman, would be intermediate and graduated sanctions for technical parole violators. Rather than sending them back—we found that we were sending them back for longer than their original sentence, and that was not serving anyone. What we found now, similar to what they are doing in Hawaii, in the Senator's home district, and Judge Steven Alm there, what he is doing is remarkable. We are mimicking that in Kentucky.

Senator WHITEHOUSE. Steve Alm and I were U.S. Attorneys together back in the day, so I am familiar with his work.

Mr. TILLEY. I Googled that, sir.

[Laughter.]

Mr. TILLEY. Yes, and I have been with Steven.

Senator WHITEHOUSE. So your experience has been the same, that making parole violation responses swifter, more certain, more immediate, even if less impactful in terms of how long they take out of the probationer's life, you get a better result from a quicker—you can have a smaller reaction if it is quicker and more certain to probation violations.

Mr. TILLEY. Absolutely. At the State level, we were backing up on multiple violations, and there was this waiting period before the offender knew whether or not parole was going to—you know, they were going to be revoked and sent back to prison, and so it was very ineffective. And now we are seeing results that are being proven effective, and hopefully we can mimic the success they have had in Hawaii.

I will add one thing on the front end, the remarkable success and really unexpected success we have had with low-level offenders, in particular misdemeanants that were filling our county jails. And, again, I still think it is translatable because we are using science, we are using risk assessment, as has been mentioned here today, to figure out who presents the most risk and who can be released prior to adjudication, or who needs to stay in potentially. And in doing so—

Senator WHITEHOUSE. How do you develop those assessment tools?

Mr. TILLEY. There is a tool called the LSCMI, and, again, it is something that is developed and used and chosen not by the legislature—that would be a mistake to have us choose that science, I think, but the court system has chosen it, and our pre-trial system—in Kentucky we have, like DC, one of the only unified, maybe the only true unified pre-trial system in the country, which means it is State run, State driven, so we can do that. And what we have seen is an increased public safety rate. They are committing fewer offenses on release. They are showing up to court at a greater rate.

And we are actually saving our counties, who pay for this, prior to adjudication pay for incarceration, saving them millions. And I think that is also translatable as so many offenders await trial. And it also preserves the presumption of innocence until proven guilty, and I think that is important, unless there is an overriding reason that a judge may see in his or her discretion, which that is in our bill, to detain an offender. And that is important as well.

Senator WHITEHOUSE. Obviously as a State representative and as the Chairman of your State's House Judiciary Committee, you have responsibilities to a wide array of stakeholders and constituents and parts of your community. I can remember going around Rhode Island with Director Wall with a map that showed where people went when they left the ACI, adult correctional institution, and went back into the community. And I think we did it by zip code, and there were some zip codes where reentry had virtually no impact—I mean virtually nobody returned to those communities—and there were other communities that were really receiving an avalanche of people coming out of the prison system.

And so when you talk about reentry, did you consider not just reentry from the individual offender's point of view and trying to make them more successful at reentry and to reduce their recidivism, but also what it means to the surrounding community, particularly the ones that are very, very heavily impacted by high returns from the prison population?

Mr. TILLEY. Absolutely. In fact, we talked a lot about what has been referred to as "community supervision." You know, "community corrections" does not play quite as well to the ear, but "community supervision" in the sense that you want to direct that offender closer to their community and help them reintegrate, because as we found, when you modify behavior in one setting, for instance, the prison, and they return to their home, they immediately maybe return to that behavior without, you know, certain controls and certain behavior modification strategies in place.

And so, yes, we did focus on that, and we do have that kind of community supervision in place in our bill. It runs all through our bill. And what we are trying to do is redirect some of the savings, again, to those communities so that we are not having to find new dollars to pay for this increase in community supervision. But it is clearly less expensive, and we can monitor in so many ways. With our reentry supervision, you know, we have several minimum conditions. We have over ten of those minimum conditions. And with technology we can monitor in so many ways. And it is much less expensive and more effective than what it costs in Kentucky, which is roughly \$21,700 per year to incarcerate a State inmate. And so we are not that far off from the number that has been thrown out here today.

And so when you have this substantial savings and a decrease in recidivism and this successful reentry, I think your communities begin to buy in as well, and I know mine has.

Senator WHITEHOUSE. I forgot to ask Secretary Wetzel, what is your experience of the effects of overcrowding in Pennsylvania's prisons, the ones that you supervise and manage?

Mr. WETZEL. We are at about 109 percent of capacity. I think that the challenge really becomes the decisions on the ground, the

decisions with who you put in a cell together. So I think I am guessing that if you looked at the numbers as we became more and more crowded, I am not sure that the overall number of misconducts would skyrocket, but I would guess that the severity and some of the in-cell violence would—because at the same time as crowding occurred, we got better at our practices. We got more technology, more cameras. But those in-cell decisions, and then I think the second area that really gets impacted by crowding would be segregation. And historically, without crowding you rarely double segregation cells when, you know—we are like Motel 6. The light is always on. So you have got to find someplace to put somebody. So sometimes you make some decisions in putting people together that you would rather not have to make as a specific result of crowding.

Senator WHITEHOUSE. But it is your experience as a practitioner that, other things being equal, higher overcrowding will have a tendency to increase violence and risk within the population?

Mr. WETZEL. Absolutely, especially if the staffing does not increase at the same scope as the inmates.

Senator WHITEHOUSE. So at a minimum, it would require additional costs.

Mr. WETZEL. Correct.

Senator WHITEHOUSE. Dr. La Vigne, any suggestions for us that you would highlight in your report that you think would have particular effect for the Bureau of Prisons?

Ms. LA VIGNE. Well, as I already stated, the proposals in our report are not the Urban Institute's proposals, so what we set out to do is to project the impact of these various proposals on populations and costs.

Senator WHITEHOUSE. Which ones would you highlight for us for the Federal Bureau of Prisons?

Ms. LA VIGNE. I will highlight any number of them that you are interested in. The ones represented in the Smarter Sentencing Act, for example, reduces mandatory minimums in three ways. It cuts the mandatory minimums for certain types of drug offenders virtually in half, and that alone we predict could reduce overcrowding by 20 percent in 10 years' time and save over \$2 billion. It also reduces mandatory minimums by extending the safety valve to Criminal History 2 categories. So that gives more judicial discretion to deviate from mandatory minimums.

But as I referenced in my formal statement, there is a lot of restrictions to our projections. We do not assume that this means that everybody with a criminal history Category 2 is going to be subject to reduced sentences. There is a lot of judicial discretion involved, and our own assumptions assume that a lot of offenders will not be subject to that because of their risk levels and their criminal history.

Regardless, we find that that alone would reduce overcrowding by 46 percent in 10 years. It would save \$544 million. And then there is also the Fair Sentencing Act crack retroactivity, which would also save a tremendous volume to the tune of \$229 million. And even that reflects a conservative estimate on our part. We actually assume that 10 percent of those who could be subject to the crack retroactivity in the Fair Sentencing Act proposal would not

because they pose too high a risk to society based on their in-prison behavior.

Senator WHITEHOUSE. Thank you very much.

Dr. Sedgwick, as I understand your testimony, if I could restate it in a single sentence, it would be that you are warning us against either sweeping or overbroad measures that might create a public safety cost outside the prison system that more than offsets any savings within the prison system. But you accept that if this is done in the smart way and in the right way, there is, in fact, opportunity here to both improve public safety and lower corrections costs.

Mr. SEDGWICK. I think you summarized it beautifully. One of the bugaboos that I have is that we very often talk about these complex issues and treat offenders either as generic, like they are all the same, or we treat them as dichotomous. We will say, well, there are the violent ones and the non-violent ones. And if you know the research on, for example, career criminals and criminal histories and specialization, one of the things that you realize is, yes, there is a subset of the offender population that are purely property offenders and never commit a violent offense. But among violent offenders they have a mix of property offenses and violent offenses in their history, as Professor DeLisi mentioned, and so you cannot just look at what is the offense that this particular offender is in for and make a judgment about their particular risk. We need to be much more granular and much more careful about this.

Senator WHITEHOUSE. Let me ask Representative Tilley and Secretary Wetzel, are you comfortable that the assessment tools that you have used in Kentucky and Pennsylvania meet that standard and are sensitive to Dr. Sedgwick's concerns?

Mr. WETZEL. Yes.

Senator WHITEHOUSE. So it is doable.

Mr. TILLEY. I would concur.

Senator WHITEHOUSE. Okay. Very good.

I will ask unanimous consent, which I will achieve since I am the last one here—

[Laughter.]

Senator WHITEHOUSE [continuing]. That two articles be added to the record. One is a New York Times article or opinion piece, "For lesser crimes, rethinking life behind bars," by John Tierney. The other is "Rhode Island halts growth in the inmate population while increasing public safety," by our corrections director, A.T. Wall.

[The articles appear as submissions for the record.]

Senator WHITEHOUSE. The record of this hearing will remain open for one additional week for any further questions or testimony that anybody wishes to offer.

Let me once again thank each of the witnesses for coming and lending your expertise, and in the case of Chairman Tilley and Secretary Wetzel, your very long and well-earned personal experience in this area. I think that what you have done politically to make these changes happen in your home States is very impressive. I am sorry you missed by one in getting unanimity the way Pennsylvania did, but I got to tell you, unanimity by all but one vote is pretty darn impressive. So obviously a lot of careful work went into the kind of product that can both be unanimous and impactful. You

can do unanimous all day long if you end up with no results. But doing something that really makes a change and getting the kind of political support at home that makes it unanimous in the legislature is a very significant achievement. So I am delighted that you both had the opportunity and the ability to come here today, and I thank you very much for being here. I thank all the witnesses. Everyone's testimony was extremely helpful. To the Urban Institute, we look forward to continuing to work with you, and thank you for the report.

And, with that, we are adjourned.

[Whereupon, at 12:04 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

UPDATED Witness List

Hearing before the
Senate Committee on the Judiciary

On

“Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism”

Wednesday, November 6, 2013
Dirksen Senate Office Building, Room 226
10:00 a.m.

Panel I

Charles E. Samuels, Jr.
Director
Federal Bureau of Prisons
Washington, DC

Panel II

John E. Wetzel
Secretary
Pennsylvania Department of Corrections
Harrisburg, Pennsylvania

Representative John Tilley
Chair, Judiciary Committee
Kentucky House of Representatives
Hopkinsville, Kentucky

Nancy G. La Vigne, Ph.D.
Director, Justice Policy Center
The Urban Institute
Washington, DC

Matt DeLisi, Ph.D.
Professor and Coordinator, Criminal Justice Studies
Iowa State University
Ames, Iowa

Dr. Jeffrey Sedgwick
Managing Partner and Co-Founder
Keswick Advisors
Richmond, VA



Department of Justice

STATEMENT OF

**CHARLES E. SAMUELS, JR.
DIRECTOR
FEDERAL BUREAU OF PRISONS**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
U.S. SENATE**

FOR A HEARING ON THE

OVERSIGHT OF THE FEDERAL BUREAU OF PRISONS

PRESENTED ON

NOVEMBER 6, 2013

**Statement of Charles E. Samuels, Jr.
Director of the Federal Bureau of Prisons
Before the U.S. Senate Committee on the Judiciary
For a Hearing on the Oversight of the Federal Bureau of Prisons**

Good morning, Chairmen Leahy and, Whitehouse, Ranking Members Grassley and Graham, and Members of Committee. I am pleased to appear before you today to discuss the operations, achievements, and challenges of the Federal Bureau of Prisons (Bureau). While I was appointed Director in December 2011, I have been with the Bureau for nearly 25 years, having started as a correctional officer and then holding many positions including Warden and Assistant Director.

I cannot begin without acknowledging that this past February the Bureau suffered tragic losses with the murders of two of our staff. On February 25th, Officer Eric Williams, a Correctional Officer at the United States Penitentiary in Canaan, Pennsylvania, was working in a housing unit when he was stabbed to death by an inmate. The death of Officer Williams reminds all of us that our work on behalf of the American people is dangerous. Every day when our staff walk into our institutions they willingly put their lives on the line to protect society, one another, and inmates in their care. On February 26th, Lieutenant Osvaldo Albarati was shot and killed while driving home from the Metropolitan Detention Center in Guaynabo, Puerto Rico. This incident is still under investigation. We will always honor the memories of Officer Williams and Lt. Albarati, and their losses further underscore the challenges the dedicated men and women working for the Bureau face daily. While there are many facets to our operations, the foundation for it all is the safe, secure, and orderly operation of institutions, and each and every staff member in the Bureau is critical to this mission.

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 inmates are actively participating in reentry programming that will assist them in becoming law-abiding citizens when they return to our communities. I am deeply committed to both parts of the mission. Yet continuing increases in the inmate population pose ongoing challenges for our agency. As the nation's largest correctional agency, the Bureau is responsible for the incarceration of over 219,000 inmates. System-wide, the Bureau is operating at 36 percent over rated capacity and crowding is of special concern at higher security facilities, with 51 percent crowding at high security facilities and 45 percent at medium security facilities. We are grateful for the support Congress recently provided to activate new facilities in Berlin, New Hampshire; Hazelton, West Virginia; Yazoo, Mississippi; and Aliceville, Alabama. When fully activated, these facilities will assist us somewhat with reducing crowding for our inmates; however, even with these institutions coming online, decreasing our crowding remains a critical challenge.

The safety of staff is always a top priority, and we use all available resources to secure our institutions. We continue to take a variety of steps to mitigate the effects of crowding in our facilities, and are confident the policy changes the Attorney General recently announced to recalibrate America's federal criminal justice system will provide us even more assistance. These changes, part of the Department of Justice's (Department) "Smart on Crime" initiative, will help ensure that federal resources are used more efficiently by focusing on top law enforcement priorities.

The large majority of federal inmates, (177,000 of 219,000) are housed in facilities operated by the Bureau, which have a total rated capacity of just under 130,000 beds. The remaining approximately 42,000 inmates are housed in privately operated prisons and residential reentry centers. Most federal inmates (50 percent) are serving sentences for drug trafficking offenses. The remainder of the population includes inmates convicted of weapons offenses (15 percent), immigration offenses (11 percent), violent offenses (5 percent), fraud and other property offenses (7 percent), and sex offenses (10 percent). The average sentence length for inmates in BOP custody is 9 ½ years. Approximately 26 percent of the federal inmate population is comprised of non-U.S. citizens.

It is particularly challenging to manage the 46 percent of the federal prisoner population housed at higher security levels, and crowding is of special concern at these facilities. For example, at the medium security level approximately 75 percent of the inmates have a history of violence, 41 percent have been sanctioned for violating prison rules, and half of the inmates in this population have sentences in excess of 8 years. At the high security level, more than 42 percent of the inmates are weapons offenders or robbers, almost 10 percent have been convicted of murder, aggravated assault, or kidnapping, and half of the inmates in this population have sentences in excess of 10 years. Moreover, 71 percent of high security inmates have been sanctioned for violating prison rules, and more than 90 percent of high security inmates have a history of violence. One out of every four inmates at high security institutions is affiliated with a gang.

There is a much higher incidence of serious assaults by inmates on staff at medium and high security institutions than at the lower security level facilities. In FY 2012, 85 percent of serious assaults against staff occurred at medium and high security institutions. Incidents at high security facilities made up 63 percent of serious assaults on staff, and 22 percent occurred at medium security facilities. Fewer assaults occur at low and minimum security institutions that house inmates who are less prone to violence.

In 2011, the Bureau published a rigorous analysis of the effects of crowding and staffing on inmate rates of violence.¹ Data was used from all security levels of BOP facilities for male inmates for the period July 1996 through December 2004. We accounted for a variety of factors known to influence the rate of violence and, in this way, were able to isolate and review the impact that crowding and the inmate-to-staff ratio had on serious assaults. This study found the rate of serious inmate assaults was associated with increases in both the rate of crowding at an institution (the number of inmates relative to the institution's rated capacity) and inmate-to-staff ratios. The analysis revealed 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 inmates. This sound empirical research underscores that there is a direct relationship between crowding, staffing, and institution safety.

¹ The Effects of Crowding and Staffing Levels in Federal Prisons On Inmate Violence and Administrative Remedies Granted, Federal Bureau of Prisons Office of Research and Evaluation, July 20, 2011.

system, and housing them in space not originally designed for inmate housing, such as television rooms, open bays, and program space. To mitigate risks associated with crowding, we have made changes to our strategies for classification and designation, intelligence gathering, gang management, use of preemptive lockdowns, and controlled movement. We review available and emerging technologies to look for ways to address crowding in our facilities. However, the challenges remain as the inmate population continues to increase.

The Inmate Reentry Strategy

As I stated earlier in my testimony, I am committed to both parts of the Bureau's mission – security and reentry. The Attorney General has also made clear his strong commitment to reentry as a critical component of public safety. For 30 years, the Bureau has assessed offenders' risk of institution misconduct, which is highly correlated with recidivism, and we thoroughly review the underlying causes of criminal behavior including substance abuse, education, and mental health. Understanding the underlying causes of criminal behavior has allowed us to make great strides in enhancing our treatment efforts to ensure offenders are prepared to succeed.

Significant advances have been made in research related to effective reentry programs. Most experts agree with the concept of identifying factors that put inmates at risk of failing to successfully reintegrate into society, and they also agree with several general principles regarding how best to lower such risks. It is critical that offenders are triaged based on risk of failure prior to formulating a treatment plan. Offenders who are more likely to successfully reenter society do not require intensive programming, though the Bureau will provide them any services we identify, as needed, to ease their transition and occupy their time in prison—for example, resume preparation/job search, securing identification, applying for benefits. High risk offenders, on the other hand, require a more thorough assessment to identify their individual risk factors and programming needs. They must be our first priority for appropriate treatment.

As a direct result of these advances, we are now modifying our reentry model to ensure that we provide effective, evidence based, cost-efficient treatment plans for each inmate. By developing an understanding of each inmate's strengths, weaknesses, and programming goals, staff can work holistically to increase the likelihood of each inmate making a successful transition back to the community. We will continue to evaluate newly designated inmates with our validated classification tool to determine inmate risk for misconduct and appropriate security level placement, and will re-assess inmates over time to determine any changes in risk that warrant a decrease (or increase) in security level. We will also continue our comprehensive evaluation of inmate programming needs and are enhancing the tools we use to construct an appropriate treatment plan, and better track progress over time.

Inmate Reentry Programming

Each year, over 45,000 federal inmates return to our communities, a number that will continue to increase as the inmate population grows. Most need job skills, vocational training,

management, parenting skills, and linkage to community resources for continuity of care if they are to successfully reenter society.

In the Bureau, reentry begins on the first day of incarceration and continues throughout an inmate's time with us. As such, federal prisons offer a variety of programs to assist inmates in returning to our communities as law-abiding citizens, including work, education, vocational training, substance abuse treatment, 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 inmates productive ways to use their time.

Many of our programs have been demonstrated to reduce recidivism (i.e., Federal Prison Industries (FPI), Education, Occupational/Vocational Training, and Residential Drug Abuse Treatment Program (RDAP)). Specifically, empirical research has shown that inmates who participate in the FPI program are 24 percent less likely to recidivate than similar nonparticipating inmates; inmates who participate in vocational or occupational training are 33 percent less likely to recidivate. Inmates who participate in education programs are 16 percent less likely to recidivate; and inmates who complete 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 inmates who participate in work programs and vocational training are less likely to engage in institutional misconduct, thereby enhancing the safety of staff and other inmates.

The Washington State Institute for Public Policy has also conducted several evaluations of the costs and benefits of a variety of correctional skills-building programs. The Institute examined program costs; the benefit of reducing recidivism by lowering costs for arrest, conviction, incarceration, and supervision; and the benefit of avoiding crime victimization. Their work is based on validated evaluations of crime prevention programs, including the Bureau's assessment of our industrial work and vocational training programs (the Post Release Employment Project study) and our evaluation of RDAP (the TRIAD study). The benefit is the dollar value of total estimated criminal justice system and victim costs avoided by reducing recidivism, and the cost is the funding required to operate the correctional program. The benefit-to-cost ratio of residential substance use disorder treatment is as much as \$3.38 for each dollar invested in the program; for adult basic education, the benefit is as much as \$19.00; for correctional industries, the benefit is as much as \$4.97; and for vocational training, the benefit is as much as \$13.01. This body of research clearly indicates these inmate programs result in significant cost savings through reduced recidivism, and their expansion is important to public safety.²

Based on these proven-effective programs, we have implemented additional programs for the inmate population. These include Challenge for high security inmates, Resolve for females

² Aos, Steve, Phipps, P., Barnoski, R. and Lieb, R. (2001) The Comparative Costs and Benefits of Programs to Reduce Crime. Washington State Institute for Public Policy, as updated April 2012, <http://www.wsipp.wa.gov/pub.asp?docid=01-05-1201>.

cognitively-impaired offenders, Sex Offender Treatment, and STAGES for inmates with Axis II disorders.

But we have also experienced programming challenges, most notably with respect to FPI, one of the Bureau's most important correctional programs proven to substantially reduce recidivism. FPI provides inmates 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 inmates productively occupied; inmates who participate in FPI are substantially less likely to engage in misconduct. At present, FPI reaches only 8 percent of the inmate population housed in Bureau facilities; this is a significant decrease from previous years. For example, in 1988, FPI employed 33 percent of the inmate population. This decrease is primarily attributable to various provisions in Department of Defense authorization bills and appropriations bills that have weakened FPI's standing in the Federal procurement process by requiring FPI to compete for the work of Federal agencies in many instances where it was previously treated as a mandatory source of supply.

We are grateful for the additional authorities Congress provided in the FY2012 appropriation to provide opportunities to expand FPI programming, and are working on the new programs. FPI has moved expeditiously to secure new business opportunities that are currently or would have otherwise been manufactured outside of the United States. FPI's Board of Directors has approved 17 pilot proposals to date. In addition to the approved pilots, more than 17 potential opportunities are being evaluated for Board approval. FPI is continuing to actively seek new business opportunities and is focusing on business development and to address the unique challenges of operating the FPI program.

Recent Innovations and Achievements

The safety of staff, inmates, and the public are our highest priorities. I have undertaken several recent changes to Bureau operations that I believe will help us enhance safety and security.

In May 2012, the Bureau began an evaluation to assess the effectiveness of oleoresin capsicum (pepper) spray for use in emergency situations. The assessment involves designated staff being authorized to carry pepper spray for use in situations where there is a serious threat to the safety of staff, inmates, or others. All staff authorized to carry pepper spray underwent an initial four-hour training, and subsequently underwent quarterly re-familiarization training. Preliminary results of the assessment suggested that pepper spray was improving safety, and this year I decided to expand the evaluation to all high security prisons and to our detention centers and jails. I am confident that the outcome of the assessment will support the use of this tool to assist our staff in maintaining institution safety and security.

I have implemented a plan to increase our Correctional Officer complement at high security institutions. The Bureau operates using a "Correctional Worker first" philosophy. This

assist with security. Institution staff are visible on the compound, assist with inmate cell and pat searches, and respond to emergencies. As you can imagine, this philosophy is important at all institutions, but most critical at the high security institutions. During evenings and weekends when high security inmates are moving about the compound, however, the institution is staffed primarily by Correctional Officers. Therefore, using existing resources, we are adding an additional Correctional Officer to each high security housing unit during these shifts.

Next, we are in the midst of making significant changes to our Special Housing Unit (SHU) policies and procedures. These changes will allow us to improve the efficiency of our SHU operations without compromising safety. Specifically, in the past year we have decreased the number of inmates housed in SHU by 25 percent, primarily by focusing on alternative management strategies and alternative sanctions for inmates. Emphasis has been placed on timelier processing of disciplinary reports, thereby reducing the amount of time inmates spend in administrative segregation awaiting sanctions. We have also created a new automated system that allows us to better track inmates housed in SHU, and Bureau leadership now receive a quarterly report that monitors SHU trends nationwide. We monitor average disciplinary sanction time given by disciplinary hearing officers to ensure relative parity among sanctions nationwide. I have focused significant resources on the mental health of inmates who are placed in SHUs to ensure we are doing everything we can to work with these inmates. The National Institute of Corrections recently awarded a cooperative agreement for independent consultants to conduct a comprehensive review of our restrictive housing operations and to provide recommendations for best practices. We look forward to the outcome of the evaluation as a source of even greater improvements to our operations.

We are moving forward to expand RDAP programming throughout the agency. As noted earlier in my testimony, RDAP has been proven effective at reducing recidivism and relapse, while also decreasing institution misconduct. For non-violent offenders, successful completion of RDAP, to include transitional treatment while in a Residential Reentry Center (halfway house), includes an early release incentive of up to one year off the term of incarceration. Thus, RDAP not only helps return inmates to their communities as law-abiding citizens, but also helps somewhat with institution crowding. However, due to limited capacity, inmates completing RDAP who are eligible for a 12 month sentence reduction are currently receiving an average of 9.9 months. With the addition of new programs in FYs 13 and 14, we will bring our total to 89 programs, and the increased drug treatment capacity will move us closer to reaching our goal of providing a 12 month sentence reduction to all eligible inmates.

Finally, in late April we made changes to our Compassionate Release program (Title 18 U.S.C. § 3582(c)). This program allows the Bureau to petition the court for a reduction in sentence for inmates facing extraordinary and compelling circumstances. We expanded the medical criteria for inmates seeking release, and this summer the Attorney General announced additional revisions to the criteria to include other categories of inmates such as elderly inmates and certain inmates who are the only possible caregiver for dependents. For these cases, the Bureau would generally consider inmates who did not commit violent crimes and have served a

an inmate's sentence.

Initiatives Moving Forward

There is more good news on the horizon. The Attorney General recently announced the Department's "Smart on Crime" initiative. This initiative, based upon a comprehensive review of the criminal justice system, has yielded a number of areas for reform. Two provisions in particular should have a direct, positive impact upon the Bureau's population while still deterring crime and protecting the public. I noted above the Attorney General's recent announcement about changes to Compassionate Release. These changes will provide for, upon order by the sentencing judge, the release of some non-violent offenders, although we estimate the impact will be modest. The Department is also urging 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 will 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 will help stem the tide of offenders entering the Bureau and lead to lower average sentences, where appropriate, and thus should decrease our population somewhat over the long term.

The Administration has also supported two legislative proposals that would have a direct impact on the Bureau's crowding through incentivizing positive institution behavior and effective reentry programming. Both initiatives were included in 112th Congress' Second Chance Reauthorization Act, and we are hopeful the 113th Congress will consider them as well. The first expands inmate Good Conduct Time (GCT) to provide inmates up to the full 54 days per year stated in statute, rather than the current net maximum of 47 days per year. It does so by awarding GCT based upon the sentence imposed rather than the time served (Title 18 U.S.C. § 3624(b)). This provision would not only provide some crowding relief and cost-savings, but also aids prison and public safety by providing a strong incentive for inmates to maintain good conduct.

The second proposal would provide inmates 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 statute for RDAP, and caps the total amount of sentence credits earned from all sources at one-third of an inmate's total sentence. This provision, too, would assist with controlling crowding, costs, and enhancing public safety. Incentivizing reentry programming encourages more inmates at all security levels to participate and build skills. This keeps prisons safer and helps released offenders return to our communities as law-abiding citizens.

Chairmen Leahy and Whitehouse, this concludes my formal statement. Again, I thank you, Mr. Grassley and Mr. Graham, and Members of the Committee for your continued support. As I have indicated in my testimony, 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 you and the Committee on meaningful reform to enhance offender reentry while reducing our overburdened prisons, and would be happy to answer any questions.

Statement by

John E. Wetzel

Secretary

Pennsylvania Department of Corrections

**Hearing on the Oversight of the Bureau of Prisons & Cost-
Effective Strategies for Reducing Recidivism**

November 6, 2013

U.S. Senate Committee on the Judiciary

Chairman Whitehouse, Ranking Member Grassley, and Members of the committee, I am pleased to be with you today to discuss lessons we've learned in the Commonwealth of Pennsylvania to increase public safety and contain the costs of corrections.

The Problem

In the 24 years before Governor Corbett was elected, Pennsylvania's prison population grew by an average of 1500 inmates each year. Between 2000 and 2011, Pennsylvania's spending on corrections increased 76 percent, from \$1.1 billion to \$1.9 billion, while the number of people in prison increased 40 percent, from 36,602 to 51,312 people. Pennsylvania was locking up record numbers of people, costing taxpayers billions.

The Governor and policymakers began asking, "What is the return on our investment?" Of the people who got out of prison in FY2009, over 65% were either arrested or reincarcerated within three years.¹ State leaders agreed; the Commonwealth of Pennsylvania deserved better and decided to take action.

Since Governor Corbett took office, the population has started to decline for the first time in decades and the state has enacted a comprehensive, statewide effort to reduce recidivism.

Justice Reinvestment Process

In response to the growing strain of corrections costs on the state's budget and the negative impact of budget cuts on local law enforcement, in 2011, Governor Corbett, Chief Justice Ronald Castille, and legislative leaders asked the CSG Justice Center to conduct a detailed analysis of Pennsylvania's criminal justice system and develop a comprehensive policy framework to cut crime and reduce recidivism, both at a lower cost to Pennsylvania taxpayers. The Pennsylvania Commission on Crime and Delinquency established a bipartisan, inter-branch working group to oversee the data analysis and policy development provided by the CSG Justice Center, which identified three significant challenges.

Based on discussions with the Working Group and input from stakeholders across the criminal justice system, CSG Justice Center staff crafted a data-driven set of policy options that form a comprehensive public safety plan that reduces the costs of corrections and parole system and reinvests savings in law enforcement strategies that deter crime, data-driven strategies that reduce recidivism, and services for crime victims.

Key Findings

First, a third of individuals sentenced to prison had less than one year remaining to serve on their minimum sentences, leaving little time for them to participate in treatment programs in prison and making it challenging for the Parole Board to review their cases in a timely manner. The number of prison admissions with such short sentences has more than doubled, increasing 138 percent between 2000 and 2011, from 1,641 to 3,903 people.

¹ Bell, N., Bucklen, K., et al. (2013). Pennsylvania Department of Corrections Recidivism Report: 2013.

Second, because everyone in prison must be considered for parole after reaching his or her minimum sentence, the rising number of admissions had resulted in a growing backlog of cases for review. For example, 70 percent of the parole reviews that should have taken place each month were delayed due to inefficiencies that likely could have been avoided with greater coordination between agencies. In addition, despite having been approved for parole, thousands of people remained in prison because of delays in identifying housing plans, completing required programs, or paying fees and fines.

Third, community-based residential programs funded by the state at over \$100 million each year to reduce recidivism were not being used to target individuals on parole who could benefit the most. As a result, thousands of parolees continued to fail to complete their supervision in the community and were returned to prison at a huge cost, despite the state's significant investment in residential programs. At the same time, district attorneys, victim advocates, and others raised public safety concerns over the significant number of people who were being released to these programs even though they had not served their minimum prison sentences.

Policy Framework

After the working group reached consensus on a policy framework addressing these challenges, state lawmakers, including Representative Glen Grell (R-Cumberland), Representative Thomas Caltagirone (D-Berks), and Senator Daylin Leach (D-Delaware), incorporated the policies into HB 135 and SB 100, which supplemented a number of other criminal justice policy reforms authored by Senator Stewart Greenleaf (R- Bucks).

By FY 2017, the framework is projected to generate up to \$253 million in cost savings and increase public safety through six key changes to policy and practice:

- Reduce by 30 percent the number of people admitted to prison for very short sentences by 2017 by enabling counties to volunteer to house these individuals at lower cost to the state than would have been paid to incarcerate them in state prison.
- Require people convicted of the two lowest-level misdemeanor offense categories to serve a local sanction rather than sentencing them to prison.
- Address inefficiencies in the current corrections and parole systems by increasing by 20 percent the number of parole cases reviewed each month by 2015.
- Hold people on parole more accountable for violations of conditions of supervision with community-based, shorter, and more cost-effective sanctions.
- Prioritize costly intensive residential programming for a target population that will benefit the most.
- Prohibit the early release of people from prison to these residential programs.

House Bill 135 established a formula that requires a portion of these cost savings to be reinvested in public safety improvements over the next six years. For example, under the law, a portion of the savings must be reinvested in data-driven law enforcement strategies, strengthening county probation and parole departments, and improving victim notification.

SB 100 was approved by unanimous votes in the House and Senate before being signed into law by Governor Corbett on July 5, 2012. HB 135, also approved unanimously in the General Assembly, was signed into law on October 25, 2012.

Implementation

Since SB 100 was enacted last summer, the Department of Corrections in collaboration with the Board of Probation and Parole has been focused on shifting the Commonwealth's \$100M investment in community corrections, changing the program mix to include non-residential services and improve quality. Our goal is to shift our investment to a suite of programs that are less costly, more effective, and serve more people. To do this, we've had to design and release new bids for services, new quality assurance processes, new data systems, and new data monitoring and accountability strategies.

Through all of these changes, our focus has been building a data-driven system. Until you analyze what is currently funded and the outcomes you are getting for that investment, you can't know what would be a smarter investment.

And the stakes are high and the work is hard, but the pay off is great. In Pennsylvania, we can save approximately \$44.7 million annually by reducing our 1-year reincarceration rate by 10 percentage points.

Thank you for the opportunity to testify before the committee today, your support of the justice reinvestment approach in Pennsylvania, and your interest in learning from states like Pennsylvania as you look to improve the outcomes in the federal system.

Representative John Tilley
Chairman, Kentucky House Judiciary Committee

November 6, 2013

Committee on the Judiciary
United States Senate

Criminal Justice Reform: A Culture Change
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Justice Reinvestment and HB 463

Kentucky had the fastest growing prison population in the U.S. in the 10-year period before 2009, with an increase of 45%, compared to an increase nationally of 13%. Kentucky's corrections spending increased 214% from 1990-2010. Greater spending on prisons did not translate into a better return for public safety or for recidivism. Despite a 214% increase in corrections spending between FY 1990 (\$140 million) and FY 2010 (\$440 million), the state's recidivism rate was still high and remained above the levels from the late 1990s. In addition, while the state's crime rate declined 6 percent between 2000 and 2010, that drop was only one-third the size of the 19 percent drop nationwide.

In 2010 the General Assembly created a bipartisan, multi-branch task force called the Task Force on the Penal Code and Controlled Substances Act to study the data, find the causes for the increases, and make recommended changes that would maintain public safety. The task force found:

- ▶ Increasing numbers of arrests and court cases, even though the crime rate remained the same as in 1974
- ▶ Rising incarceration rates for technical parole violators

- Sentencing of low-level offenders in KY: far more likely than those in other states to be sentenced to prison, especially drug offenders

In 2011, The GA passed HB 463, The Public Safety & Offender Accountability Act, the first criminal justice overhaul in over 30 years. Its goals were to enhance public safety and improve the return on our investment in the criminal justice system. The reforms are largely based on the idea of Justice Reinvestment in which the savings achieved in incarceration costs and recidivism can be reinvested in alternatives to incarceration and reentry programs that are proven to work, such as drug treatment, community supervision, and other programs that **improve outcomes for those reentering society**. Instead of devoting resources to lock up nonviolent, low-risk drug offenders for long periods, it makes more sense to use those resources to provide effective treatment options that allow people to address their substance abuse problems and become productive citizens.

A review of the changes created by the new law, HB 463, shows that Kentucky is seeing measurable benefits and providing a model for other states that want to get smart on crime.

The bill's provisions focused on **improving recidivism rates and increasing the and successful reentry of incarcerated adults into the community**, which in turn, will have a positive impact on public safety and corrections spending.

The bill's provisions require the use of scientifically validated risk and needs assessments to help determine a person's risks of reoffending and the risk factors that need to be addressed to reduce the likelihood of future criminal behavior. These reforms place an emphasis on improving outcomes through alternatives to incarceration, such as supervision and treatment, tailored to address the needs of each individual.

The risk and needs assessments are used throughout the criminal justice system. First, a defendant is assessed at the pretrial phase when a judge is making decisions about bail and pretrial release. The assessment rates the defendant according to his or her likelihood to reoffend while on pretrial release and the likelihood of reappearing for court. Low-risk defendants are generally required to be released, and as the risk increases, judges have more discretion regarding release decisions. Risk and needs assessments are also used in the presentence investigation. The judge must use the results of the assessment to consider the likely impact of a sentence on future behavior. The Department of Corrections also uses risk and needs assessments throughout the period of incarceration to provide programs and treatment tailored to address the needs of each inmate. The Parole Board also uses another version of an assessment during its decision-making process. Assessments are also used during probation and parole to customize supervision and treatment throughout a person's supervision. DOC has conducted over 62,000 risk and needs assessments since July, 2010.

The programs that are used to address those risks and needs are required to be evidence-based programs that are proven to be effective. Of the programs used by DOC, 94% are now evidence-based programs.

Reentry and recidivism reduction provisions

Mandatory Reentry Supervision (MRS). Studies show the first 6 months after release from incarceration are the most crucial in determining whether an exoffender's reentry into society will be successful. During this period, making resources available to these individuals based on their individual needs will drastically reduce their likelihood to reoffend. HB 463 requires six months of mandatory reentry supervision (MRS) in the community for those who did not

receive parole to help ensure their success. The provisions require DOC to release eligible inmates from custody 6 months before their minimum expiration date and place them under the supervision of the Division of Probation and Parole. MRS provides the coordination of resources for housing, employment, treatment and other programs for the released individuals and provides monitoring for their compliance with the conditions of their release. These individuals would otherwise serve out their entire sentences and be released into Kentucky communities without supervision or resources for reentry assistance within the community, creating a greater risk they will reoffend.

- Since Jan. 1, 2012, over 6300 offenders have participated in MRS. This has resulted in a savings of over \$21 million. The current return rate for the offenders is 20.7%.
- The effective date for MRS was delayed until January 2012 to give the DOC time to build the staff and resources of the Division of Probation and Parole, which is responsible for supervising those on MRS, and train employees on the risk and needs assessment tool.
- The Department of Corrections committed resources to increase the number of probation and parole officers to handle the increased number of supervisees. The department hired 73 additional probation and parole officers as well as 22 Probation and Parole Investigators, and the average caseload is currently 81.65 per officer, down from 93.8 in June 2011.
- HB 463 requires the DOC to report to the legislature after Feb. 1, 2015 to determine the efficacy of MRS.

Post-incarceration supervision. A separate provision in HB 463 requires certain classes of inmates to be subject to one year of post-incarceration supervision upon

the expiration of their sentences: those convicted of a capital offense or a Class A felony, inmates with maximum- or close-security classification, or those who would not otherwise be eligible for parole by statute. Post-incarceration supervision will provide serious offenders the same reentry resources and supervision as MRS. This provisions applies to offenders convicted after the effective date of the legislation.

Changes in the controlled substances laws.

The following changes to the controlled substances statutes will result in millions of dollars of savings which HB 463 requires to be used to expand treatment programs.

Presumptive probation for simple possession of drugs. HB 463 established presumptive probation for simple possession of drugs and a minor trafficking offense. The new provision also requires pretrial release on unsecured bond or a person's own recognizance for an offense for which a conviction may result in presumptive probation. There are exceptions if the person is found to be a danger to others or a flight risk.

Deferred Prosecution program for first and second offenders of felony possession of controlled substances. Recognizing that possession offenses often stem from addiction and result in felony records, further diminishing the addicted person's chance for a successful recovery and economic future, HB 463 implemented the new concept of deferred prosecution. Deferred prosecution has been statutorily recognized as the preferred alternative for first offense felony possession cases. The elements of deferred prosecution (DP) are as follows:

- Prosecutor has to agree and set conditions

- Maximum length of participation is two years
- Defendant does not enter a guilty plea
- If defendant's request for DP is denied, prosecutors are required to state on the record "substantial and compelling reasons why the defendant cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety."
- **Upon successful completion, charges are dismissed and records are sealed**, except for purposes of determining future eligibility for DP
- Options if person violates terms of DP: may continue program, change terms, or remove the defendant from the program and proceed with regular prosecution
- Currently, defendants given deferred prosecution are monitored by either Drug Court or Pretrial Services. Supervision strategies for the DP program are similar to those for monitored conditional release supervision.

Distinguishing between trafficking and peddling. Before the implementation of HB 463, a person was guilty of certain trafficking offenses based on the type of controlled substance, regardless of the amount involved. Trafficking a small oneuse amount of a substance carried the same penalty as trafficking large quantities of the same substance. In order to distinguish between a true drug trafficker and a peddler who is selling to support his or her own habit, HB 463 takes into account the amount trafficked by designating new quantities for each type of controlled substance, which acts as a threshold amount for the larger trafficking penalty. Trafficking in higher quantities of controlled substances results in larger penalties than trafficking in smaller amounts. The designated amounts may be accumulated by law enforcement over a 90-day period to show a larger amount trafficked.

(Possession offenses were not modified by quantities in HB 463.)

Reinvesting savings from changes in controlled substances laws into drug treatment. HB 463 requires DOC to calculate the fiscal savings resulting from changes to controlled substances laws. Fiscal savings are required to be used solely for expanding and enhancing evidence-based SAP treatment programs. □ Since the implementation of HB 463, there has been a significant increase of Substance Abuse Program (SAP) slots (slots is used instead of beds, to note that some of the additional programs are community-based treatment and not residential programs.)

- At the end of 2007, there were 1430 prison and jail treatment beds. As of September 2013, there are 5987 total SAP slots, including 3987 inpatient treatment beds located in jails, prisons, and the community, and 2000 treatment slots through contracts with Community Health Treatment Centers and other community programs.
- Another potential benefit to the alternative sentencing for drug offenders is that fewer low-level offenders are in Drug Court. This has created more spaces in Drug Court to be available to higher-risk drug offenders.

Allowing parolees to complete programming in the community. Another problem area within the parole system was when the parole board ordered parole for an inmate contingent upon completion of a program, the inmate would often be forced to be placed in a waiting list for the program within a correctional institution. This created a large backlog (over 2700 inmates) for the programs within the institutions. Under HB 463, the Department of Corrections was authorized to determine an appropriate residential or nonresidential placement for qualified parolees who are required to complete an intervention program as a condition of release. The Department of Corrections may release a parolee from a

DOC facility to a residential intervention program or to appropriate community housing in order to complete a nonresidential intervention program.

Expanding community-based transitional housing options and GPS

monitoring. The Department of Corrections is authorized to continue to expand the use of transitional housing or GPS monitoring to facilitate reentry for inmates eligible for conditional release. The bill's provisions authorize the DOC to place an inmate on home incarceration or conditional release while using a monitoring device within 9 months remaining on an inmate's sentence (this was increased from 6 months).

DOC to supervise probationers and parolees according to evidence-based practices.

Requiring state funding to be used for programs and practices that are

evidence-based. The Department of Corrections is required to demonstrate that state-funded intervention programs provided by the department for inmates, probationers, and parolees have been evaluated for effectiveness in reducing recidivism or that similar programs have research demonstrating such effectiveness.

Reducing Supervision Caseloads So Officers Can Focus on High-Risk Offenders

Requiring the use of administrative caseloads. One of the primary tenets of justice reinvestment is to utilize resources more efficiently by focusing higher levels of supervision on higher risk offenders. In order to do this, policies must be

implemented to supervise lower risk offenders more efficiently. Under HB 463, the Department of Corrections is required to establish administrative policy for the supervision of low-risk offenders through administrative caseloads. Administrative supervision will include monitoring offenders to ensure that they have not engaged in new criminal activity and are fulfilling financial obligations to the court. Offenders on administrative supervision who fail to meet financial obligations can be placed on a higher level of supervision at the discretion of the Department of Corrections. Those who engage in criminal activity can be prosecuted, can be revoked, or can be placed on a higher level of supervision.

Offenders on higher levels of supervision who, upon reassessment demonstrate a reduction in dynamic risk factors and who achieve the goals established on their supervision plans can be placed on administrative supervision at the discretion of the Department of Corrections. If the supervised person who has his or her conditions or level of community supervision modified is a probationer, the provisions require notice to the court of the modification.

Authorizing earned-time credits for parolees. The Department of Corrections is required to extend earned-time credit to parolees in the community using criteria similar to those that currently apply to inmates.

Authorizing intermediate/graduated sanctions for technical violations of parole. In an effort to reduce the number of technical parole violators (persons who violate the terms and conditions of their parole rather than commit a new offense) who are returning to prison, HB 463 implemented a system of graduated sanctions for violations of conditions of community supervision. The Department of Corrections is authorized to respond administratively to technical parole

violations not warranting revocation (for example, a missed appointment with probation and parole officer, missing curfew, etc.). Penalties are determined according to a sanctions grid established through administrative policy. Graduated sanctions were also permitted for use with probationers with the consent of the judge who granted probation.

Other provisions of HB 463 are already showing great success. Arrests for minor offenses are down, and the pretrial release of defendants has increased by 5%. Meanwhile, the public safety rate, which is the percentage of defendants who do not commit an offense while on pretrial release, increased from 90% to 92%. The rate at which they reappear on their court date has also increased. These pretrial changes have resulted in savings to the counties of approximately \$25 million in jail costs.

Since August 2012, our state inmate population has decreased from 22,503 to 20,011 as of September 5, 2013. That is a decrease of over 2200 inmates, or almost 10%. This reduction led to the decision not to renew the final private prison contract in KY. As of October 1, 2013, the entire state felon population will be housed in state facilities, community service centers, or local jails.

Over the next 10 years, Kentucky's reforms are estimated to reduce the prison population **by 3,000 to 4,000 inmates and bring a gross savings of approximately \$422 million** in corrections spending. The goal is to achieve these reductions while maintaining public safety and preserving state resources so we can dedicate expensive prison beds for serious offenders.

One thing is clear. We cannot continue to incarcerate our way out of any problem. We have tried that, and it does not work. Had the General Assembly not acted to control the constantly expanding prison population, we would have been forced to

increase the state's spending on corrections by at least an additional \$161 million by 2020 to cover the predicted growth.

We are confident, however, that the reforms were based on sound policymaking and will continue to make positive changes for Kentucky's future.

2012 and 2013 Legislation affecting reentry
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HB 1 and HB 217: Pain Management Facilities, KASPER, etc.

- "Pain Management Facilities" must be owned by a physician holding an active Kentucky medical license.
- Pain Management Facilities must accept private health insurance as an allowable form of payment.
- CHFS and KBML share enforcement authority.
- Kentucky State Police, Office of the Attorney General, CHFS, and Licensing Boards to share reports of improper prescribing
- Commonwealth's and County Attorneys to report indictments of a medical professional for a felony drug offense to the Attorney General within 3 days
- Licensing Boards are required to issue regulations to protect patients, including:
 1. Mandatory prescribing and dispensing standards adopted by the medical community itself;
 2. Limitations on "in office" dispensing (to combat Florida style "pill mills");
 3. Emergency license suspension procedures when public health is endangered;

4. Commencement of complaint investigation within 7 days, production of a charging decision within 120 days;
 5. No licensing of practitioners convicted of drug felonies;
 6. Mirroring of sanctions imposed by other states;
 7. Mandatory reporting of criminal or disciplinary actions by medical professionals;
 8. Participation in the National Practitioner Data Bank;
 9. Continuing medical education on addiction and pain management.
 - Addiction and pain specialists required to consult with licensing boards.
 - Boards to accept unsworn complaints.
 - Doctors and nurses must check KASPER prior to prescribing Schedule II or III drugs as well as conduct a physical exam and discuss the risk of drug tolerance. Exceptions are made for emergency services
 - CHFS may contract for the design, upgrade or operation of KASPER.
 - Commonwealth's and County Attorneys authorized to request KASPER reports.
 - Medical professionals may direct employees to access KASPER
 - Medical professionals may access KASPER reports showing their own prescribing practices.
 - Medicaid Services to monitor and report improper prescribing practices.
 - Practitioners protected in good faith use of KASPER.
 - Medical professionals may place KASPER reports in patient's records.
 - Real Time Reporting funding requests authorized.
 - Error correction to be permitted.
 - CHFS to "proactively" use KASPER data.
 - CHFS, Licensing Boards, and ODCP to generate public Trend Reports.
- CHFS

- Hospitals may request KASPER reports on employees.



CHFS may join other states in sharing prescription data.

- Coroners to test for drugs and report; Name and address of decedent not reported.
- ODCP and the State Medical Examiner shall publish findings relating to drug overdoses for a more accurate count of the deaths caused by prescription drug abuse. Personal identifying information will be kept confidential.
- Governor shall select Licensing Board members to ensure broad range of knowledge and talent.
- Pharmacies discovering robbery or theft must report.
- Model Interstate Compact on Prescription Monitoring Programs is adopted.
- Legislative oversight is provided for. A House Bill 1 Implementation Oversight Committee monitored the roll out of HB 1 provisions and agency regulations during 2012.

SB 78: Non-felony expungement clarification

- This Senate bill was amended to add HB 57 (Rep. Yonts), which clarifies the effect of traffic tickets on non-felony expungement requests and requires that a certificate of eligibility completed by the State Police and the Administrative Office of the Courts be submitted with all expungement petitions.

Current and future reentry initiatives

- In 2012, pursuant to HB 54, the General Assembly gave the Criminal Justice Council the responsibility for oversight of the continued

□

implementation of the HB 463 provisions. The Council has met twice since August 2012 to continue to monitor the progress being made.

The General Assembly will continue to find ways to address challenges facing those who are being released from prison and seeking to reenter society as productive citizens. Of particular concern are **gaps in housing, employment and treatment services.**

- **Housing.** We need to find ways, through tax credits or otherwise, to incentivize housing for ex-offenders to increase the availability of affordable housing. Having a place to live is a very basic necessity and is the foundation upon which everything else necessary for a successful reentry is built. Without housing, it is difficult to hold a job and provide for your family. Seeking treatment and other services essential for successful reentry becomes secondary without proper housing.
- **Employment.** We are looking for ways to remove barriers to employment for ex-felons. We can start by determining what modifications can be made in statutes that prohibit convicted felons from obtaining **occupational and professional licenses** in many fields. For example, convicted felons lose or are restricted from receiving a license for cosmetology, waste site operator, chiropractic care, emergency medical technician, paramedic, and motorcycle safety instructor. Currently there is no requirement that a felony conviction have a nexus to the professional or occupational license being sought. There is also no statutory time limitation that would bar consideration of an old felony when a person seeks an occupational license. These are common sense changes that would make it easier for people to reenter society and to support themselves and their families.

□

- We also need to give serious consideration to authorizing **felony expungement** in certain circumstances. A felony conviction has been appropriately termed an “economic death sentence.”

Treatment. The General Assembly will continue to work with DOC to find ways to increase the availability of programs in local jails and community agencies. We need to find ways to increase funding for these programs so that those in rural areas can also receive the services they need to have a successful reentry.

- One area that has not been explored fully is how to deal with mental health issues in our society. We need to find ways to address these needs both in terms of reentry and in terms of preventing someone from ever entering the criminal justice system.
- DOC, in partnership with reentry councils across the state, have implemented Family Engagement Sessions to work with offender families to prepare them for loved ones entering the criminal justice system and for those nearing release from the criminal justice system. The feedback has been tremendous and families know feel empowered in the knowledge of how the processes work. Family relationships are a key factor in the success of an offender’s reentry process.
- DOC has pledged to continue monitoring recidivism rates to see if program participation is working and to make improvements if necessary.

Statement of

Nancy G. La Vigne, Ph.D.

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before the

Committee on Judiciary

United States Senate

Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism

Wednesday, November 6, 2013

The views expressed are those of the author and should not be attributed to the Urban Institute, its trustees, or its funders.

Good afternoon, Mr. Chairman, members of the Committee. It is an honor to appear before you to testify about the challenges and opportunities associated with the federal corrections system. I am the director of the Justice Policy Center at the Urban Institute. We represent over three dozen researchers studying a wide array of crime and justice issues. For 20 years we have managed the Federal Justice Statistics Resource Center on behalf of the federal government, cleaning, coding, and analyzing data from a wide array of federal criminal justice agencies including the Bureau of Prisons (BOP), the Administrative Office of the Courts, and the United States Sentencing Commission (USSC). Our portfolio of research includes evaluations of promising programs, reviews of the literature of “what works” in reducing recidivism, and expertise in cost-benefit analysis. We are also the assessment partner on the Justice Reinvestment Initiative, a federally

funded program that reduces costs associated with state prison systems while enhancing public safety. This expertise has made us uniquely situated to study the drivers of the federal corrections population, identify policies that can avert future growth, and project the impact of those policies in terms of population reductions and cost savings.

That work, funded by the Public Welfare Foundation and the Open Society Foundations, is embodied in our newly released report, *Stemming the Tide: Strategies to Reduce the Growth and Cut the Cost of the Federal Prison System*.¹ The report chronicles the rampant increase in the size and cost of the federal prison system and reviews 20 policy options designed to reduce the prison population without jeopardizing public safety. Many of those options reflect legislative proposals introduced by you and your colleagues. Our overarching conclusion is that it will require changes to both sentencing and release policies to reduce the federal prison population to levels that are within their rated design capacity. Doing so can save billions of dollars that could be dedicated to other important justice priorities, including programming and treatment to help federal prisoners lead law abiding lives upon their release.

Problem Statement

Over the past several decades, the federal prison population has experienced an almost tenfold increase in its population since 1980; its current population exceeds 219,000,² with projections of continued growth for the foreseeable future. This continuous growth has substantial costs. With each passing year, the federal government has had to allocate more resources to the federal prison system at the expense of other critical public safety priorities. Since Fiscal Year (FY) 2000, the rate of growth in the BOP budget is almost twice the rate of growth of the rest of the US Department of Justice (DOJ).³

A wide array of actors, including members of this Committee, other Members of Congress, the Attorney General, other administration officials, bipartisan policy advocates, and researchers, have concluded that this growth and its associated costs are unsustainable. The basis for this conclusion varies:

- **Fiscal impact.** Resources spent on the BOP eclipse other budget priorities.
- **Overcrowding risks.** Overcrowded facilities can jeopardize the safety of inmates and staff and limit opportunities for effective programming that can reduce recidivism.
- **Fairness and equity concerns.** High levels of incarceration may have disproportionate effects on certain subpopulations and communities.
- **Inefficient resource allocation.** Current research and recent evidence-based policy changes implemented in states raise questions about the cost-effectiveness of existing federal sentencing and corrections policies.

¹ Samuels, La Vigne, and Taxy (2013).

² BOP (2013b).

³ US DOJ, *Summary of Budget Authority by Appropriation*. Budget summaries for fiscal years 2000–13. See, for example, <http://www.justice.gov/archive/jmd/2k-summary/2kbudget.pdf> (2000); and <http://www.justice.gov/jmd/2013summary/pdf/budget-authority-appropriation.pdf> (2013).

The high costs of maintaining a growing prisoner population have contributed to the increases in the BOP budget relative to the rest of the DOJ: in FY 2000, BOP took up less than 20 percent of the DOJ budget, but we project that by FY 2020, it will consume more than 30 percent. In these fiscally lean times, funding the expanding BOP population crowds out other priorities, including funding for federal investigators and federal prosecutors and support for state and local governments.⁴

BOP facilities are currently operating at between 35 and 40 percent above their rated capacity, with 51 percent crowding at high-security facilities and 47 percent at medium-security facilities in FY 2012.⁵ The capacity of BOP facilities in 2012 was 128,359, but BOP-operated facilities housed 177,556 inmates in 2012.⁶ Since FY 2000, the inmate-to-staff ratio has increased from about four-to-one to a projected five-to-one in FY 2014.

Barring any meaningful changes in policy and practice, this untenable status quo will be the norm for the coming decade: the BOP projects that, through 2020, federal prisons will be overcrowded by at least 33 percent, with the population exceeding system capacity by at least 50,000 people each year.⁶ The BOP anticipates adding over 25,000 beds by 2020, but most of these projects have not yet been approved and would not substantially reduce overcrowding (see figure 1).⁷ As illustrated in figure 1, the federal prison population would need to decline by over 50,000 inmates to be operating prisons within their rated capacity.

Figure 1: BOP Projected Overcrowding Compared with Current Capacity and New Beds

250,000

⁴ *Hearing on Federal Sentencing Options after Booker: Current State of Federal Sentencing* (2012) (statement of Matthew Axelrod, Associate Deputy Attorney General).

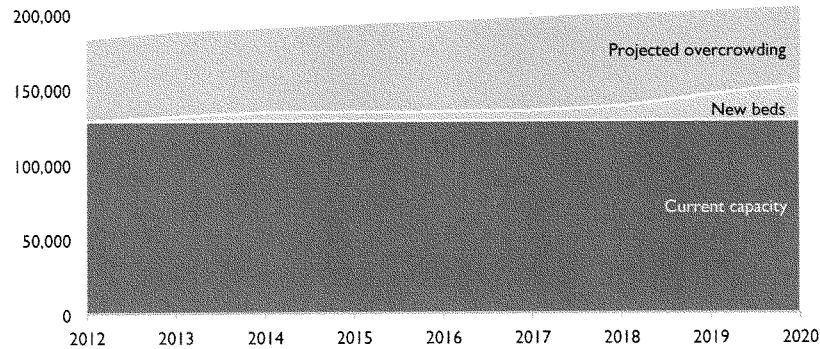
⁵ US DOJ (2013); *Hearing on the Oversight of the Federal Bureau of Prisons Subcommittee on Crime, Terrorism, Homeland Security, and Investigations* (2013) [hereinafter *BOP 2014 Budget Hearing*] (statement of Charles E. Samuels, Jr., Director, Federal Bureau of Prisons).

<http://docs.house.gov/meetings/JU/JU08/20130919/101318/HHRG-113-JU08-Wstate-SamuelsC-20130919.pdf>.⁶

⁶ US DOJ (2013). This represents the prison populations and capacity for 2012. The population ebbs and flows throughout the year as prisoners are released and new offenders are admitted. As of September 2013, overcrowding had dropped to 36 percent in BOP facilities, but was expected to climb again.

⁶ GAO (2012).

⁷ See GAO (2012) table 7, based on BOP's 2020 Capacity Plan, January 2012. These projections assume that 17,500 new beds will be constructed and staffed starting in FY 2016—these new facilities will require increases in appropriations to the BOP that have not yet received congressional approval.



Source: GAO (2012).

Beyond the fiscal problems associated with maintaining such a large federal prison population, overcrowding threatens the safety of inmates and prison staff and undermines the ability to provide effective programming.⁸

- Overcrowding is most concentrated in high-security facilities, where over 90 percent of inmates have a history of violence. Overcrowding is currently above 50 percent in highsecurity facilities.⁹
- The BOP has found that high inmate-to-corrections officer ratios are correlated with increases in the incidence of serious assault.¹⁰ In February 2013, a BOP officer was killed for the first time in five years, while working alone in a unit housing 130 inmates.¹¹
- Provision of programming and treatment designed to reduce recidivism is restricted due to lack of space, inadequate staff, and long waiting lists for educational, treatment, vocational, and other reentry programming.¹²
- Health and safety hazards increase from over-used equipment, such as toilets, showers, and food service equipment.¹³

Given the detrimental effect of this continued growth on prison conditions, inmate and staff safety, and the ability to provide recidivism-reducing programming and treatment, it is critical that options be explored that avert future expansion of this already bloated system.

⁸ GAO (2012).

⁹ US DOJ (2013).

¹⁰ BOP (2005).

¹¹ Kalinowski and Halpin (2013).

¹² GAO (2012).

¹³ GAO (2012).

What Works in Preventing Recidivism

A large and growing body of evidence indicates that programs to prepare inmates for employment, address substance addiction, and maintain and enhance family relationships are critical to reducing the likelihood of recidivism following their release. Much of this evidence is embodied in the What Works in Reentry Clearinghouse,¹⁴ developed by the Urban Institute in partnership with the Council of State Governments' Justice Center as part of the Second Chance Act's National Reentry Resource Center.¹⁵ For example, the Clearinghouse found positive effects for many substance abuse treatment programs, including the BOP's Residential Drug Abuse Program,¹⁶ Connecticut's substance abuse treatment tier programs,¹⁷ and Minnesota's chemical dependency treatment program.¹⁸ Several prison industries programs were found to be effective, including the federal prison system's UNICOR program,¹⁹ as were work release programs in Florida²⁰ and Washington²¹ and a number of educational and vocational programs, particularly postsecondary and adult basic education.

Importantly, studies of in-prison visitation found that inmates who receive visits from family members while incarcerated have reduced rates of recidivism compared to those who do not, even when statistically controlling for other differences between these groups.²² This finding is consistent with the Urban Institute's reentry studies, which have found that families are an important positive influence in the reentry process, with higher levels of family support linked to higher employment rates and reduced recidivism following release²³ and that in-prison contact with family members is predictive of the strength of family relationships following release.²⁵

It is important to note that many of the prison programs found to be effective in reducing reoffending and substance abuse are also cost-effective. Welsh's review of cost-benefit analyses of reentry programs²⁴ found that 12 of 14 evaluations of reentry programs resulted in positive benefit-cost ratios, and a comprehensive review conducted by Aos yielded similar findings.²⁵ In an Urban Institute evaluation of the Maryland Reentry Partnership Initiative,²⁶ we found that the effort returned three dollars in benefits for every dollar in new costs. Another Urban study²⁷ found that jail reentry programming is cost-beneficial if the programming results in at least a 2 percent reduction in recidivism.

¹⁴ <http://whatworks.csgjusticecenter.org>.

¹⁵ <http://csgjusticecenter.org/nrrc>.

¹⁶ Pelissier et al. (2002).

¹⁷ Daley et al. (2004).

¹⁸ Duwe (2010).

¹⁹ Saylor and Gaes (1992).

²⁰ Berk (2007).

²¹ Drake (2007).

²² Bales and Mears (2008); Derksen, Gobeil, and Gileno (2009).

²³ La Vigne, Visser, and Castro (2004); La Vigne, Shollenberger, and Debus (2009). ²⁵ Naser and La Vigne (2006).

²⁴ Welsh (2004).

²⁵ Aos (2006).

²⁶ Roman et al. (2007).

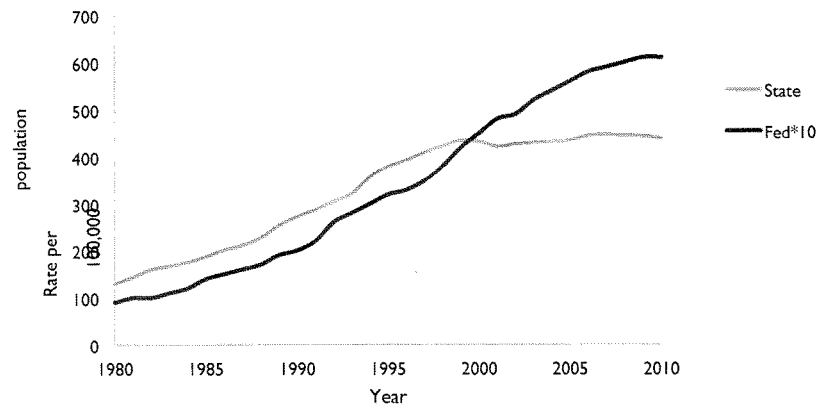
²⁷ Roman and Chalfin (2006).

These findings make a strong case for the federal prison system to expand programming to serve all the prisoners who can benefit from it, especially given that federal treatment and prison industries programs feature prominently among the most effective reentry programs that have been rigorously evaluated. Doing so, however, requires a reduction in the prison population to relieve overcrowding and the shifting of resources saved from population reduction toward program and treatment delivery. States across the country have done exactly that, offering examples and lessons learned that the federal system could benefit from following.

Lessons from the States

The federal experience in prison growth has largely been mirrored in the states, but while the federal prison has continued to grow, in the past decade states have engaged in extensive bipartisan reform efforts, many of which have reduced overcrowding and saved taxpayers money without sacrificing public safety. The experiences of the states can be instructive; as illustrated in Figure 2, the state incarceration rate has remained largely constant for the past decade while the federal incarceration rate has grown by over a third.

Figure 2: Trends in State and Federal Incarceration Rates



Source: Bureau of Justice Statistics, Office of Justice Programs, US Department of Justice.

While state prison systems differ significantly from the federal system, many drivers of prison population growth remain the same. For example, some of the growth in state systems was driven by increases in truth-in-sentencing requirements, often requiring an 85 percent threshold for violent offenders and some lower threshold for nonviolent offenders. The Violent Offender Incarceration and Truth-in-Sentencing Incentive (VOI/TIS) Grant Program, authorized by the Violent Crime Control and Law Enforcement Act of 1994, further incentivized states to adopt truth in sentencing with funding to build or expand prisons and jails.²⁸ Faced with high prison

²⁸ Sabol et al. (2002); Ditton and Wilson (1999).

populations and shrinking budgets, however, many states recently revised their truth-insentencing provisions to allow for earlier release. Mississippi, for example, passed a law significantly reducing the TIS threshold from 85 percent to 25 percent for many offenders; this policy both reduced the prison population and saved the state money, without compromising public safety.²⁹ These states have recognized that certainty, as a crucial attribute in the sentencing process (especially for victims and victims' advocates,) is not compromised by lowering time served thresholds as long as the change is well publicized. Given that with very few exceptions federal inmates must serve over 87 percent of their sentence, these policy changes are quite instructive.

Similarly, legislators in states across the country have expanded early release programs for offenders who comply with prison regulations and programming requirements. At least 31 states offer inmates the opportunity to earn sentence-reduction credits through participation in education, vocational training, substance abuse treatment and rehabilitation, and work programs; education and work programs are the most common.³¹ These programs vary by programmatic requirements, extent of the credit, and eligibility. Many states factor inmates' compliance with prison rules and regulations into earned time credit calculations.³²

Studies show that early release resulting from earned and/or good time credits can be a cost-effective method for reducing prison populations at minimal risk to public safety. A review of early release programs and public safety measures found no significant differences between the recidivism rates of inmates released early and those who served their full sentences.³³ These programs have also been found to produce significant cost savings.³⁴ States' experiences can guide efforts to expand and strengthen BOP's early release programs.

Drivers of Federal Population Growth

The federal system has its own unique drivers of growth that need to be addressed as well. More than 90 percent of BOP inmates are sentenced offenders, mostly for federal crimes.³⁵ The number and composition of offenders committed to federal prison result from the investigations pursued by law enforcement, cases accepted and charged by prosecutors, the dispositions of those cases, the proportion of convicted offenders that receive a term of imprisonment, and the imposed sentence.

The BOP does not play a role in these decisions: the combination of the volume of admissions and sentence length drives the inmate population. The length of stay is largely determined by the sentence imposed (informed by the relevant statutory penalties and federal sentencing

²⁹ Justice Policy Institute (2011); Gray (2011).

³⁰ Stith and Koh (1993).

³¹ Lawrence (2009). Some states also offer additional opportunities for earning earned time credits, such as participation in "special programs," disaster relief or conservation efforts, or by conducting extraordinary meritorious service in prison.

³² Lawrence (2009).

³³ Guzman, Krisberg, and Tsukida (2008).

³⁴ Drake, Barnoski, and Aos (2009).

³⁵ BOP also houses sentenced DC felony offenders (since 1997) and some pretrial or pre-sentencing offenders for the US Marshals Service and for Immigration and Customs Enforcement. See BOP (2013a).

guidelines)³⁶ and any subsequent sentence reductions that release inmates early. Currently few options for early release exist, and most federal offenders sentenced to prison serve at least 87.5 percent of their terms of imprisonment.³⁷

The length of sentences—particularly for drug offenders, many of whom are subject to mandatory minimum sentences—is an important determinant of the size of the prison population and driver of population growth. Our 2012 study of the growth in the BOP population from 1998 to 2010 confirmed that time served in prison for drug offenses was the largest determinant of population growth.³⁸ Changes in sentencing laws (particularly mandatory minimums) and practices, prison release policies, or both could directly decrease the time served and thereby moderate prison population growth.

Given that the federal prison population is driven by the volume of admissions and sentence length, any attempt to address prison overcrowding and population growth that relies exclusively on back-end policy options to shorten length of stay, while meaningful, would only yield a marginal impact. We find that a combination of both front- and back-end policies will be necessary to reduce population growth in both the short and long term. Fortunately, a bipartisan coalition of lawmakers—including many members of this Committee—have taken up the mantle of leadership in crafting innovative and effectual legislation that will go a long way in stemming the tide of federal prison population growth. We have analyzed the projected impact of these legislative proposals along with other possible policy changes in our *Stemming the Tide* report.

Overview of Stemming the Tide

In our report, we generate cost and population estimates for over a dozen policy options to reduce the federal prison population. Our estimates generally employ BOP data on federally sentenced offenders only (thus excluding pretrial, DC, state, or other miscellaneous offenders) as of the end of Fiscal Year 2011 (September 30, 2011). Elsewhere, we rely on published summary information in the FY 2012 USSC Sourcebook, 2011 USSC Mandatory Minimum Report, and other USSC, GAO, and BOP annual or special reports. We are also indebted to the many criminal justice policy experts who provided input and feedback on our interpretations of proposed policies and methodology.

When making assumptions regarding program eligibility or impact, we err on the conservative side. For example, our cost estimates for dollars saved are based on the average marginal cost of imprisoning one inmate for one year—these do not take into account the savings that could accrue from averted prison construction or prison closures, including wholesale staffing changes or other structural changes to the BOP cost structure. We also assume that barring any new

³⁶ Recent legislative and policy changes to this domain may have the combined effect of reducing sentence length: for example, the shift from mandatory to advisory sentencing guidelines and enactment of the Fair Sentencing Act could moderate sentence lengths.

³⁷ There are limited opportunities for some offenders to have their sentences reduced below 87.5 percent, based on prison participation in residential drug treatment programming and, in rare cases, compassionate release.

³⁸ Mallik-Kane, Parthasarathy, and Adams (2012).

prison construction or policy changes, overcrowding will continue to rise to 55 percent in BOP facilities within 10 years.

The extent of our assumptions varied depending on the type of change proposed. For existing proposals, such as proposed legislation, the population estimates are based on our interpretation of the proposed change and our best understanding or assumptions about how it will work in practice. In cases for which a proposal rests on the exercise of judicial or prosecutorial discretion, it is difficult to discern the accuracy of the assumptions. In addition, the projected impact of these policy options is not necessarily additive, as some share of offenders or inmates may be eligible for multiple policies, diminishing their benefits to some degree.

Because the biggest driver of federal prison growth has been the number of drug offenders getting lengthy sentences, our projections conclude that the most direct way to reduce the prison population is to address drug offenses. Before the Sentencing Reform Act of 1984 and mandatory minimums for drugs, a quarter of all federal drug offenders were fined or sentenced to probation, not prison. Today 95 percent are sentenced to a term of incarceration.³⁹ The average time served before 1984 was 38.5 months, almost half of what it is now.⁴⁰

One legislative proposal, S. 1410 The Smarter Sentencing Act of 2013, combines three policies targeted at reducing prison population and spending growth associated with drug offenders subject to mandatory minimum sentences. We examine these separately. Reducing mandatory minimum penalties for certain nonviolent drug offenses has support from policymakers on both sides of the aisle who view these penalties as unfair, ineffective, and an unwelcome intrusion on judicial discretion and state-level drug enforcement. Every year, 15,000 offenders are charged with offenses carrying these minimums, so lowering the mandatory sentences would greatly reduce overcrowding and costs. In 10 years, reducing mandatory minimums by half would save \$2.5 billion and reduce prison crowding to 20 percent above capacity. This is the only policy option that would, on its own, eliminate prison overcrowding going forward.

Another way to address sentence length is to provide more judicial discretion in departing below statutory mandatory minimum penalties. Judges are allowed to exempt an offender from a mandatory minimum sentence if he or she meets certain criteria. This option—the safety valve—applies only to drug offenders with minor or no criminal history. That same discretion could be expanded to include drug offenders with slightly greater criminal histories who pose little threat to public safety. Expanding the safety valve to Criminal History II offenders would save \$544 million over 10 years.

A final option in The Smarter Sentencing Act that would alleviate prison overcrowding immediately, for which over 3,000 inmates would be eligible for immediate release, applies to the Fair Sentencing Act of 2010, which increased the quantity of crack cocaine needed to trigger a mandatory minimum sentence. But these statutory changes have only applied to cases going forward. Making these changes retroactive for inmates who judges confirm pose little risk to public safety would reduce sentences for many crack cocaine offenders; a previous retroactive

³⁹ USSC 2012 Sourcebook.

⁴⁰ Bureau of Justice Statistics (1987).

sentence change for crack offenders in BOP custody was shown in a methodologically rigorous study to have no adverse effects on public safety.⁴¹

Another legislative proposal, S. 619 The Justice Safety Valve Act of 2013, would provide even greater authority to judges to depart below the statutory mandatory minimum penalty for offenders whose case-specific characteristics and criminal histories are inconsistent with a lengthy minimum sentence. This new safety valve could be applied to all offenders facing federal mandatory minimums, including drug offenders with more extensive criminal histories and offenders subject to mandatory minimum penalties for nondrug offenses. Expanding safety valve eligibility to any offender subject to a mandatory minimum sentence could save as much as \$835 million in 10 years. Though it would take several years to realize an effect from this legislative change, it would stabilize overcrowding at approximately 40 percent for the remainder of the decade.

Other legislative options provide early release or transfer to community corrections for those already in BOP custody, more immediately relieving dangerous overcrowding. These proposals marry research literature about what works at reducing recidivism and increasing public safety with the experiences of states in reducing their prison populations.

Federal inmates can reduce their required length of stay for good conduct (except those with life sentences or with less than a year to serve) and participation in specific programming. Expanding such opportunities can free up bed space through the early release of those who participate in intensive programs proven to cut down on recidivism. Research indicates that in the states, the early release of inmates has no significant impact on recidivism rates.⁴² Based on our understanding of S. 1231 RS Second Chance Reauthorization Act of 2011, earned time for intensive, evidence-based program participation could save \$45 million. Another option that would provide similar quantities of credits for both intensive, validated programming and less intensive programming or programming that has not been validated would save \$224 million.

Another option, proposed in H.R. 2656 The Public Safety Enhancement Act of 2013, is giving early release credits for a broader set of programs and productive activities and rewarding inmates based on their risk level. The goal here is to incentivize inmates to engage in conduct and activities that lower their risk levels during the course of incarceration. Low-risk inmates, for example, would earn more credits and would be released early to serve the remainder of their prison terms on home confinement. This would help overcrowding, though mostly in lowsecurity prisons. (Under current contracting mechanisms, however, home confinement is more costly than prison; that might change as BOP renegotiates its contracts for a lower price. A more competitive rate of reimbursement for home confinement is roughly half that which BOP currently pays through its contractors.) Using competitive market rates for home confinement, transferring low-risk prisoners can save up to \$112 million; but, if BOP cannot renegotiate its contracts, it could lose almost \$80 million.

Our report also provides cost and population estimates for other policy changes at both the front and back ends. A policy that has been particularly effective at the state level is reducing the

⁴¹ Hunt (2011).

⁴² Guzman et al. (2008).

required truth-in-sentencing threshold of required time served before the inmate is eligible for release. Under TIS laws, inmates must serve their entire sentence, except what is subtracted for good conduct. Lowering the minimum amount of time served to 80, 75, or 70 percent could go a long way toward easing overcrowding without compromising the “certainty and severity of punishment” TIS laws were designed to guarantee. Reducing the required minimum of time served from 87.5 to 75 percent for those inmates that exhibit exemplary behavior while in BOP custody would save over \$1 billion in 10 years; reducing the minimum to 70 percent would save over \$1.5 billion and prevent any growth in overcrowding over the next 10 years.

Policy changes reducing the number of drug offenders sentenced to terms of incarceration would have an immediate impact on both population and cost. This can be done by only accepting certain types of drug cases, diverting cases to states, and reducing drug prosecutions. Another approach is reducing drug sentences either by instructing prosecutors to modify charging practices to reduce mandatory minimum sentences (as the Attorney General has recently done⁴³) or by amending statutory penalties. Cutting the number of drug offenders entering BOP by just 10 percent would save \$644 million over 10 years.

Other policies target inmates already in BOP custody. Two additional earned time policies include expanding upon those already in place. Federal inmates can get up to 12 months off their sentences for successfully completing the Residential Drug Abuse Program, but most receive much less than that. Giving graduates the full 12 months of credit would save money and encourage inmates to participate in a program proven to decrease post-release drug use and rearrest rates.⁴⁴

Similarly, current inmates could receive the full good conduct credit they earn. Federal law allows inmates up to 54 days of good conduct credit, but because of the way the BOP calculates time off, inmates actually receive up to 47 days off. This change alone, which would require a statutory change, would lead to 4,000 releases and save over \$40 million in the first year alone.⁴⁵

Federal prisons already have early release programs for terminally ill inmates and the elderly, but few eligible inmates are offered this option. These inmates are good candidates for early release because they are less likely to reoffend⁴⁶ and their medical care is costly.⁴⁷ BOP could greatly expand the eligibility criteria for elderly inmates who have served a vast majority of their sentences; changing their discharge status could actually save the BOP money. The BOP is already expanding and reforming compassionate release for sick and elderly inmates; doubling the number of inmates released early through this program would yield even more savings.

Finally, the federal prison system could increase the number of transfers of foreign national inmates to their home countries. About a quarter of the federal prison population is not US citizens, but less than 1 percent of foreign nationals are transferred through the International

⁴³ Holder (2013a, 2013b).

⁴⁴ Pelissier et al. (2000).

⁴⁵ US DOJ (2013).

⁴⁶ See, for example, USSC (2004) and Chiu (2010).

⁴⁷ Chiu (2010).

Prisoner Transfer Program.⁴⁸ Together, expanding elderly and compassionate release and doubling international transfers could save almost \$15 million.

Conclusions

The BOP population has increased almost tenfold since 1980. If current trends persist, spending on prisons will continue to squeeze taxpayers for billions of dollars annually and eclipse other spending priorities, such as federal investigators and prosecutors.

Federal prisons are also currently operating over one third over capacity, and the BOP projects that the population and overcrowding will continue to grow over the coming years. This means that even fewer inmates will have access to reentry programming designed to reduce recidivism and that prison facilities will become even more dangerous for prisoners and correctional officers alike. The current status quo is untenable, and it is anticipated to get even worse.

BOP has limited discretion and authority in reducing its burgeoning population, and even if its authorities increase, most of the savings from back-end options are limited. Most options for reducing the population would require statutory changes or changes in policies by investigators, prosecutors, judges, and probation officers; it is heartening that so many Members of Congress have advanced cross-cutting and innovative proposals to address this problem.

Our previous research has shown that lengthy drug sentences have been the biggest driver of growth in the federal prison population, and our report confirms that the most direct and effectual methods of decreasing the prison population target drug offenders specifically. Indeed, the only policy change that would on its own eliminate overcrowding altogether is reducing certain drug mandatory minimums. Other promising front-end changes include changing truth-in-sentencing requirements, reducing the number of offenders entering the federal prison system for drug offenses, and providing judges more discretion in departing below mandatory minimums.

At the same time, back-end changes targeting inmates already in BOP facilities could immediately reduce overcrowding and save money. Options such as granting the statutory changes of the Fair Sentencing Act retroactively to nonviolent inmates deemed at little risk to public safety, changing the formula by which good time credits are calculated for inmates already in BOP custody, bringing RDAP to scale, and providing some type of expanded programming credit would help reduce overcrowding while not harming public safety. BOP is already reviewing and expanding its existing authorities, which will generate further savings.

Aggressive action is needed to stem the tide of prison population growth: I hope that our report illuminates the drivers of federal prison population growth and potential solutions that go beyond stemming the tide of growth toward actually reducing the prison population over the coming decade. One of our key findings is that in order to alleviate dangerous conditions immediately and continue to slow growth, a combination of front- and back-end policies will be necessary. Many states have done so and are already reaping the benefits of cost savings at no risk to public safety.

⁴⁸ OIG (2011).

Thank you for the opportunity to testify today. I would be pleased to answer any questions you may have.

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Testimony to the United States Senate Committee on the Judiciary Hearing "Oversight of the
Bureau of Prisons and Cost-Effective Strategies for Reducing Recidivism"

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Room 226 Dirksen Senate Office Building

Overall Assessment: Although reducing the costs of the BOP is important, the policy recommendations significantly neglect the antisociality of criminal offenders, and the likely recidivism that would result from a large-scale release of BOP inmates. This testimony attests to the antisociality and behavioral risks denoted by the modal federal prisoner, with estimates of additional crimes that various policy recommendations could produce. These estimates are emphasized in bold.

Responses to the Urban Institute's *Stemming the Tide: Strategies to Reduce the Growth and Cut the Cost of the Federal Prison System*

1. Overcrowding. Despite the intuitive idea that crowding makes prisons more dangerous, crowding has little impact on inmate misconduct. Meta-analytic research (Franklin *et al.*, 2006) reported a very small effect size ($r = .025$). Thus, while crowding is not viewed favorably, the notion that crowding inexorably increases inmate violence and misconduct is empirically not supported. Moreover, projections of operating capacity of prisons produce estimates that are often incorrect, and retorted by observed data.
2. Drug Offenders. The report promulgates the notion that drug offenders are somewhat innocuous and that their antisocial behavior is limited to drug use/sales. In fact, criminal offenders are overwhelmingly versatile in their offending patterns, and their criminal histories contain violent, property, drug, nuisance/public-order, and traffic offenses and various indicators of noncompliance with the justice system, such as failure to appear violations, probation violations, parole violations, etc. (DeLisi, 2003). More recent research using a sample of habitual offenders found that juvenile drug use was the best predictor of chronic offending, extreme chronic offending (1 SD above mean career arrests), and arrest rate per year (DeLisi *et al.*, 2013). Meta-analytic research (Bennett *et al.*, 2008) indicates that drug users offend at levels 3-4 times greater than persons not convicted of drug crimes. Thus, although BOP inmates could be sentenced for drug-oriented offenses, their antisocial behavioral repertoire extends beyond drug use or sales.
3. Reduction of Crack Cocaine Sentences. The report cites a USSC memo, not empirical research from a refereed journal regarding the recidivism outcomes of released crack offenders. Metaanalytic research indicates that crack users have the highest recidivism scores (Bennett *et al.*, 2008). Such a policy also counters research which has shown that sentencing enhancements increase the deterrent and incapacitative effects of prison (Kessler & Levitt, 1998). Moreover, enhanced penalties for crack cocaine were based on criminogenic effects associated with crack use/trafficking and collateral social problems (Fryer *et al.*, 2005), not race/ethnicity as is sometimes asserted. However, reduced crack sentences are likely to disproportionately burden the African American community since crime is overwhelmingly intraracial.
4. Safety Valve for Judicial Discretion. Current law permits judges to waive mandatory minimum sentencing for drug offenders with little to no criminal history, thus the extant policy is adequate to avoid unnecessary confinement of lowest risk offenders. The suggestion to apply the safety valve to all offenders—including those with extensive criminal histories—is not advised.

The entire criminal career research paradigm has shown tremendous continuity in antisocial behavior among those with extensive arrest and convictions histories (DeLisi & Piquero, 2011; Moffitt, 1993). Prison is an important interruption of their criminal careers, but the preponderance of offenders continue to commit crime upon release.

Releasing these types of offenders would likely produce more crime. For instance, research has shown that a one-prisoner reduction in the prison population is associated with a 15 Part I Index offense increase per year (Levitt, 1996). To put this in perspective, releasing 1% of the current BOP population would result in approximately 32,850 additional murders rapes, robberies, aggravated assaults, burglaries, thefts, auto thefts, and incidents of arson.

Similarly, Marvell and Moody (1994) pooled 19 years of state prisoner data and found that 17 Index crimes are averted each year per additional prisoner. To put this in perspective, releasing 1% of the current BOP population would result in approximately 37,230 additional murders, rapes, robberies, aggravated assaults, burglaries, thefts, auto thefts, and incidents of arson. That independent research teams produced such similar estimates of Index offenses prevented per year lends confidence to their findings.

Safety Valve 1: The Urban Institute proposal to release 2000 offenders under new criminal history category II guidelines would produce an estimated 30,000 to 34,000 new Index crimes per year.

Safety Valve 2: The Urban Institute proposal recommends the creation of new safety valve procedures to “extend judicial discretion in reducing mandatory minimum sentences beyond drug offenders with minimal criminal histories *to drug offenders with more extensive criminal histories, some weapons offenders, armed career criminals, sex abuse offenders, child pornography offenders, and identity theft offenders*” (2013, p. 23, italics added). **The release of offenders with extensive antisocial histories would be potentially disastrous to public safety.**

To illustrate, Figures 1-3 demonstrate the sheer criminal offending differences between “average” criminal offenders—who in this sample were nonetheless relatively chronic offenders, and career criminals (similar to those who are sentenced under habitual offender statutes). DeLisi *et al.* (2011) calculated differences in magnitude of offending between career offenders and other offenders for various age ranges (likely to be the age of offenders released from BOP per the proposal). The arrest differentials are: ages 32-38 (8.4), ages 39-45 (14.6), ages 46-52 (18.1), and ages 53-59 (14.2). Over the life-course, these differences are large.

Figure 1 shows observed arrest differentials by offender type across seven age ranges. Figure 2 shows observed arrest activity for murder across seven age ranges. Figure 3 shows observed arrest activity for robbery across seven age ranges.

The salient conclusion from these data is that offenders with extensive criminal histories, which would include weapons offenders, armed career criminals, sex abuse offenders, child pornography offenders, and identity theft offenders, among others, continue to offend at

alarmingly high rates even at relatively advanced ages which in the criminal justice domain is beyond age 35.

Another critical point is that unlike the Urban Institute's projected data, which are inherently prone to error, these arrest data are based on observed offending patterns.

Figure 1: Observed Arrest Differences (Non Career/Career Criminals)

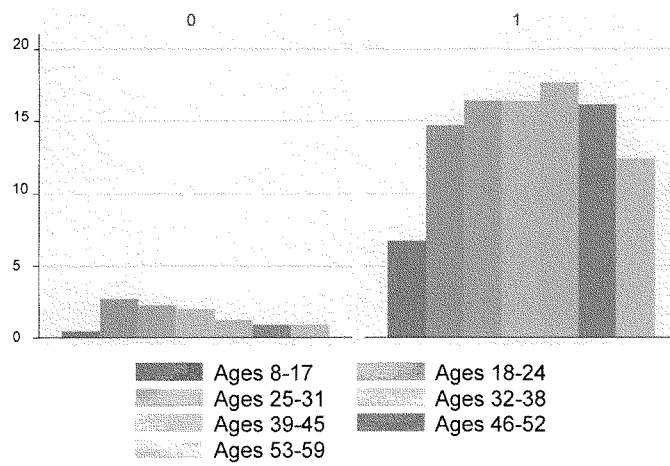


Figure 2: Observed Arrest Differences for Murder (Non Career/Career Criminals)

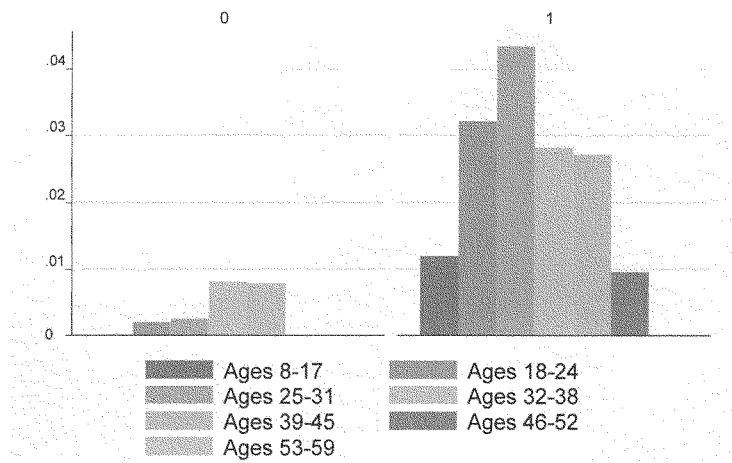
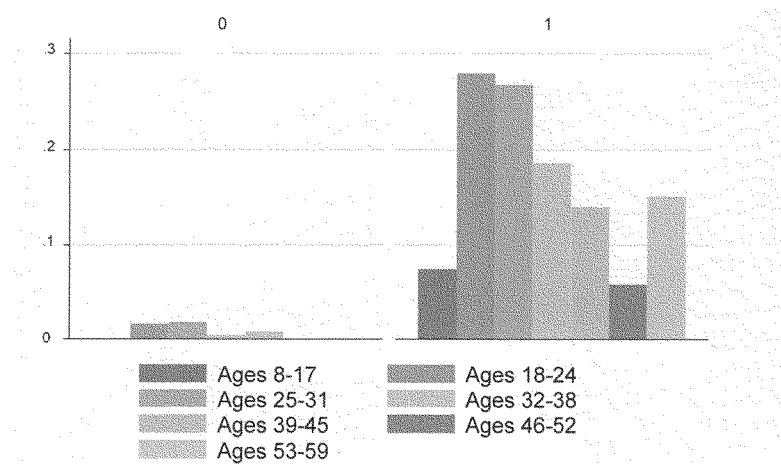


Figure 3: Observed Arrest Differences for Robbery (Non Career/Career Criminals)



Sources: DeLisi *et al.*, 2011

5. BOP Cost Reductions. Although meta-analytic research indicates that private prisons are no more cost-effective than state/federal prisons (Pratt & Maahs, 1999), prisoners released from private prisons are similar in terms of recidivism outcomes for released offenders (Bales et al., 2005). Thus, transferring inmates to private prisons would reduce BOP expenditures without commensurate public-safety risks.

6. Foreign Nationals in the BOP. The report indicates that 25% of BOP inmates are not US Nationals, and that less than 1% of foreign prisoners are transferred to their home nation through the International Prisoner Transfer Program. With the exception of prisoners with known terrorism connections, it is unacceptable for the BOP to house so many criminal foreign nationals. The transfer of these inmates (criminals, not terrorists) to their home nation should be exponentially increased. The report indicates that conditions in the treaty with Mexico have precluded the transfer of many of these inmates—if addressed, this mechanism could reduce the BOP population dramatically. **More importantly from a crime control perspective, only 3% of prisoner transfers were rearrested in the United States** according to the Urban Institute report.

7. Expansion of Earned and Good Conduct Credit. Prisoners should **not** receive sentenced reduction credits for simply abstaining from misconduct and other forms of noncompliance. To do so is tantamount to rewarding prisoners for not continuing to commit crime behind bars. The early-release of a single offender can have disastrous consequences. The most illustrative example is the parole of Texas inmate Kenneth McDuff in 1989. McDuff had been sentenced to death in 1966 for three murders, but later had his sentence commuted as a result of *Furman v. Georgia* (1972). His ultimate parole release was based on the same logic of the Urban Institute's report (good conduct credits, lengthy amount of time served, advanced offender age, etc.). After release, McDuff continued to offend, and was ultimately sentenced to death again for five new homicides, and was executed in 1999.

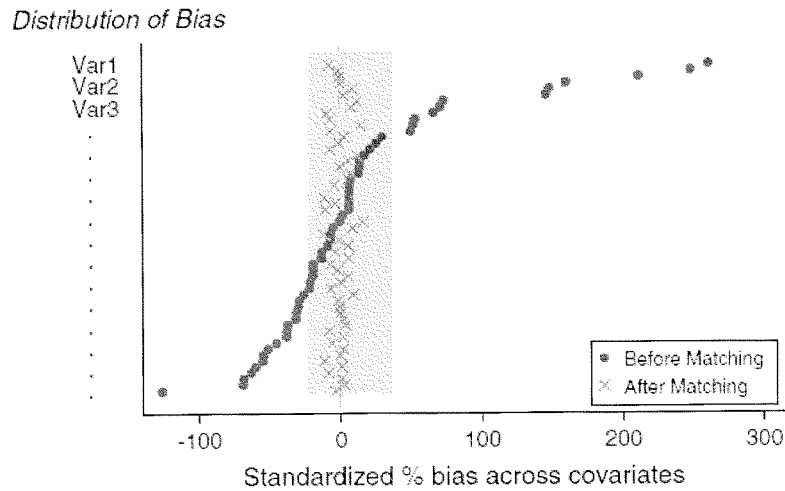
Determinations of good conduct credit also relate to participation in various educational, work, and treatment programs. **It is important to note that the effectiveness of treatment programs has been inflated by methodologies that were unable to control for baseline differences in criminal propensity.** For example, a recent study (Kim & Clark, 2013) found that treatment effects are likely overestimated by 50% or more due to selection problems in the samples. This means that the putative crime-reduction effects of prison programming—and the potential for use for early release—are rife with error (see Figure 4).

Expand and Incentivize Programming 1: The Urban Institute proposal to potentially release 36,000 inmates over the next 10 years would produce an estimated 540,000 to 612,000 new Index crimes.

Expand and Incentivize Programming 2: The Urban Institute proposal to release 12,000 offenders in 1 year would produce an estimated 180,000 to 204,000 new Index crimes.

Expand and Incentivize Programming 3: The Urban Institute proposal to transfer 34,000 inmates to home confinement over the next 10 years release would produce an estimated 510,000 to 578,000 new Index crimes.

Figure 4: Error in Prison Treatment Effects as a Function of Propensity Score Matching



Source: Kim & Clark, 2013

Finally survey research has shown that nearly 60% of prisoners themselves feel that rehabilitation comes from within and is not the result of programming efforts of prisons (Kolstad, 1996). Unfortunately, prison is most effective at producing desistance from crime.

8. Early Release for Special Populations (Elderly)

The data provided on page 34 about the dearth of offenders eligible under the Second Chance Act of 2007 provides evidence that counters the widely-held notion that prisons are packed with elderly prisoners. These policies also intimate that elderly offenders are low-risk merely because of their age. For instance, an 85-year old Iowa sex offender was recently charged with sexually abusing a 95-year old victim in a nursing home setting. The offender has a decades-long criminal history involving sex offenses against children

(<http://www.iowasexoffender.com/registrant/6810/>), thus the instant offense against an adult females reinforces the notion that offenders are versatile as described in point 2.

Other Concerns

1. The Urban Institute relies on media sources that do not substantiate claims made in the report. For example, Mississippi's reduction from truth in sentencing from 85% to 25% was touted as not compromising public safety, but no data are reported to substantiate it. Moreover, the report indicates that victim and victim advocates' perspectives were not compromised by such a policy, it is unclear how this could be true.
2. Does the Urban Institute have any data about the livelihood and prosperity of persons released by the reduction of crack sentences in terms of rearrest, reconviction, and re-confinement? Also, compared to members of the community population, ex-prisoners have significantly lower educational attainment, significantly lower incomes and wealth, significantly lower social support, significantly higher psychiatric comorbidity, significantly greater substance abuse problems, worse victimization experiences, and are more likely to utilize public assistance. What are the associated costs with these forms of governmental assistance that would offset reduced BOP costs?
3. The report contains no mention of the various antisocial conditions relating to criminal propensity of federal prisoners. For instance, the prevalence of psychopathy in correctional populations is at least *25-fold* higher than its prevalence in the general public. Psychopathy is one of the most pernicious and stable antisocial conditions, and among the strongest predictors of serious recidivism (Hare, 1996; Hare & Neumann, 2008). Thus, proposed BOP releases would include (depending on the size of the policy recommendation) hundreds to thousands of clinically psychopathic offenders.

Another important criminological construct is sexual sadism, the prevalence of which is also dramatically higher in correctional samples than the general public. Even after decades of confinement, offenders who are sexually sadistic pose significant risks to the community as exemplified by current federal death row inmate Alfonso Rodriguez Jr., who was condemned for the murder of Dru Sjodin in 2003. What screening mechanisms are in place that measure these constructs?

It is important to note that psychopathy and sexual sadism are not exclusive to prisoners convicted of homicide and sexual offenses, but are also found in offenders convicted of other crimes, including drug-based offenses.

Questions for the Committee to Consider

1. What is the crime-saving value of prison?
The greatly expanded use of incarceration since 1980 is among the best explanations for the dramatic declines in crime from its peak in 1993 to 2011 (Levitt, 2004). There is compelling

evidence that **prison is the only sanction that reduces criminal offending because of incapacitation**. A recent large-scale analysis of over 100,000 offenders from seven birth cohorts (MacLeod *et al.*, 2012) found that the offending behavior of criminals is assumed to remain the same throughout their active careers, and only is reduced when offenders cease offending after repeated confinement. Declines in offending reflect the proportion that have ceased offending, and do not reflect intrinsic reductions in the predilection toward offending. *Put another way, prison wears down offenders to the point where they ultimately desist from crime—they do not necessarily transform their antisocial mindset.*

Although the BOP population continues to grow, the much larger state prisoner population has declined for three consecutive years (Glaze & Parks, 2012). According to the National Crime Victimization Survey (NCVS), the violent crime and property crime rates have increased for two consecutive years. Although quantitative study has not been published (the results from the NCVS were released October 24, 2013), these unusual trends of declining prison usage and increasing crime support the notion that prison reduces crime (primarily by incapacitation). Prison and crime are reciprocally related, such that greater use of imprisonment is associated with less crime.

2. What are the costs of career criminals to society?

Estimates of the victimization, lost productivity, and criminal justice system costs of one career criminal exceed \$1 million (Cohen, 1998; DeLisi & Gatling, 2003) and the individual costs of one murderer have been estimated at \$24 million (DeLisi *et al.*, 2010). To put this into perspective, the release of just 100 career offenders from BOP custody would potentially produce \$100,000,000 in fiscal costs in addition to the incalculable human toll of criminal victimization.

3. Prisons and Punishment Rationales

BOP inmates were sentenced for a combination of reasons, including retribution, incapacitation, deterrence, and rehabilitation. The incapacitative effects of prison cannot be overemphasized because they preclude offender access to the general public and thus neutralize offending opportunity. Although criminologists and policy makers quibble about the relative deterrent value of prison, careful quantitative estimates indicate that 15 to 17 serious crimes are averted per prisoner, and these estimates withstood strenuous peer review.

4. The Rights and Efficacy for Crime Victims Should Not Be Ignored

The proposed policies provide zero efficacy for crime victims, and would only exacerbate the notion that criminal justice policies favor fiscal exigencies over the pain and suffering of the victims of crime. Moreover, since criminal offending and victimization are constrained by social interaction patterns (and thus crime is mostly intraclass and intraracial), more disadvantaged communities would bear the brunt of the widespread release of BOP inmates.

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Thoughts on “Cost Effective Strategies for Reducing Recidivism”

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In its draft report, *Stemming the Tide: Strategies to Reduce the Growth and Cut the Cost of the Federal Prison System*, the Urban Institute observes that “The federal prison population has escalated from under 25,000 inmates in 1980 to over 219,000 today. This growth has come at great expense to taxpayers and other important fiscal priorities.”¹ I couldn’t agree more with this report on the problems of fiscal austerity confronting public safety budgets; however, I believe this statement oversimplifies the tradeoffs in public safety that we need to consider in order to make good decisions and, as a result, may offer cost-shifting instead of true cost-savings.

A more comprehensive view of the problem would cast the issue somewhat differently: we need to reduce not the costs of incarceration (or, indeed, the criminal justice system) but rather the total *social costs of crime* including not only expenditures on public safety, but also the costs of victimization, tangible and intangible, to the public. As we seek to do this, the allocation of funds among components of the criminal justice system should be guided by their *demonstrated effectiveness* in reducing crime not their absolute or relative size compared to other components of the criminal justice system.

It is all too tempting to look first to the correctional system, both state and federal, as a source of savings in a period of austerity. Early last year, CBS aired a segment on its weekly news program, *Sunday Morning*, entitled, *The Cost of a Nation of Incarceration* (April 22, 2012). The unmistakable implication was that the United States incarcerates too many at too high a cost. But just how large and costly is the prison population? According to the U.S. Bureau of Justice Statistics

¹ *Stemming the Tide: Strategies to Reduce the Growth and Cut the Cost of the Federal Prison System*, (Washington, DC: The Urban Institute, 2013), p.1.

(BJS), 1,598,780 adults were incarcerated in U.S. federal and state prisons and county jails at year-end 2011 — a 0.9% decrease over 2010 and the second consecutive annual decrease.² (Indeed, the imprisonment rate has declined consistently since 2007 when there were 506 persons imprisoned per 100,000 U.S. residents. The rate in 2011 was comparable to the rate last observed in 2005 (492 per 100,000).³) A recent report of the Vera Institute calculated the average per inmate cost of incarceration for a sample of forty States: \$31,286.⁴ Hence, one could estimate the total cost of incarceration nationwide in 2011 as \$50.2 billion. This is surely a significant sum, but is it either disproportionate in relative terms or too large in absolute terms?

Another way to look at correctional spending in context is to examine per capita state and local government expenditures on criminal justice. Examining figures from 2007 (the most recent figures in the 2012 *Statistical Abstract of the United States*), total per capita state and local government expenditures on criminal justice were \$633 per resident of the United States. Of that total, \$279 per resident was spent on police protection, \$129 on courts, prosecution and public defenders, and \$225 on corrections (including prisons, jails, probation and parole).⁵ Whether \$633 per resident is too great a public expenditure, and whether \$225 per resident for corrections is a disproportionate share of the total, cannot be determined from these numbers alone. Rather, we would need to know *the benefit* of these expenditures both in sum and relative to one another. Fortunately, we have recent experience to illuminate this question.

According to the FBI's Uniform Crime Report, between 1960 and 1992, the number of violent crimes in the United States increased nearly sevenfold, from approximately 288,000 to more than 1.9 million, and the violent crime rate increased nearly fivefold from 160.9 to 757.7 per 100,000 population. But then crime trends abruptly reversed and began a decadelong decline. Again according to FBI *Uniform Crime Report* data, the rate of all seven index offenses (homicide, rape, robbery, aggravated assault, burglary, larceny and auto theft) declined significantly over the 1990s, with the aggregate declines ranging from 23% to 44%.

If we look at *National Crime Victimization Survey* (NCVS) data for the same period, the crime declines estimated

² Department of Justice, *Prisoners in 2011*. (Washington, DC: Bureau of Justice Statistics, 2012), Appendix Table 2.

³ Ibid., p 6.

⁴ Christian Henrichson and Ruth Delaney, *The Price of Prisons: What Incarceration Costs Taxpayers*. (New York: Vera Institute of Justice, 2012), 9.

⁵ Department of Commerce, *Statistical Abstract of the United States, 2012*. (Washington, DC: Census Bureau, 2012), p. 216.

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from the household survey are equal to or greater than the FBI/police statistics in all six crime categories (the NCVS does not measure homicide), with the survey showing much larger declines in larceny, assault and rape. The victim survey not only confirms the trends found in the police data, but also moves the larceny and assault declines much closer to the average declines for the other index crimes than do the police statistics. The violent victimization rate in the United States has fallen 67% since its peak in 1994 and in 2010 equaled the lowest rate measured in the thirty-six year history of the NCVS.

The distinguished criminologist Franklin Zimring has characterized this sustained and broadly based crime decrease during the 1990s as the most important sociological and socioeconomic development of the second half of the twentieth century. This a remarkable statement about a time period that included three assassinations, the Civil Rights revolution, the Great Society, the Vietnam War and the anti-war movement, the feminist movement and the end of the Cold War to mention just a few. Equally important is who benefitted from what has been called, "The Great American Crime Decline."

If we examine the trends in homicide, we find that the benefits of lower crime rates have been spread widely across the social and demographic categories of the American nation. With the exception of children under the age of 14, the homicide rate decline was remarkably similar for all age groups, ranging between 36 and 44%. In terms of gender, the homicide decrease for men was 42%, one-third more than for women. Among races, the homicide decrease for nonwhites was 46%, again one-third more than for whites. These data suggest that the benefits of the crime decline of the 1990s were concentrated in those groups with the highest exposure to crime – urban minority males. Indeed, Zimring eloquently notes that "[t]he crime decline was the only public benefit of the 1990s whereby the poor and disadvantaged received more direct benefits than those with wealth. Because violent crime is a tax of which the poor pay much more, general crime declines also benefit the poor, as likely victims, most intensely."⁶

But what explains the decline? Broadly speaking, the most commonly researched variables affecting crime rates are the economy, demography and criminal justice policies. Among the last, the most obvious candidate for explaining the crime decline in the 1990s is incarceration; this is because no other change in the operation and output of the American criminal justice system in the generation after 1970 begins to approach the scale of the expansion of incarceration. After small and trendless variation for several decades, the rate of imprisonment in the United States expanded after 1973 more than

⁶ Zimring, p. vi.

threefold. However, estimates of how much of the crime decline of the 1990s can be attributed to increased incarceration vary widely, from 10%⁷ to 27%⁸ of the overall decline.

Before dismissing this contribution as insignificant, we should heed one of Zimring's lessons from the 1990s: "The crime decline of the 1990s was a classic example of multiple causation, with none of the contributing causes playing a dominant role."⁹ Such a conclusion is eminently sensible when we consider that the economy and demography also play significant roles in explaining crime rates. But what if we consider just alternative criminal justice policies such as prevention and intervention programs?

Zimring explicitly dismisses correctional or crime prevention programs from having played any plausible role: "Nor were there any indications that correctional or crime prevention programs had national level impact on crime."¹⁰ In a telling portion of his book, Zimring discusses Robert Martinson's 1974 *Public Interest* article entitled, "What Works? Questions and Answers about Prison Reform." Martinson had concluded that "with few isolated exceptions, the rehabilitative effects that have been reported so far have had no appreciable effect on recidivism."¹¹¹² Zimring then quotes Francis Allen's reflection on Martinson's conclusion: "there was, in fact, little new about the skepticism expressed in the Martinson study of the rehabilitative capabilities of correctional programs or the existence of validated knowledge relevant to the avoidance of criminal recidivism. At least since World War II expressions of such skepticism have abounded in penological literature, as have criticisms of correctional entrepreneurs whose claims of significant reformatory achievements were unsupported by scientific demonstration."¹³

To summarize the lessons from the crime decline of the 1990s (which has continued, though at a much slower rate, up until 2010), one would fairly say that, among the criminal justice policies proffered as causes, the case for effectiveness is stronger for incarceration than for crime prevention or intervention programs. And yet there are those who still earnestly advocate a redistribution of criminal justice funds from incarceration to its alternatives.

⁷ William Spelman, "The Limited Importance of Prison Expansion," in *The Crime Drop in America*, ed. Alfred Blumstein and Joel Wallman (New York: Cambridge University Press, 2000), pp. 97-129.

⁸ John J. Donohue III and Peter Siegelman, "Allocating Resources Among Prisons and Social Programs in the Battle Against Crime," *Journal of Legal Studies* 27 (January 1998): 1-43.

⁹ Zimring, p. 197.

¹⁰ *Ibid.*, p. 69.

¹¹ Robert Martinson, "What Works? Questions and Answers About Prison Reform," *The Public Interest* (Spring 1974), p. 12.

¹³ Francis Allen, *The Decline of the Rehabilitative Ideal*. (New Haven: Yale University Press, 1981) p.57.

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But there are risks to such an agenda that should be carefully weighed before acting. Consider the following well-known statistics: according to U.S. Department of Justice surveys and studies, over 60% of prison inmates had been incarcerated previously¹⁴; and a 2002 Department of Justice study of 272,111 inmates released from prison in 1994 found that they had accumulated 4.1 million arrest charges *before* their most recent imprisonment and another 744,000 charges within 3 years of release.¹⁵ This is an average of 17.9 charges each. The same study found that 67.5% of inmates released were rearrested for a new offense, almost exclusively a felony or serious misdemeanor, within three years of their release. These data suggest that the criminal justice system is hardly incarcerating trivial or non-serious offenders and that the threat of recidivism is quite real. And since most crime in the United States is intra-communal, it should also be pointed out that declining to incarcerate or prematurely releasing individuals with a demonstrated propensity to commit crimes unless incapacitated imposes costs on already distressed inner city, minority communities, thereby adding to their disadvantage.

What is the magnitude of those costs? Estimates vary widely because of the difficulty of placing a value on intangibles such as victims' lost quality of life, general fear, lost use of community spaces, and psychological effects. Added to these are more easily measured tangible victim costs such as lost property, lost productivity and medical treatment. A 1996 research preview from the National Institute of Justice used data from 1987 to 1990 and estimated the tangible costs of crime to victims at \$105 billion annually and the annual intangible costs to victims at another \$345 billion for a total cost of \$450 billion annually.¹⁵ The approximately 40% reduction in crime rates achieved during the decade of the 1990s was thus worth about \$180 billion annually in saved victim costs, tangible and intangible; and this is a significant underestimate since it does not capture the increased quality of life, reduced fear, greater use of community spaces, and reduced psychological effects on non-victims.

All of this is meant to suggest not that nothing can be done to deal with the current fiscal problems afflicting the criminal justice system broadly and the federal prison system in particular, but rather to counsel caution when dealing with sweeping claims of cheap, readily available, and highly effective alternatives to federal incarceration. First, we need to understand the unique characteristics of the federal prison population. Second, we need to critically evaluate the effectiveness of interventions meant to reduce recidivism. Third, we need to make use of the voluminous literature on

¹⁴ Department of Justice, *Survey of State Prison Inmates, 1991*. (Washington, DC: Bureau of Justice Statistics, 1993) 11.

¹⁵ Department of Justice, *Recidivism of Prisoners Released in 1994*. (Washington, DC: Bureau of Justice Statistics, 2002) 1. ¹⁵ Department of Justice, *The Extent and Costs of Crime Victimization: A New Look*. (Washington, DC: National Institute of Justice, 1996), p. 2.

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predicting criminality. And finally, we need to hold tenaciously to the commitment by our actions to reduce the total social costs of crime and eschew the practice of merely getting those costs off our books by shifting them to others.

On the first point, it is noteworthy that while total prison populations in the United States have declined for two straight years, the number of sentenced prisoners under the jurisdiction of the Federal Bureau of Prisons in 2011 increased by 6,651 inmates (up 3.1%) from 2010 and the average annual increase between 2000 and 2011 is 3.3%.¹⁶ Not only is the federal prison population growing while the state prison and local jail populations are declining, but the mix of offenders in these respective populations is quite different.

Among sentenced state prisoners, an estimated 53% were sentenced for violent offenses in 2010, the year for which the most recent data on offense are available.¹⁷ Eighteen percent of state prisoners were serving sentences for property offenses, and 17% were serving sentences for drug crimes. Among sentenced federal prisoners, 48% were held for drug crimes, while only 8% were held for violent offenses.¹⁸ Fewer inmates served time in federal prison for violent and drug crimes in 2011 than in 2010, while 35% of sentenced prisoners were imprisoned for public-order offenses. An estimated 11% of inmates in federal prison were sentenced for immigration offenses, which represented one of the fastest growing segments of the federal prison population. Between 2010 and 2011, the number of inmates sentenced to more than a year in federal prison for immigration crimes increased 9.4%. These figures caution against estimating recidivism effects for early release federal prisoners based on comparisons to state and local prisoners. They also suggest that more attention be paid to the incentives that induce federal law enforcement officials to arrest, convict and incarcerate a very different population than do their state and local colleagues.

On the matter of the effectiveness of rehabilitation/intervention programs, there has been considerable skepticism of such programs in the research community for the last forty years. Even among scholars most committed to rehabilitation and treatment programs, there is widespread recognition that the range of possible improvement in recidivism rates is on the order of 10% and that most of the currently utilized programs in this country are ineffective.¹⁹ But while evidence for effective treatment and rehabilitation is modest, there is a much larger literature on career criminals and criminal careers that underpins

¹⁶ Department of Justice, *Prisoners in 2011*. (Washington, DC: Bureau of Justice Statistics, 2012), Table 1.

¹⁷ *Ibid.*, Table 9.

¹⁸ *Ibid.*, Table 11.

¹⁹ Francis T. Cullen and Cheryl Lero Johnson, "Rehabilitation and Treatment Programs," in *Crime and Public Policy*, ed. James Q. Wilson and Joan Petersilia (New York: Oxford University Press, 2011), pp. 293-344.

efforts to classify offenders and predict which are most likely to recidivate. Again this literature, while voluminous, is fraught with difficulties including the prevalence of false positives. Yet, it at least explicitly addresses the problem of shifting incarceration costs onto the general community and individual victims.

In conclusion, we have had demonstrable success in reducing crime rates significantly in the United States. Based on that experience, we have evidence to judge what contributed to that success and how much. And we know who the primary beneficiaries of that success were. As we face the present challenges of fiscal austerity, we ought not ignore those hard-learned lessons. The aggregate size of the criminal justice budget, and its allocation among the component parts of the criminal justice system, should be constantly monitored and reassessed. But that assessment should be done wisely and judiciously by the lamp of experience.

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**Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing on “Oversight of the Bureau of Prisons & Cost-Effective
Strategies for Reducing Recidivism”
November 6, 2013**

This is the second hearing this fall in which the Judiciary Committee turns its attention to the unsustainable growth in the federal prison population. In the last 30 years, the Bureau of Prisons has seen a 700 percent increase in its population, which now accounts for a full quarter of the Justice Department’s operating budget.

This dramatic increase in the prison population threatens public safety and critical funding for victim services. As BOP’s budget diverts more and more resources from the basic law enforcement functions of the Department of Justice, we are losing the prosecutors and agents necessary to investigate and charge the crimes that threaten our communities. We are cutting support for the critical work of our state and local law enforcement partners and the victim services providers that help rebuild lives. And we are placing the men and women who work and live in our prison facilities at ever greater risk. It is urgent that we act to reverse these trends.

Overcrowding in the high security facilities which house some of the most dangerous inmates in the Federal system is at 55 percent. That level of crowding is unacceptable and its risks are real, as evidenced by the tragic murder of Correctional Officer Eric Williams at USP Canaan in Pennsylvania earlier this year. Our hearts go out to his family and it is time we take action.

As we discussed at the Committee’s hearing in September, the main drivers of prison growth are front-end sentencing laws enacted by Congress, like the proliferation of mandatory minimum sentences that send more and more people to prison for longer and longer periods of time, often completely devoid of evidence suggesting they are necessary or appropriate. I am committed to addressing sentencing reform this year - as I know other Senators are from both sides of the aisle. It is a problem that Congress created and it is time that we fix it. Public safety demands it.

But it is also true that there are important steps that can be taken to reduce the prison population already in custody. For example, the first and easiest thing we could do is to clarify how good time credit is calculated to ensure that prisoners may earn the 54 days a year for appropriate behavior that Congress intended, rather than the 47 days BOP actually credits them. This was a change I included in the Second Chance Reauthorization Act of 2011 and a reform I understand Senator Whitehouse will champion in a bill he plans to introduce soon. This very modest change would save BOP tens of millions of dollars a year, a savings that we can reinvest in our law enforcement efforts.

We must also look at reducing recidivism. More than 90 percent of Federal inmates will be released from prison at some point and return to our communities. Public safety demands that we do all we can to ensure that when they are released they are prepared to become productive members of society. That is why I have led efforts to reauthorize the Second Chance Act and other initiatives to improve reentry. I look forward to hearing what efforts are underway at the

Bureau to improve evidence-based programing to reduce recidivism. I know this is an interest shared by many members of this Committee, including Senators Whitehouse and Cornyn.

There are also several existing programs that the Bureau of Prisons could make better use of to reduce overcrowding, including fully utilizing the residential drug abuse program. This program is an important component of BOPs efforts to reduce recidivism. According to a recent GAO report, less than 19 percent of the inmates who successfully completed the program in 2009 to 2011 received the full 12-month reduction in sentence the law allows. Instead they received an average 8-month reduction, costing BOP over \$100 million in unnecessary expenses over that time. Additionally, the GAO found that the BOP did not fully utilize its authority under the Second Chance Act to allow inmates to serve the last 12 months of their sentence in pre-release community corrections. Instead, inmates serve an average of less than 4 months in community corrections; again, costing the Bureau significant unnecessary expense.

In addition to these pressing budget and public safety questions, I look forward to hearing from the director on other critical issues, including steps the Bureau is taking to reduce its use of solitary confinement, how BOP conducts oversight of conditions in its contract detention facilities or private prisons, the status of BOPs compliance with the Prison Rape Elimination Act regulations, and efforts by the Bureau to reduce interstate phone rates in response to the new rule issued by the FCC.

Lastly, I want to commend Director Samuels and his staff for their prompt attention to concerns I raised along with other Senators, including Senator Blumenthal, regarding the proposed closing of the only secure facility for female inmates in the Northeast. We were very pleased to learn earlier this week that the Bureau took our concerns to heart and have drafted an alternative plan that will allow those prisoners from the Northeast to remain closer to their families. There is no question that maintaining family ties is a critical element in easing reentry to the community and I applaud the Bureau's efforts in this instance. I also want to note the Bureau's establishment of a working group to look at the specific needs of incarcerated women. For far too long, the specific needs of women inmates have been simply an afterthought within the larger prison system. I look forward to hearing about the Bureau's efforts to meet the unique needs of this population in our prison system.

I look forward to hearing from Director Samuels today about steps we here in Congress can take to address these and other important issues in the area of prison management and recidivism reduction. I ask that my full statement be placed in the record.

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Senator Sheldon Whitehouse
Hearing on “Oversight of the Bureau of Prisons & Cost-Effective
Strategies for Reducing Recidivism”

As Prepared for Delivery

Welcome to today’s hearing entitled “Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism.”

Today, this Committee will be exercising its responsibility to conduct oversight of the Bureau of Prisons. I welcome Director Charles Samuels and look forward to his testimony. In addition, we will be exploring how we can improve our federal corrections system so that we better protect the public while reducing costs.

Continued growth in federal spending on prisons and detention poses a significant threat to all other federal law enforcement activities. During the last fiscal year, the costs of detaining federal inmates represented more than 30% of the Justice Department’s budget. Since 2000, costs associated with federal prisons and detention have doubled. If nothing is done, these costs will continue to consume an ever-larger share of the Department’s budget. The result is fewer resources for all other federal law enforcement needs and less federal funding for state and local law enforcement agencies.

Furthermore, while spending on federal prisons has continued to grow, the system remains dangerously over capacity. The inmate-to-staff ratio in our federal prisons has increased significantly over the past decade, and each year we ask the men and women who guard our prisons to do more with less. If we let these trends continue, we will be putting these brave men and women at serious and unnecessary risk.

Fortunately, states across the country have shown that it is possible to rein in corrections costs while improving public safety and reducing recidivism.

In my home state of Rhode Island, where we are fortunate to benefit from the leadership of A.T. Wall, the Director of our Department of Corrections and dean of corrections directors nationwide, we enacted a package of reforms that increased recidivism reduction programming, focused greater attention on high-risk offenders, and expanded investments in successful reentry. As a result of these reforms, our state's prison population declined for the first time in years.

Other states have had similar successes. Today we will hear from witnesses from Pennsylvania and Kentucky who helped lead their states in enacting and implementing significant reforms of their corrections systems that cut costs while better protecting the public.

These examples – and others from across the country – show that it is time for the federal government to learn from the states.

As a former state and federal prosecutor, I recognize that there are no easy solutions to this problem. Inmates in our federal prisons are there because they committed serious offenses, and because the law enforcement officers across their country did their jobs in seeing that they were arrested and prosecuted. And we must never try to save money at the expense of public safety.

But what the states have shown us is that it is possible to cut prison costs while making the public safer – if we are willing to be guided not by ideology, but by what works.

To achieve this goal, we must be willing to look at all aspects of our sentencing and corrections system:

We should be willing to reevaluate mandatory minimum sentences. Two important pieces of legislation have been introduced in this area by Chairman Leahy and Senator Paul, and Senator Durbin and Senator Lee. These Senators have already shown that it is possible to work together on this issue in a bipartisan way, and I hope their work becomes a model for this Committee's efforts going forward.

We should be willing to explore whether the federal sentencing guidelines are still working effectively nearly 30 years after they were first enacted.

We should ask whether we are doing enough to provide drug and alcohol treatment for those inmates who need it. And we should ask whether we are collecting accurate information – in the Presentence Report and throughout the criminal justice process – about substance abuse and addiction among inmates.

We should ask whether there is more that can be done to prepare inmates for reentering their communities, and to reduce the risk that they will commit more offenses when they are released. In Rhode Island, under the leadership of Director Wall, we passed reforms that allowed inmates to earn credit toward their sentences if they were willing to meaningfully participate in programs that reduced their criminal risk factors.

And finally, we should ask if we can do a better job of supervising exoffenders after they are released. Many states, led by the example of Hawaii's HOPE program, have implemented parole systems that impose "swift and certain" sanctions for violations of the terms of supervision, with promising results so far.

As this Committee considers possible reforms, these are just some of the areas that I believe we must address.

But let me be clear about one thing: Doing nothing about this problem is no longer an option. If we do nothing, we are choosing to give less to the FBI to disrupt terrorist groups. We are choosing to spend less stopping the next generation of cyber threats. We are choosing to spend less enforcing the Violence Against Women Act. We are choosing to give less to our partners in state and local law enforcement agencies. I know none of my colleagues wish to make those choices. That is why I look forward to hearing from Director Samuels and today's other witnesses and to working with the members of this Committee to address this critical issue.

**OVERSIGHT OF THE BUREAU OF PRISONS & COST-EFFECTIVE
STRATEGIES FOR REDUCING RECIDIVISM**

Senator Blumenthal Questions for the Record

FOR MS. LA VIGNE

ON ADDITIONAL COST SAVINGS:

It seems to me that when you enact sentencing reform you reduce prison overcrowding. When you reduce prison overcrowding you make it easier for BOP to give inmates individualized attention, to keep inmates near their families, and to provide inmates with programming that has been proven to reduce recidivism. And finally, when BOP can do these things, you have fewer people in prison.

1. In your opinion, could this be an additional source of cost savings that would result from sentencing reform, over and on top of the savings discussed in your report?

ON DATA:

I have been surprised in my work on this issue by how hard it is to find good data on sentencing and incarceration. The sentencing commission does an absolutely impressive job of providing good data, but when you look for data on incarceration patterns it is much harder to find.

1. As a researcher, do you believe the federal government could do a better job of providing high-quality data on this issue?
2. How could they do better?

Senate Judiciary Committee Hearing
“Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism”
Questions for the Record Submitted by Senator Al Franken for Charles Samuels

Question 1: My staff recently met with Bureau of Prisons (BOP) employees who said that they were concerned about the effects that sequestration cuts are having on their staffing levels and on their safety. My understanding is that medium security facilities and low security facilities especially have been affected by sequestration cuts. What are you doing to make sure that BOP employees' safety is protected in the face of the sequestration cuts?

Question 2: BOP's website states the following with respect to its policy of placing inmates reasonably closely to their homes:

The Bureau attempts to designate inmates to facilities commensurate with their security and program needs within a 500-mile radius of their release residence. If an inmate is placed at an institution that is more than 500 miles from his/her release residence, generally, it is due to specific security, programming, or population concerns. The same criteria apply when making decisions for both initial designation and re-designation for transfer to a new facility.

Prominent juvenile justice advocates have informed my office that in fact there are young adults (i.e., inmates who are 25 years old or younger) who have been assigned to institutions that are more than 500 miles away from their homes.

How do you respond to this? If true, please explain why BOP has placed these young adults so far from their homes and why BOP believes that the benefits of such placements outweigh the costs of placing young adults far from their homes?

Question 3: A recently published report by Human Rights Watch and the American Civil Liberties Union explains that solitary confinement of young adults can have very negative consequences. For instance, the report states:

Experts assert that young people are psychologically unable to handle solitary confinement with the resilience of an adult. And, because they are still developing, traumatic experiences like solitary confinement may have a profound effect on their chance to rehabilitate and grow. Solitary confinement can exacerbate, or make more likely, short and long-term mental health problems. The most common deprivation that accompanies solitary confinement, denial of physical exercise, is physically harmful to adolescents' health and well-being.

The report recommends that BOP modify its contracts with juvenile justice facilities to prohibit the solitary confinement of youth. What is BOP's position with respect to the passage quoted above and with respect to the report's recommendation?

Question 4: In *Miller v. Alabama*, the Supreme Court held that mandatory life imprisonment without parole constitutes cruel and unusual punishment when it is applied to juveniles. The Court noted that juveniles have greater prospects for reform than do adults, in part because their brains are still developing. Given juveniles' and young adults' special potential for rehabilitation, does BOP provide any special programming tailored to this population? If so, please provide descriptions of such programming.

Question 5: I recently visited a prison in Minnesota and talked to the employees there about the intersection between mental health care and the criminal justice system. Some of the employees told me that they benefited from crisis intervention training (CIT), which helped them to defuse otherwise potentially violent situations. What role does CIT play in the federal prison system?

“Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism”

Senator Grassley’s Questions for Prof. DeLisi

1. Does any scientifically rigorous evidence support the conclusion that prison overcrowding and budgetary constraints can be alleviated, without causing any harmful effect on public safety, through reducing sentences, placing inmates in successful anti-recidivism programs, and ordering the early release of inmates?
2. The Judiciary Committee is set to consider three prison reform bills: S. 619, the Justice Safety Valve Act of 2013, S. 1410, the Smarter Sentencing Act of 2013, and S. 1675, the Recidivism Reduction and Public Safety Act of 2013.

In your opinion, will the proposals in these pieces of legislation alleviate overcrowding in federal prisons without causing harm to or affecting public safety?

“Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism”

Questions from Senator Grassley for Ms. La Vigne

1. Your testimony and the Urban Institute report heavily advocate for decreasing the prison population by “reducing drug prosecutions.” The report states that “[c]utting the number of drug offenders entering BOP by just 10 percent would save \$644 million over 10 years.”

Does this analysis of cost savings for not prosecuting drug dealers take into account the cost to potential victims and society of the crimes these drug dealers would continue to commit if they were not prosecuted, as well as the violence associated with drug trafficking?

2. You also advocate cost savings from reducing the percentage of the sentences that federal prisoners must serve. Does your cost analysis of this change take into account the crimes that would be committed as a result of the early release of thousands of violent offenders against potential victims and society?

“Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism”

Senator Grassley’s Questions for Director Samuels

1. In your testimony, you answered questions regarding efforts to convert the former state prison in Thomson, Illinois to federal use. How much money is currently being expended on the Thomson prison?
2. You testified that following the February 2013 death of a BOP officer in the line of duty, you permitted guards in high security prisons, as well as guards in jails and detention centers to carry pepper spray. Why are you unwilling to establish a permanent policy that all prison guards can carry pepper spray?
3. Is it possible for BOP, when assigning prisoners, to take greater account of the location of the inmate’s family?
4. In your testimony, you indicated that the BOP can do a better job of informing inmates of the International Prisoner Transfer Program. What is BOP’s current process for notifying and explaining the treaty transfer program to foreign national inmates, and what efforts is BOP making to encourage those inmates to utilize the program?
5. A December 2011, report from the Department of Justice Inspector General on the International Prisoner Transfer Program found that in fiscal year 2010 slightly less than 1 percent of foreign national inmates were transferred to their home countries. The report stated that BOP and the International Prisoner Transfer Unit (IPTU) rejected 97 percent of transfer requests from foreign national inmates.

For what reasons did BOP and IPTU reject these requests? In addition, what restraints curtail the efforts of BOP to successfully reduce the number of foreign national inmates in the federal prison population?

“Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism”

Questions from Senator Grassley for Dr. Sedgwick

1. In your written testimony, you call attention to the unique characteristics of the federal prison population. Can you offer any insight into why federal prisoners differ so significantly from state and local prisoners?
2. You also recommend caution about the claims to effectiveness of rehabilitation, prevention and intervention programs. Can you elaborate on this for the Committee? What is the current state of evidence on such programs?
3. We understand that California is engaged in a sweeping reform of its prison, jail and community corrections programs that has reduced prison populations significantly. Can you comment on these reforms and what impact they have had on public safety in California?
4. Of the various strategies for cutting the federal prison population analyzed by the Urban Institute, which seem to you to be most promising and why?
5. Can you give examples of strategies for reducing prison population states have tried that have succeeded in reducing both inmate populations and recidivism?
6. Does any scientifically rigorous evidence support the conclusion that prison overcrowding and budgetary constraints can be alleviated, without causing any harmful effect on public safety, through reducing sentences, placing inmates in successful anti-recidivism programs, and ordering the early release of inmates?
7. The Judiciary Committee is set to consider three prison reform bills: S. 619, the Justice Safety Valve Act of 2013, S. 1410, the Smarter Sentencing Act of 2013, and S. 1675, the Recidivism Reduction and Public Safety Act of 2013.

In your opinion, will the proposals in these pieces of legislation alleviate overcrowding in federal prisons without causing harm to or affecting public safety?

“Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism”

Senator Grassley’s Questions for Secretary Wetzel

1. You testified that Pennsylvania decided to prohibit the early release of prisoners to residential programs. What occurred in Pennsylvania because of early prisoner release that led the state to abolish it?

“Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism”

November 6, 2013

Joint Questions For the Record For Director Samuels**From Senator Blumenthal and Senator Leahy****QUESTION FOR DIR. SAMUELS – DANBURY**

We want to thank you and your staff for your efforts to respond to the concerns we raised, along with other Senators from the Northeast, about the proposed closure of the Danbury women’s prison, which would have left no “secure” prison facility for women in the Northeast. We know that the Bureau has many competing interests it must address, but we worry that the role of women prisoners is often neglected due to their small numbers. We understand BOP has a new plan that is a dramatic improvement, and we want to quickly discuss that plan.

1. First, let’s talk about the period—we understand this will be roughly 18 months from now—after BOP has had time to make some changes to the Danbury facility. Our understanding is that, barring an unanticipated change in circumstances, there will be a low security bed at Danbury for every female U.S. citizen from the northeast who needs to be housed in a low security facility. Is that correct?
2. Your staff mentioned that efforts are being made to move the current Residential Drug Abuse Treatment Program available to inmates at the Danbury facility to the new secure female facility. Can you confirm that the RDAP program will be available to the female inmates being transferred to the new converted camp facility as a result of FCI Danbury’s mission change? When do you estimate that program will be back on-line in the converted camp facility?
3. Will you work with us to ensure that the women who are transferred from Danbury to Brooklyn will have access—to the extent possible—to the same programming they have had at Danbury?
4. Our understanding is that Danbury will continue to have the level of programming for female inmates that inmates enjoyed at Danbury before BOP made the decision to change the institution’s mission. Is that correct?
5. In a meeting with our staff, your staff represented that beds that were not filled with U.S. citizen women from NY, NJ and New England will be filled with non-U.S. Citizen inmates with geographic or familial ties to the Northeast. What steps is BOP taking to make sure this plan is implemented?
6. We understand that BOP is considering a standing committee to review treatment of women prisoners across the board. Can you tell us more about that?
1. A memo you distributed to all federal inmates on June 19 encouraged inmates to stay connected with their families and encouraged inmates to have visits with their children because “there is no substitute for seeing your children, looking them in the eye, and letting them know you care about them.” Consistent with this memo, what actions is BOP taking to prioritize keeping women within physical reach of their children and families? Are there specific efforts being taken to help keep inmates within a reasonable traveling distance of their children and families?
7. How is this policy being applied to non-U.S. Citizen women with U.S. Citizen children?

QUESTION FOR DIR. SAMUELS – PROCESS FOR CHANGING A FACILITY’S MISSION

There is obviously a lot of information at your disposal when evaluating ways to reduce costs and maximize existing resources. This past summer the Bureau of Prisons came to the conclusion that transitioning FCI Danbury from a female institution into a male institution was the correct way to move forward. As you know, many of us in the Senate were disappointed with the conclusion BOP initially reached on Danbury, and we didn’t have a lot of confidence in the process by which BOP reached it.

1. Has BOP learned anything from this experience that can give the members of this Committee confidence in BOP’s decision-making going forward?

QUESTION FOR DIR. SAMUELS – EFFECT OF IMMIGRATION STATUS OF INMATE

As we understand it, one of the factors you try to take into account when placing U.S citizens in a facility is where the citizen calls home. This allows inmates to remain connected to their families, benefitting them, their families, and ultimately society. However, our understanding is that you do not consider where non-citizens call home.

1. Does this apply even when non-citizens have U.S. citizen children?
2. Does the designation “non-citizen” include legal permanent residents, and if so, do you believe it should?
3. Are there any cases where you consider a non-citizen’s home when deciding where they should be incarcerated?
4. It concerns us that BOP makes no effort to help the families of non-citizens stay close to their incarcerated loved ones.

We would like to follow up with you to see if there are ways this policy could be changed.

QUESTION FOR DIR. SAMUELS – INMATES LEAVING EARLY

One of the success stories that came out of the Danbury analysis was the Bureau’s application of the Second Chance Act and reforms regarding the use of community corrections and home confinement. Our understanding is that you did a case by case analysis to see if some inmates could be transferred to halfway houses or to minimum security camps.

1. In your opinion, were you able to let some women transfer without compromising public safety?
2. Is it possible that these women will be better able to integrate back into society, given that they can now get about the business of learning how to live outside prison walls?
3. How many women were you able to transfer to a halfway house or minimum security camp as a result of this analysis?
4. What percentage of inmates is this?
5. What plans are there to apply this type of review to other facilities?
6. Could this kind of analysis be a national model?

QUESTION FOR DIR. SAMUELS – SENTENCING REFORM & COST-EFFECTIVENESS

In your testimony, you discussed BOP's efforts to help ensure that inmates reenter society smoothly, with the goal of reducing recidivism.

1. In your opinion, does keeping inmates near their families help to reduce recidivism?
2. Would it be easier for you to keep inmates near their families if your prisons were less overcrowded?
3. Would sentencing reform lead to your prisons being less overcrowded?

**Follow-Up Questions for Charles E. Samuels, Jr., Director of the Bureau of Prisons
From Chairman Patrick J. Leahy**

Sentencing reform

Q: The evidence is clear that the growing rate of our prison population is simply unsustainable and that a failure to act is in itself a threat to public safety. Overcrowded prisons become nothing more than warehouses with a revolving door that siphon ever more resources away from critical law enforcement functions like hiring more prosecutors and FBI agents. We in Congress have two options: either continue to give more resources to BOP to build ever more prisons at the expense of other law enforcement and victim services, or find a way to safely reduce the prison population to a sustainable level.

1. We know that nearly all prisoners are eventually released and you note in your testimony that the current level of overcrowding in BOP facilities, which is more than 50% in high-security facilities, draws critical resources away from efforts to help prepare these inmates to become law abiding members of society. How would a reduction in the prison population help you to reduce recidivism rates and improve public safety?
2. Can you describe for us what consequences overcrowding has on the day-to-day operation of the prison? What impact does it have on officers and inmate safety?

Q: You note in your testimony your support for the need to "recalibrate" America's criminal justice system with less focus on low-level, nonviolent drug offenders with no ties to large-scale criminal organizations.

1. How would this shift in focus away from low-level drug offenders help BOP do its job?

Prison Rape Elimination Act

Q: With respect to the Prison Rape Elimination Act, or PREA, all penal institutions, both federal and state, are expected to adopt regulations designed to reduce the incident of prison sexual assault. The standards also call for audits to monitor the implementation of the PREA regulations, which I understand began at the federal level last month.

1. Can you tell us the status of the audit and of BOP's compliance with the PREA regulations overall at this time?
2. What is BOP's plan for reporting the auditors' findings to Congress?

Reentry

Q: A key element to successful reentry has been meaningful drug treatment, such as the Residential Drug Abuse Program. There have been reports that there are substantially more inmates who want to participate in this programming than BOP has the capacity to accommodate. As a result, although inmates could be earning up to 12 months of credit toward

their sentence for completion of the program – which would positively impact the overcrowding situation, while also providing needed treatment - the average length of time awarded is only 8 or 9 months.

1. Can you tell us how long inmates are waiting for this treatment, on average? What steps is BOP taking to ensure that more inmates receive the maximum amount of credit?

Private Prisons

Q: Privately operated, for-profit prisons have become a regular part of BOP's incarceration plan for many inmates. If BOP is contracting with private industry to engage in what is traditionally a state function, companies who run private prisons should be subject to the same degree of public accountability as a federal agency running the same prison.

Currently, for-profit prisons—even those under BOP contract, housing BOP prisoners—are not subject to the same disclosure requirements under the Freedom of Information Act (FOIA) as BOP prisons. It is extremely difficult for the public to obtain the information necessary to help ensure that the constitutional rights of those held in private facilities are upheld, and that their living conditions are humane.

1. Are contract detention facilities required to operate their facilities in accordance with current BOP Program Statements?
2. Over the past several years, there have been reports of significant mistreatment in BOP's CAR facilities. What steps have you taken to ensure that private prisons are held to the same standards of accountability as BOP run facilities?
3. Please describe how BOP conducts oversight of prison conditions in contract detention facilities.
4. Do oversight personnel review inmate grievances and interview inmates incarcerated at for-profit facilities? How much does BOP rely on records generated by private prison staff?
5. What kinds of corrective action has BOP taken in response to repeated poor performance by a contract detention facility? Has a contract ever been canceled or not renewed for poor performance?

Communications Management Units

Q: The BOP disclosed CMU policy for public comment years after they were opened. More than three years after the comments period closed, the rule still hasn't been finalized.

1. What is the current status of the rule?

2. I understand that there is a significant over-representation of Muslims in CMUs. What measures are being taken to ensure that Muslim and Arab men are not being singled out for CMU designation?
3. Does the BOP provide advance notice and a hearing prior to CMU designation, procedures I understand are employed prior to other transfers?

**Senator Jeff Sessions
Questions for the Record
Director Charles Samuels
“Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism”
November 6, 2013**

1. Please provide the number of criminal aliens in federal prison at the end of Fiscal Year 2013.
2. How many criminal aliens in federal prison are subject to deportation or removal?
3. Of the criminal aliens subject to deportation or removal, how many are deportable or removable because they do not have legal status to be in the United States (either by entering the country unlawfully or by overstaying his or her visa)?

Questions for the Record
“Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism”
November 6, 2013
Senator Sheldon Whitehouse

Nancy G. La Vigne, Ph.D.:

- 1) Prof. DeLisi testified that many of the proposals discussed in the Urban Institute’s report would inevitably lead to more crimes, based on the assertion that the release of any single prisoner results in 15-17 new offenses. Is his methodology valid? Are his conclusions consistent with the evidence from states that have reformed their criminal justices systems?
- 2) Prof. DeLisi testified that “the effectiveness of treatment programs has been inflated.” Do you agree? Is there evidence that treatment programs are effective in reducing recidivism?

Questions for the Record
“Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism”
November 6, 2013
Senator Sheldon Whitehouse

Representative John Tilley:

- 1) The Committee heard testimony that permitting the early release of prisoners or reducing sentences always leads to more crime. Based on your experience reforming the criminal justice system in Kentucky, do you agree? What happened to crime rates in your state after you passed your package of reforms?
- 2) As you reformed your corrections system, did you try to reinvest the savings you achieved in other law enforcement priorities? Have those efforts been successful?

Questions for the Record
“Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism”
November 6, 2013
Senator Sheldon Whitehouse

John E. Wetzel:

- 1) The Committee heard testimony that permitting the early release of prisoners or reducing sentences always leads to more crime. Based on your experience reforming the criminal justice system in Pennsylvania, do you agree? What happened to crime rates in your state after you passed your package of reforms?
- 2) Do you believe that it is important to target recidivism-reduction programming toward high-risk inmates? How do you try to achieve this goal in Pennsylvania?

“Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism”

Senator Grassley’s Questions for Prof. DeLisi

1. Does any scientifically rigorous evidence support the conclusion that prison overcrowding and budgetary constraints can be alleviated, without causing any harmful effect on public safety, through reducing sentences, placing inmates in successful anti-recidivism programs, and ordering the early release of inmates?

No scientifically rigorous study can demonstrate zero harmful effects on public safety. Although some programs show modestly significant effects for reducing recidivism, the release of prisoners *always* results in new criminal offending and thus reduced public safety compared to if those offenders remained in confinement. Consider the following studies. For example:

- A careful quantitative study using state prisoner and UCR data from 1978-1990 and 1991-2004 found that each additional prisoner prevents approximately 30 Part I felony offenses for the former period, and prevents 8 Part I felony offenses for the latter period.¹ Prior studies from my written testimony indicate that between 15-17 Part I felony offenses are averted for each additional prisoner. Taken together, these estimates indicate substantial increases in crime resulting from prisoner releases.
- In their influential study using nationally representative data, Langan and Levin tracked 272,111 former inmates released from prisons in 15 states in 1994. Within three years:
 - 67.5% were rearrested for a new felony or serious misdemeanor
 - 46.9% were reconvicted in state or federal court
 - 25.4% were resentenced to state or federal prison
 - Another 26.4% were back in prison for violations of parole
 - Offenders who would appear to have *lower risk* (based on conviction for a non-violent felony) have *higher* likelihood of re-arrest.
 - 66.7% of drug offenders are rearrested within three years.²

None of these data provide confidence that released prisoners are prone to desist from crime.

- Observed crime trends are also revealing. A careful, large-scale quantitative study indicated that released prisoners are significantly responsible for all forms of crime measured by the FBI, and that former prisoners are particularly responsible for the crimes of murder and robbery.³
- When the federal courts mandated prisoner releases in Philadelphia, the result was a large-scale increase in crime by the released prisoners. According to Justice Alito:

¹ Johnson, R., & Raphael, S. (2012). How Much Crime Reduction Does the Marginal Prisoner Buy? *Journal of Law and Economics*, 55(2), 275-310.

² Langan, P. A., & Levin, D. J. (2002). Recidivism of prisoners released in 1994. *Federal Sentencing Reporter*, 15, 58-65.

³ Raphael, S., Stoll, M. A., Duggan, M., & Piehl, A. M. (2004). The Effect of Prison Releases on Regional Crime Rates [with Comments]. *Brookings-Wharton Papers on Urban Affairs*, 207-255, p. 241.

During an 18-month period, the Philadelphia police rearrested thousands of these prisoners for committing 9,732 new crimes. Those defendants were charged with 79 murders, 90 rapes, 1,113 assaults, 959 robberies, 701 burglaries, and 2,748 thefts, not to mention thousands of drug offenses.⁴

- A recent article in the Wall Street Journal by legal scholar Heather Mac Donald indicated that California has experienced sharp increases in property crime overall, burglary, and auto theft as part of a federal injunction to release 40,000 prisoners within two years as a result of *Brown v. Plata* (2011).⁵
 - It is likely that the current crime increases (2012-2013) are in part caused by reductions in the state prisoner population over the last three years—although this conclusion awaits definite study.
2. The Judiciary Committee is set to consider three prison reform bills: S. 619, the Justice Safety Valve Act of 2013, S. 1410, the Smarter Sentencing Act of 2013, and S. 1675, the Recidivism Reduction and Public Safety Act of 2013.

In your opinion, will the proposals in these pieces of legislation alleviate overcrowding in federal prisons without causing harm to or affecting public safety?

No, the proposed legislation would alleviate overcrowding in federal prisons, but it would also result in more crime and reduced public safety. A main reason is that the offenders who appear to be lowest risk based on their conviction offense have the greatest offending frequencies. Raphael recently estimated the following crime rates per 100,000 by offense type:

Murder	5.63
Rape	33.11
Robbery	146.12
Assault	309.54
Burglary	747.22
Larceny	2450.72
Auto Theft	432.91
Other Property	725.46
Drugs	469.68

Thus the very federal offenders most likely to receive early release have the greatest offending velocity.⁶ And the more violent offenders, such as those convicted of murder, rape, armed robbery are also most likely to continue engaging in predatory offending.

⁴ *Brown v. Plata*, 563 U.S. ____ (2011), p. 14 Alito dissent.

⁵ See, <http://online.wsj.com/news/articles/SB10001424052702304799404579153812943219656>; *Brown v. Plata*, 563 U.S. ____ (2011).

⁶ Raphael, S. (2011). Incarceration and prisoner reentry in the United States. *The ANNALS of the American Academy of Political and Social Science*, 635(1), 192-215.

RESPONSES OF NANCY G. LA VIGNE, PH.D.,
TO QUESTIONS SUBMITTED BY SENATOR WHITEHOUSE

Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism

Senator Sheldon Whitehouse Questions for the Record

1. Prof. DeLisi testified that many of the proposals discussed in the Urban Institute's report would inevitably lead to more crimes, based on the assertion that the release of any single prisoner results in 15-17 new offenses. Is his methodology valid? Are his conclusions consistent with the evidence from states that have reformed their criminal justices systems?

Professor DeLisi bases his estimates of the incapacitative effect of incarceration on a peer-reviewed journal article by Steven Levitt, published in 1996, that uses state-level data from 1971-1993.ⁱ That article, when it was published, provided compelling evidence that prison can incapacitate offenders and thus prevent them from committing further crimes against the general population, and it is just one of many articles that produced similar findings. As the primary source for estimating the number of crimes that would be committed because of the release of federal prison inmates in 2013 and beyond, however, it is problematic.

Before discussing the methodology of the Levitt study or subsequent studies with different findings, it is worth noting that the federal and state systems differ considerably, both in the types of inmates entering each system and the average length of stay in each system. Because little research has been conducted on the incapacitation effect of prison for a federal population, it makes sense that information from the states would be used as a proxy for unavailable federal information. But it is important to recognize that federal offenders are less likely to be incarcerated for violent crimes and typically have longer lengths of stay than their counterparts in the states.ⁱⁱ

The first troubling aspect of the Levitt paper for analytic use today is its period of data collection, starting in the early 1970s. The Levitt paper argues that at this time, the marginal increase of one prisoner prevented several crimes from occurring. Since then, the state incarceration rate has increased to almost three times the average rate at the time of the Levitt study,ⁱⁱⁱ and the federal rate is approximately seven times as high as it was in 1980 (the oldest data available).^{iv} The federal prison population is almost ten times higher than it was in 1980—nine years after data collection for the Levitt research began.^v Indeed, most of his research was conducted before the passage and implementation of the Sentencing Reform Act of 1984 or the Anti-Drug Abuse Act of 1986, and none of it coincides with the implementation of state-level reforms as a result of the Violent Offender Incarceration/Truth in Sentencing initiative (VOI/TIS).

Given the substantial changes in the size and composition of prison populations since the Levitt paper was researched, diminishing marginal returns are likely an issue; with the incarceration rate tripled, the marginal prisoner today is likely quite different from the marginal prisoner of the past. This is borne out by more recent econometric research about the marginal incapacitative effects of incarceration; the reductions that Levitt found do not hold up as the scale of imprisonment increases.^{vi} In fact, this recent research has found that reductions in the

incapacitative effect of incarceration may be accelerating.^{vii} Plainly, the marginal prisoner today is exponentially less threatening to public safety than the marginal prisoner at the time of Levitt's study.

Using the numbers from the Levitt study also ignores the reality on the ground. In recent years, 29 states have reduced their incarceration rate, and all but three have also seen the crime rate drop.^{viii} If reducing the number of prisoners increased crime to such a dramatic degree—at over a dozen per person as DeLisi purports—then there would have been an explosion of crime rather than a continued drop.

One limitation of the Levitt article that the author points out himself is that at the time of its publication, there was still little known about effective programming to prevent offenses or recidivism. Such programs are “preferable to long-term incarceration from both a cost-benefit and humanitarian perspective” (p. 348). Since then, the literature about what works in prevention and reentry has expanded. Efforts such as Urban Institute's What Works in Reentry Clearinghouse have shown that there are many programs and policies that are proven to reduce recidivism. These program evaluations conform to a high standard of methodological rigor, and many randomized controlled trials have shown substantial recidivism reductions.

Subsequent econometric research at the state level, published in the same journal as the Levitt paper, has found that providing the incentive of earlier release to prisoners for participating in such programming or good conduct is cost-beneficial from many perspectives. The incentive of early release encourages more inmates to participate in programming, and the rehabilitative effect of programming is much stronger than the incapacitative effect of prison.^{ix} That is, building upon Levitt's own prediction, high-quality programming not only saves money, but also is a much more effective way to reduce crime.

Taking these changes into consideration, Levitt himself has recently argued that the calculus of incarceration has changed, telling the *New York Times*, “We know that harsher punishments lead to less crime, but we also know that the millionth prisoner we lock up is a lot less dangerous to society than the first guy we lock up... **I think we should be shrinking the prison population by at least one-third** [emphasis added].”^x

The literature on how much time served is sufficient to protect the public is therefore at best mixed, and our methodology is especially conservative for not incorporating the recidivism reduction benefits of programming into a more explicit cost-benefit analysis.

2. Prof. DeLisi testified that “the effectiveness of treatment programs has been inflated.” Do you agree? Is there evidence that treatment programs are effective in reducing recidivism?

Perhaps what DeLisi perceives as inflated is the so-called “evidence” of program effectiveness that is the result of poorly designed studies that lack the methodological rigor to assert causation in a manner that would withstand academic scrutiny. However, a large and growing body of strong research evidence indicates that programs that prepare inmates for employment, address substance addiction, and maintain and enhance family relationships are critical to reducing the likelihood of recidivism following their release. Much of this evidence is embodied in the What Works in Reentry Clearinghouse,^{xi} developed by Urban Institute in partnership with the Council of State Governments’ Justice Center as part of the Second Chance Act’s National Reentry Resource Center.^{xii} Our methodology is stringent, examining only studies that conform to the highest standards of methodological rigor—including many randomized controlled trials, the “gold standard” of evaluation methods. While we are in the process of populating the Clearinghouse and have hundreds more studies still to review, to date we have found positive effects for many substance abuse treatment programs, including BOP’s Residential Drug Abuse Program,^{xiii} Connecticut’s substance abuse treatment tier programs,^{xiv} and Minnesota’s chemical dependency treatment program.^{xv} Several prison industries programs were found to be effective, including the federal prison system’s UNICOR program,^{xvi} work release programs in Florida^{xvii} and Washington,^{xviii} and a number of educational and vocational programs, particularly postsecondary and adult basic education.

Importantly, studies of in-prison visitation found that inmates who receive visits from family members while incarcerated have reduced rates of recidivism compared to those who do not, even when statistically controlling for other differences between these groups.^{xix} This finding is consistent with Urban Institute’s reentry studies, which have found that families are an important positive influence in the reentry process (with higher levels of family support linked to higher employment rates and reduced recidivism following release)^{xx} and that in-prison contact with family members is predictive of the strength of family relationships following release.^{xxi}

ⁱ Levitt, Steven. 1996. “The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation.” *The Quarterly Journal of Economics* 111(2): 319–351.

ⁱⁱ Samuels, Julie, Nancy La Vigne, and Samuel Taxy. 2013. “Stemming the Tide: Strategies to Reduce the Growth and Cut the Cost of the Federal Prison System.” Washington, DC: Urban Institute. <http://www.urban.org/publications/412932.html>.

ⁱⁱⁱ Levitt (1996); La Vigne, Nancy. 2013. “Statement of Nancy G. La Vigne, Ph.D. Director, Justice Policy Center, Urban Institute before the Committee on Judiciary United States Senate.” *Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism*.

^{iv} La Vigne (2013).

^v Samuels, La Vigne, and Taxy (2013).

^{vi} Johnson, Rucker and Steven Raphael. 2012. “How Much Crime Reduction Does the Marginal Prisoner Buy?” *Journal of Law and Economics* 55(2): 275–310.

RESPONSES OF NANCY G. LA VIGNE, PH.D.,
TO QUESTIONS SUBMITTED BY SENATOR BLUMENTHAL

Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism

Senator Blumenthal Questions for the Record

On Additional Cost Savings:

It seems to me that when you enact sentencing reform, you reduce prison overcrowding. When you reduce prison overcrowding, you make it easier for the Federal Bureau of Prisons (BOP) to give inmates individualized attention, to keep inmates near their families, and to provide inmates with programming that has been proven to reduce recidivism. And finally, when BOP can do these things, you have fewer people in prison.

1. In your opinion, could this be an additional source of cost savings that would result from sentencing reform, over and on top of the savings discussed in your report?

Our projections did not consider the potential savings associated with increased program delivery behind bars. That's because we took a very conservative approach to population and cost projections, looking solely at the effect of each individual policy option on its own and assuming everything else stays the same. As a result, it is possible that there may be additional cost savings—both to federal agencies that have to house fewer future recidivists and to potential victims of averted crimes—beyond those that may be caused by additional programming available when prison overcrowding decreases because of sentencing reform.

Indeed, our own research at Urban Institute (and that of others) suggests that these savings could be substantial. Welsh'sⁱ review of cost-benefit analyses found that 12 of 14 evaluations of reentry programs led to positive cost-benefit ratios; he concluded that increasing treatment resources for offenders reduces recidivism and is cost-beneficial for society. In an Urban Institute evaluation of the Maryland Reentry Partnership Initiative, Roman et al.ⁱⁱ found that the effort returned \$3 in benefits for every \$1 in new costs. In another Urban Institute study, Roman and Chalfinⁱⁱⁱ found that jail reentry programming is cost-beneficial if the programming leads to at least a 2 percent reduction in crime. Also, Aos's meta-analysis of reentry program effects^{iv} lists the cost-benefit ratios for a variety of adult and juvenile reentry interventions and finds that the majority of interventions are cost-beneficial.

On Data:

I have been surprised in my work on this issue by how hard it is to find good data on sentencing and incarceration. The sentencing commission does an absolutely impressive job of providing good data, but when you look for data on incarceration patterns, it is much harder to find.

1. As a researcher, do you believe the federal government could do a better job of providing high-quality data on this issue?

Yes, the federal government could do a better job of making more detailed data available to researchers and the general public. The US Sentencing Commission disseminates comprehensive data about offenders sentenced in the federal system. Data from BOP are available through the Bureau of Justice Statistics (BJS) Federal Justice Statistics Program and BOP provides an overview of the population on its website. But they could do better.

2. How could they do better?

Both agencies could be more transparent and disseminate more of the information they collect and analyze. They could also make these data publicly available in a timelier manner. BOP could do a better job of releasing information about its population, particularly for program participation. The BOP provides several annual reports to Congress with summary information, but these reports are not ordinarily made public. Moreover, datasets (with individual-level information) compiled for BJS do not include any information about program participation, except for inmates who receive Residential Drug Abuse Program credit. While BOP assesses inmates' risks on intake for classification purposes and at various times throughout their terms of incarceration, these data are not made public. The closest proxy for risk in publicly available data is the security of the facility in which inmates are incarcerated.

Another area with inadequate information concerns inmates completing their prison terms in Residential Reentry Centers (halfway houses) or home confinement. It would be beneficial to learn more about programming, compliance or noncompliance with conditions of confinement, and information about inmates who are sent back to BOP facilities from these community placements because of technical violations or other reasons. There are also certain fields in the publicly available data that could be improved, such as information about resentencing of prisoners already in BOP custody.

While the US Sentencing Commission regularly releases much of its data, it does not release its resentencing data set, which could help researchers better understand the final sentences served by inmates. Also, the prison impact assessments that the Sentencing Commission prepares for Congress are not made public and should be, in our assessment.

¹ Welsh, Brandon. 2004. "Monetary Costs and Benefits of Correctional Treatment Programs: Implications for Offender Reentry." *Federal Probation* 68(2). <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=208065>.

¹¹ Roman, John, Lisa Brooks, Erica Lagerson, Aaron Chalfin, and Bogdan Tereshchenko. 2007. *Impact and Cost-Benefit Analysis of the Maryland Reentry Partnership Initiative*. Washington, DC: Urban Institute. http://www.urban.org/UploadedPDF/311421_Maryland_Reentry.pdf

¹² Roman, John and Aaron Chalfin. 2006. "Does It Pay to Invest in Jail Reentry Programs?" Washington, DC: Urban Institute. http://www.urban.org/projects/reentry-roundtable/upload/roman_chalfin.pdf.

¹³ Aos, Steve. 2006. *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates*. Olympia, WA: Washington State Institute for Public Policy. <http://www.wsipp.wa.gov/rptfiles/06-10-1201.pdf>.

RESPONSES OF NANCY G. LA VIGNE, PH.D.,
TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism

Senator Grassley Questions for the Record

1. Your testimony and the Urban Institute report heavily advocate for decreasing the prison population by “reducing drug prosecutions.” The report states that “[c]utting the number of drug offenders entering BOP by just 10 percent would save \$644 million over 10 years.”

Does this analysis of cost savings for not prosecuting drug dealers take into account the cost to potential victims and society of the crimes these drug dealers would continue to commit if they were not prosecuted, as well as the violence associated with drug trafficking?

To be clear, our report does not advocate any particular policy change, including reducing the number of drug prosecutions. We simply describe the projected population and cost effects of a wide array of options that are currently under consideration by this Congress.

Our methodological approach is conservative in nature because we examine each policy change on its own, holding all else constant. Thus, we do not take into account “dynamic effects” such as increased or decreased recidivism as a result of any policy option.

We would note, however, that reducing the number of offenders charged with federal drug trafficking crimes does not necessarily mean that the conduct of the offenders would go unaddressed; federal prosecutors could decline drug cases in favor of state prosecution or recommend that certain offenders receive alternatives to incarceration. The Attorney General’s recent Smart on Crime initiative explains that while there is violence associated with the drug trade generally, some non-violent, non-gang-involved, and non-leader drug offenders are nonetheless charged federally with mandatory minimum sentences for drug crimes.¹ He directed US Attorneys to revise their charging and declination practices in light of this information. We assume that prosecutors will, as before, use their discretion to balance public safety goals while conforming to their charging and declination practices.

2. You also advocate cost savings from reducing the percentage of the sentences that federal prisoners must serve. Does your cost analysis of this change take into account the crimes that would be committed as a result of the early release of thousands of violent offenders against potential victims and society?

As above, in our report, and in my testimony, we do not advocate any particular policy change. However, many policy options discussed in our report would increase the authority of BOP to release certain inmates prior to their having served 87.5% of their sentence. In each of these policy options, we assume that BOP will exercise its discretion conservatively, extending an earlier release option to those inmates who truly exhibit exemplary behavior while in BOP custody or those who complete the requisite quantity of programming. Many of these policy options explicitly exclude violent or high-risk offenders from early release.

While we do not calculate “dynamic effects” from either increased or decreased recidivism for any of these policy options, there is convincing evidence that early release programs that reward inmates for participating in recidivism reduction programming or for good behavior while in BOP custody would not increase crime. While prison surely has an incapacitation effect,ⁱⁱ many such policies have already been piloted in the states; a review of these programs found no statistical difference in the crime rates of those who had been released early.ⁱⁱⁱ Moreover, retrospective and prospective cost-benefit analyses have found that certain early release programs, when combined with treatment or programming, are cost-beneficial because they reduce recidivism.^{iv} Similarly, a recent peer-reviewed econometric study found that on the margins, well-implemented early release programs decrease the risk of inmate misconduct, recidivism program non-completion, and post-release criminal activity. This decrease in risk is relative to policies that mandate all inmates serve a large majority of their sentences.^v The literature on how much time served is sufficient to protect the public is therefore at best mixed, and our methodology is especially conservative for not incorporating the recidivism reduction benefits of programming into a more explicit cost-benefit analysis.

ⁱ Holder, Eric. 2013a. “Attorney General Eric Holder Delivers Remarks at the Annual Meeting of the American Bar Association’s House of Delegates.” San Francisco, August 12.

<http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html>; Holder, Eric. 2013b. “Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases.” Memorandum to the US Attorneys and Assistant Attorney General for the Criminal Division. Washington, DC: US Department of Justice; Holder, Eric. 2013c. “Retroactive Application of Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases.” Memorandum to the US Attorneys and Assistant Attorney General for the Criminal Division. Washington, DC: US Department of Justice.

ⁱⁱ Levitt, Steven. 1996. “The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation.” *The Quarterly Journal of Economics* 111(2): 319–351.

ⁱⁱⁱ Guzman, Carolina, Barry Krisberg, and Chris Tsukida. 2008. “Accelerated Release: A Literature Review.” Focus, Oakland, CA: National Council on Crime and Delinquency.

http://www.nccglobal.org/sites/default/files/publication_pdf/focus-literature-review.pdf.

^{iv} Lee, Stephanie, Steve Aos, Elizabeth Drake, Annie Pennucci, Marna Miller, and Laurie Anderson. 2012. “Return on Investment: Evidence-Based Options to Improve Statewide Outcomes April 2012 Update.” Olympia, WA: Washington State Institute for Public Policy.

^v Kuziemko, Ilyana. 2013. “How Should Inmates be Released from Prison? An Assessment of Parole versus Fixed-Sentence Regimes.” *The Quarterly Journal of Economics* 128(1): 371–424.



Questions from Senator Grassley for Dr. Sedgwick and Responses

1. In your written testimony, you call attention to the unique characteristics of the federal prison population. Can you offer any insight into why federal prisoners differ so significantly from state and local prisoners?

Surely part of the answer to this question are the differences between state and federal criminal codes that specify which offenses are targeted by each jurisdiction for prosecution and, perhaps, sentencing to a term of incarceration. But equally important is a little-commented on development in the criminal justice system: the increasing use of multi-jurisdictional task forces, funded in many cases by DOJ's Office of Justice Programs, that involve federal, state, and local law enforcement targeting high priority offenses where state and federal criminal codes overlap. We have witnessed in recent years task forces targeting gun crime, drug trafficking, human trafficking, internet crimes against children and so on. These task forces facilitate discussions among levels of government which level is best equipped to serve public safety goals by assuming jurisdiction over a particular case and offender. In making this decision, United States Attorneys are guided by priorities set by the Attorney General and the Department of Justice. Thus, when we observe marked changes in federal prison population composition such as the current abrupt and marked increase in sentenced offenders imprisoned for public-order offenses (especially immigration crimes), we ought examine the incentives created and priorities articulated by DOJ that induce federal law enforcement officials to arrest, convict and incarcerate a very different population than do their state and local colleagues.

2. You also recommend caution about the claims to effectiveness of rehabilitation, prevention and intervention programs. Can you elaborate on this for the Committee? What is the current state of evidence on such programs?

On the matter of the effectiveness of rehabilitation intervention programs, there has been considerable skepticism of such programs in the research community for the last forty years at least. Even among scholars most committed to rehabilitation and treatment programs, there is widespread recognition that the range of possible improvement in recidivism rates is on the order of 10% (meaning that we may be able to reduce the baseline recidivism rate for released offenders from around 66% to perhaps 60%) and that most of the currently utilized programs in this country are ineffective.¹ As recently as 2012 in her keynote address to the National Institute of Justice Research Conference, Joan Petersilia, Professor of Law at Stanford University and Faculty Co-Director of the Stanford Criminal Justice Center noted that of the 23 programs listed on the federal website for evidence-based antirecidivism, only one—for burglars in England—has been shown to work. Speaking of effective community-based treatment as an alternative to incarceration, Petersilia continued, “We don’t have the models, we can’t replicate them, and if we can replicate them, we can’t scale them up.”²

3. We understand that California is engaged in a sweeping reform of its prison, jail and community corrections programs that has reduced prison populations significantly. Can you comment on these reforms and what impact they have had on public safety in California?

California’s Public Safety Realignment (PSR) policy is designed to reduce the prison population through normal attrition of the existing population while placing new nonviolent, nonserious, nonsexual offenders under county

¹ Francis T. Cullen and Cheryl Lero Johnson, “Rehabilitation and Treatment Programs,” in *Crime and Public Policy*, ed. James Q. Wilson and Joan Petersilia (New York: Oxford University Press, 2011), pp. 293-344. ² A YouTube video of Professor Petersilia’s entire speech was uploaded by DOJ and can be seen at <http://www.youtube.com/watch?v=1KThzwhelDc>



jurisdiction for incarceration in local jail facilities. Inmates released from local jails will be placed under a county directed post-release community supervision program (PRCS) instead of the state's parole system. The state is giving additional funding to the 58 counties in California to deal with the increased correctional population and responsibility, but each county must develop a plan for custody and post-custody that best serves the needs of the county. Thus, it should be noted that the PSR policy is really a cost-shifting program that reduces state prison and parole costs by dramatically increasing local jail costs. Some, but not all, of these costs are compensated for by increased county aid. And some of these costs are shifted onto the backs of citizens in the form of reduced public safety and increased costs of criminal victimization. As Heather MacDonald has noted in "California's Prison Litigation Nightmare,"² "the first full year of crime data after realignment is not reassuring. California's crime rate is up considerably over the national average. The differences are starkest regarding theft, which is precisely the category of crime most affected by AB 109. Nationally, property crime was down 0.9 percent in 2012; in California, it was up 7.6 percent. Car theft nationally was up 0.6 percent; in California, it jumped 14.6 percent. Burglary nationally was down 3.7 percent; in California, it was up 6.6 percent. Violent crime also showed a disparity: murder rose nationally 1.1 percent, compared with 4.7 percent in California; robbery was down 0.1 percent nationally, while California saw a 3.9 percent rise. I would caution against drawing sweeping conclusions from one year of data, but the portents are, in this case, not promising.

4. Of the various strategies for cutting the federal prison population analyzed by the Urban Institute, which seem to you to be most promising and why?

I think the top of my list of promising strategies would be to release more elderly and terminally ill inmates early. Everything research has shown us about criminal careers and career criminals indicates that desistance from crime is related to aging: quite frankly, a life on the streets as a criminal is hazardous and physically quite taxing. Consequently, there is little public safety benefit to incarcerating elderly and terminally ill inmates. It should be noted, however, that public safety (the product of incapacitation and/or deterrence) is not the only value at work in sentencing decisions. There is also the value of retribution or proportionality; the public may not be comfortable with lighter effective sentences for the same crime when committed by an older offender rather than a younger one.

A second choice would be to increase the number of international transfers where feasible. However, this particular option strikes me as highly improbable: it constitutes a form of cost shifting between our federal government and a foreign government who assumes the costs of incarcerating one of their own citizens for violating *our* laws. I find it rather hard to imagine any foreign government being willing to assume such costs for our benefit. A more likely outcome will be transferring a foreign national to his or her own jurisdiction where he or she will promptly be released.

A third choice would be transferring low-risk prisoners to home confinement after they earn enough credits. Again, there may be an element of cost shifting involved here depending on what jurisdiction is assigned responsibility for monitoring the confinement. The attractive part of this option is that it explicitly involves risk-assessment in the decision for early release; if this risk assessment is done well, then the impact on public safety can be minimized as experience reveals the optimum level of risk the public is willing to tolerate. This is a far better alternative than the remaining options mentioned in the 2013 Federal Prison Report Draft, none of which explicitly acknowledge risk differentials among offenders and treat all federal prison inmates alike regardless of their criminal histories and personal characteristics.

5. Can you give examples of strategies for reducing prison population states have tried that have succeeded in reducing both inmate populations and recidivism?

Since 1994 and the passage of Truth-in-Sentencing guidelines, the Commonwealth of Virginia has operated under a set of carefully constructed and evidence-driven sentencing guidelines. These guidelines were informed by the following goals and objectives: to reduce the gap between the sentence pronounced in the courtroom and the time actually served by a convicted felon in prison; to ensure that violent criminals serve longer terms in prison than in the past; to safely redirect low-risk nonviolent felons from prison to less costly sanctions; and to reduce disparity in the punishment of offenders unwarranted by the circumstances of the offense or the defendant's criminal history.

² Heather MacDonald, "California's Prison Litigation Nightmare," *City Journal*, Autumn 2013 vol. 33, No. 4. Available online at http://www.city-journal.org/2013/23_4_california-prisons.html

How successfully have these goals been met? According to the Sentencing Commission's 2008 Annual Report, first degree murderers are estimated to serve 90% of the incarceration terms ordered by the court (as compared to less than 33% under the pre-guideline system), robbers 90% (as compared to less than one-third), larceny offenders 88% (compared to 30%), and drug sellers (excluding marijuana) 89% (compared to 20%). Overall, those convicted of murder, rape, robbery, burglary, drug sales, and larceny are all estimated to serve no less than 85% of their court-imposed sentence.

In terms of length of incarceration served by violent criminals, again the evidence is that sentences imposed for violent offenders under truth in sentencing provisions are resulting in substantially longer lengths of stay than those seen prior to sentencing reform. Sentencing reform and the truth-in-sentencing guidelines have been successful in increasing terms for violent felons, including offenders whose current offense is nonviolent but who have a prior record of violence.

But what about non-violent offenders? Based on study of sentencing reports received from the Commonwealth's courtrooms, in fiscal year 2008 approximately two-thirds of those for whom sentencing guidelines recommended incarceration were adjudicated guilty of a nonviolent offense. Since July 2002, such offenders, if they have no prior violent felony conviction (and if their instant offense is not sale of one ounce or more of cocaine), are eligible for risk assessment consideration for alternative sanction. In FY2008, 51% of eligible non-violent offenders were recommended for alternative sanction by the risk assessment instrument.

Combining these two trends (longer sentences for violent offenders and alternative sanctions for non-violent offenders), one would expect the composition of the Commonwealth's prison population to change. And that is precisely what has happened in practice: in June 1994, 69% of prison inmates were violent offenders; in June 2007, the percentage had risen to 79%.

As noted in the 2008 Annual Report of the Commonwealth's Criminal Sentencing Commission, one of the goals of the sentencing guidelines was to target violent offenders for longer terms of incarceration in order to incapacitate them. By achieving longer lengths of stay for violent offenders, sentencing reform was expected to result in fewer repeat violent offenders returning through the circuit courts of the Commonwealth. And that is exactly what has happened since implementation of the sentencing guidelines.

More than 28% of violent offenders sentenced in 1996 had at least one prior violent felony convictions; by 2004, this figure had dropped to 24%, a decrease of 14.3%. The 2008 Annual Report also notes that given the relatively short history of sentencing guidelines, the full impact of longer prison stays for violent offenders has not yet been achieved or accurately measured. So the observed change in violent recidivism noted above is surely underestimated.

One other aspect of the Commonwealth's sentencing guidelines bears on the question of whether or not prison stays are too long: the provision of longer prison stays for violent offenders was coupled with a geriatric release provision. In most cases, as offenders age, they are less likely to recidivate; at some point, advancing age and declining physical condition make an inmate less of a threat to public safety and more of a burden on the correction system's medical system. As a result, the geriatric release provision allows inmates to petition for conditional release upon reaching age 65 and having served at least five years of the sentence imposed or reaching age 60 and having served at least ten years of the sentence imposed. While the number of inmates eligible for geriatric release is currently limited to do the comparative youth of the sentencing guidelines themselves, the number is expected to double in the next few years and continue to rise at a fast pace as more inmates sentenced under the truth-in-sentencing system reach the necessary age and time-served thresholds.

In sum, the Commonwealth of Virginia is following a goal-driven, evidence-based strategy of incarcerating (and therefore incapacitating) violent offenders while diverting non-violent offenders to alternative sanctions without risk to public safety.

6. Does any scientifically rigorous evidence support the conclusion that prison overcrowding and budgetary constraints can be alleviated, without causing any harmful effect on public safety, through reducing sentences, placing inmates in successful anti-recidivism programs, and ordering the early release of inmates?

I think my answers to questions two and five above may be pertinent here. I would just add to those comments and observations the following point: nothing strikes me as more destructive to public safety than sweeping, across

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the board reductions in sentences, placement in anti-recidivism programs, and early release of inmates *regardless of the risk they pose to public safety based on their personal characteristics and criminal histories*. Over and over again, we see reforms proposed based, for example, on differential treatment of offenders based on their most recent offense. This quite wrongly assumes a high degree of specialization among offenders and differentiation between offender types. It also ignores the prevalence of plea bargaining in the criminal justice system that results in, for example, an offender being convicted of drug possession when the arrest charge was drug trafficking. Any policy adopted to reduce prison overcrowding should rely on the abundant research on career criminals and criminal careers³ and look at an offender's entire history in making decisions about alternatives to incarceration.

7. The Judiciary Committee is set to consider three prison reform bills: S. 619, the Justice Safety Valve Act of 2013, S. 1410, the Smarter Sentencing Act of 2013, and S. 1675, the Recidivism Reduction and Public Safety Act of 2013. In your opinion, will the proposals in these pieces of legislation alleviate overcrowding in federal prisons without causing harm to or affecting public safety?

Of the three pending pieces of legislation, I would be more inclined to focus on revisiting sentencing guidelines to ensure that the existing guidelines still reflect the current state of criminal justice research that I have referenced throughout my testimony and in these answers to your questions. In doing so, I would reject the Urban Institute's proposal to repeal sentencing guidelines and restore judicial discretion. Such discretion, though not unbounded, already exists; and it is well to remember what drove the movement of sentencing guidelines in the first place: the manifest injustice of an offender's sentence being largely determined by the luck of the draw in his case's assignment to a particular judge in a particular jurisdiction. We have already traveled down the road of similar offenders committing similar crimes receiving very different sanctions due to judicial whim. We ought not repeat that mistake. But that does not mean that we should not ensure that sentencing guidelines are frequently reviewed to ensure that they reflect the most current research.

I would strongly urge against creating a "justice safety valve" that simply transfers costs from the Federal Bureau of Prisons to communities by widespread release of inmates regardless of the risk they pose to their communities; and I would heed Professor Petersilia's sage advice about the limits of evidence-driven rehabilitation programs.

³ See, for example: Alex Piquero, David Farrington, and Alfred Blumstein, "The Criminal Career Paradigm," *Crime and Justice*, 30 (2003), pp. 359-506; Alfred Blumstein and Jacqueline Cohen, "Characterizing Criminal Careers," *Science*, 237 (1987), pp. 985-991; Alfred Blumstein, David Farrington, and Soumyo Moitra, "Delinquency Careers: Innocents, Desisters, and Persisters," *Crime and Justice*, 6 (1985), pp. 187-219; Alfred Blumstein, Jacqueline Cohen, Somnath Das and Soumyo D. Moitra, "Specialization and Seriousness During Adult Criminal Careers," *Journal of Quantitative Criminology*, 4 (December 1988), pp. 303-345; and John H. Laub and Robert J. Sampson, "Understanding Desistance from Crime," *Crime and Justice*, 28 (2001), pp. 1-69.

Questions for the Record
“Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism”
November 6, 2013
Senator Sheldon Whitehouse

John E. Wetzel:

- 1) The Committee heard testimony that permitting the early release of prisoners or reducing sentences always leads to more crime. Based on your experience reforming the criminal justice system in Pennsylvania, do you agree?

A: No. It's about who and when you release the person while using science to make the decisions instead of painting with a broad brush. It is critical to make good decisions with good outcomes while still reducing population costs.

What happened to crime rates in your state after you passed your package of reforms?

A: We don't anticipate a negative impact because reforms improved criminal justice policy and expect improved outcomes as a result. Our reforms are focused on improving identified problems in the system and a logical consequence was that we flattened out the population growth. The focus is improving criminal justice practices and policies.

- 2) Do you believe that it is important to target recidivism-reduction programming toward high-risk inmates?

A: Absolutely. The research is very clear that high risk offenders benefit from intensive programming. It has the opposite effect on low risk offenders and increases their potential criminality. Furthermore, from a resource standpoint, providing programming to low risk offenders has a negative effect on them. From a financial standpoint spending money on those who do not benefit from it is a waste of resources. Targeted evidenced based programming to the proper offender reduces crime.

How do you try to achieve this goal in Pennsylvania?

A: Good evidence based actuarial risk assessment at the front door and developing a continuum of treatment that meets the assessed needs of the offenders. Finally,

connecting offenders who have continuing program needs with programs on the outside through our reentry efforts to meet the remaining needs.

“Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism”

Senator Grassley’s Questions for Secretary Wetzel

1. You testified that Pennsylvania decided to prohibit the early release of prisoners to residential programs. What occurred in Pennsylvania because of early prisoner release that led the state to abolish it?

A: The prelease was a program that targeted low risk offenders and put low risk offenders in a program designed for high risk offenders which increased their future criminality. It was a flawed concept. We created transition units in the prison to accomplish the same goal for the lower risk offenders but in a more research based manner and placed them in the residential program with technical parole violators. Our decision was based upon data, and again, focused on improving outcomes.

Responses to: Questions for the Record
“Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism”
November 6, 2013
Senator Sheldon Whitehouse

Representative John Tilley:

- 1) The Committee heard testimony that permitting the early release of prisoners or reducing sentences always leads to more crime. Based on your experience reforming the criminal justice system in Kentucky, do you agree? What happened to crime rates in your state after you passed your package of reforms?

The crime rates in Kentucky do not support the theory that the early release of prisoners or the reduction of sentences necessarily creates an increase in crime rates. Since the enactment of the reforms in our state, with the exception of property crimes, all crime rates have ultimately decreased. We are experiencing positive results because our state implemented smart-on-crime policies to decrease recidivism.

One example of a successful reform that is helping to keep recidivism down is mandatory reentry supervision, or MRS. Studies show that the first 6 months after release from incarceration are the most critical in determining whether a person will successfully reenter society. In order to help offenders successfully transition into society, the legislation requires the Department of Corrections to implement MRS for eligible inmates who are not granted discretionary parole. These inmates are released six months prior to the completion of their sentences and are supervised by parole officers until their sentence expires. While on MRS, offenders are provided with resources to help find housing, employment, treatment and other programs. Without mandatory reentry supervision, these offenders would serve out their sentences within the corrections system and would be released into our communities without supervision and without transitional services. MRS provides an opportunity to address the problems faced by those trying to reenter society after incarceration and reduce their rate of reoffending. As of September 2013, 5,105 inmates have been released to MRS. The current recidivism rate for those on MRS is less than 20%, which is much lower than the recidivism rate for other offenders who do not receive this supervision.

Another reform enacted in our state is post-incarceration supervision, although it is still too new for us to confidently quantify its results. This provision requires certain serious offenders who are convicted after the effective date of the legislation to be subject to one year of additional supervision in the community upon the expiration of their sentences. Post-incarceration supervision will provide serious offenders the same reentry resources and supervision as MRS without jeopardizing public safety.

Mandatory reentry supervision and post incarceration supervision can only be successful if the appropriate tools are used to identify what each individual needs to successfully reenter society. First, our reforms require the use of risks and needs assessment tools within the criminal justice

system. These tools are evidence-based and validated, and they allow officials to make better decisions regarding supervision levels and to address the specific risks and needs of each individual within the system. Second, our legislation requires that state funding be used for programs and practices that are also evidence-based. The Department of Corrections is required to demonstrate that state-funded intervention programs provided by the department have been evaluated for effectiveness in reducing recidivism.

Reduction in sentences was not a major focus of our criminal justice reforms, but we did implement sentence reductions in our controlled substances statutes. The new provisions maintained possession in the first degree as a low-level felony but reduced the maximum sentence from 5 years to 3 years. A component of the controlled substances reforms requires the Department of Corrections to calculate the fiscal savings resulting from changes to the controlled substances laws, and we specified that the savings from those changes are to be used solely for expanding and enhancing evidence-based treatment programs.

The reforms passed in our state in 2011 have already shown progress. As the reforms continue, treatment options expand, and our responses become more specific to each individual's needs, it is our hope that positive results continue to become more apparent. These reforms show that public safety can be maintained through simple, common-sense revisions within the criminal justice system.

- 2) As you reformed your corrections system, did you try to reinvest the savings you achieved in other law enforcement priorities? Have those efforts been successful?

Our reforms emphasized substance abuse treatment as Kentucky has experienced a rise in drug abuse problems in the past decade that effect all aspects of our communities from schools to economic development as well as all aspects of the criminal justice system. We increased substance abuse treatment slots available to the Department of Corrections from 1,500 in 2007 to almost 6,000 today. Because a vast majority of crimes in Kentucky are rooted in addiction, this focus on drug treatment reduces and prevents recidivism. In fact, our reforms have reduced our prison population, which has allowed the Department of Corrections the flexibility it needed to implement innovative solutions to administrative problems encountered within our corrections system.

For several years prior to the passage of HB 463, the Kentucky State Police (KSP) had been assessing options for the relocation of their training academy, a facility used to process new cadet classes through basic training, as well as providing refresher training for current troopers and visiting personnel from other law enforcement agencies. The old academy faced severe constraints due to age, location, and physical space, and KSP's budget significantly limited their ability to acquire land for any new academy buildings. The passage of HB 463 gave Kentucky's Justice & Public Safety Cabinet confidence that it could rely future planning on a decrease in the state inmate population, allowing that agency to close a state prison and transfer its grounds and physical plant to the KSP for conversion into a new training academy.

The Department of Corrections and the Administrative Office of the Courts (AOC) are partnering together through a grant to implement “SMART,” or “Supervision, Monitoring, Accountability, Responsibility and Treatment.” The program is based on the HOPE Model. Currently six Kentucky jurisdictions are involved with the objectives of:

- Identifying probationers at high risk of violating their terms of supervision, specifically in relation to substance use;
- Responding swiftly and certainly to violations, using brief jail stays as primary sanctions;
- Targeting treatment resources to offenders who are unable to comply with their probation conditions after an initial sanction and who need treatment; and
- Reducing violation behavior and new crimes, thereby reducing revocations to prison.

FY13 total awards \$946,524

FY14 total awards \$947,364

Above are the amounts awarded for community corrections grants in the past two years. In FY13, this money was allocated to the 6 SMART pilot programs. The majority of the FY14 awards also went towards the continuation of the SMART programs. Because this program is in its infancy, we are still in the early phases of evaluating the success of the grant programs. We hope to be able to empower local governments to address individual needs, as well as share best practices from the use of these grant funds over time.

Our reforms have also increased the number of Probation and Parole officers. As a result of a \$3 million allocation from the 2010 General Assembly, 54 staff positions were added to the Division of Probation and Parole. In addition, the new legislation directly resulted in the creation of 36 new staff positions for the Division. Additional resources are expected to be allocated to the Division of Probation and Parole for personnel and infrastructure needs including expanding the Division’s fleet inventory and offices statewide in preparation for these expanded services.

United States Senate, Committee on the Judiciary, *Hearing on the Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism*, held on November 6, 2013

**Statement for the Record
Submitted by the Arthur Liman Public Interest Program at Yale Law School*
November 13, 2013**

The Arthur Liman Public Interest Program¹ at Yale Law School appreciates the opportunity to submit this statement in connection with the Senate Judiciary Committee's November 6, 2013 hearing, *Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism*. We applaud the Committee for putting on its agenda questions about efforts by the Federal Bureau of Prisons (BOP) to implement cost-effective strategies to reduce recidivism.

This statement first discusses how, upon learning about the BOP's proposal to limit placement opportunities for women in the Northeast, the Liman Program began efforts to map where facilities for federal prisoners were and to identify the roles that gender and jurisdictions of sentencing play when considering options for placements of incarcerated individuals. Second, we provide a brief overview of research demonstrating that incarcerated individuals who have opportunities for education and who can maintain ties with their families and communities are more successful while in prison and upon release.

As we explain, these studies make plain that *where* individuals are incarcerated has an impact on access to programs and to other resources that contribute to lowering recidivism rates. Further, for those prisoners who are parents, opportunities for children to visit are especially important, given that children of prisoners face special challenges. Because more women than men took care of young children prior to incarceration and because women have fewer placement options in the federal system, women disproportionately suffer the burdens of distance from children. Third, we outline the efforts, recently undertaken by the federal government, to try to lower the costs that incarceration imposes on children of prisoners.

Fourth, we detail what can be learned from public information about where men and women are currently incarcerated in the federal system and about the judicial districts in which they were sentenced. As the data and appendices below illuminate, the decisions to locate federal prisons in certain parts of the country result in placing many inmates at great distances from the districts in which they were sentenced and to which they may well be released. Moreover, given the few placement options provided for women, that subset of the population is often at a greater distance from families and from ready access to volunteer programs than are men.

Fifth, we discuss approaches available to the BOP to fulfill the goals it recognizes—to “place each inmate in an institution that is reasonably close to the anticipated release area”² and

* A full version of this statement, including endnotes, maps, and appendices, can be found 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. Institutional affiliation provided for identification purposes only.

then to help that person move toward release and reentry. From the publicly available data, implementation of those goals often appears to fall short of these aims. Given that distance makes visiting difficult and, for families with limited incomes, in many instances impossible, the BOP could effectuate a cost-effective strategy to lower recidivism by reviewing each inmate's eligibility for reclassification, treatment programs, education, and for Second Chance Act release to a residential reentry center (RRC or halfway house). After identifying individuals eligible for these opportunities, the BOP could provide these programs and alternatives or find facilities for inmates closer to their families. Our suggestions build on the model used when discussion of FCI Danbury came to the fore. As we understand it, once concerns were raised about the decision to move so many women away from the Northeast, the BOP undertook an individualized review and determined that dozens of women housed at Danbury were eligible for alternative placements.

Institutionalizing a process of individualized reviews for both women and men in the federal prison system would help to keep individuals as close to their home communities as possible and facilitate their successful reintegration upon release. Doing so would comport with the BOP's own goals of supporting prisoners who are parents and of helping all prisoners to move towards reentry, and this approach would also fulfill the directives of both Congress and the Executive branch.

I. The Proposed Closure of FCI Danbury as a Facility for Women Prompted the Liman Program to Undertake a Study of Federal Offenders' Proximity to Home

Over the last several months, the Liman Program has been exploring the impact of the distances federal prisoners are placed from their homes and families on their likelihood of successfully re-entering their communities upon release. The Liman Program has learned about this issue by undertaking a study, *Prison Visitation Policies: A Fifty State Survey*, which provided the first comprehensive comparison of prison visiting policies in all of the states and the BOP.³ A second Liman Program study, *Administrative Segregation, Degrees of Isolation and Incarceration: A National Overview of Policies*, surveyed state and federal policies on the use of administrative segregation, the degrees of isolation imposed on inmates in segregation, and those inmates' eligibility for visits.⁴ A third study, which is currently underway, aims to map placement opportunities for women and men within the federal system and to compare the distances between prisoners' residences and their sites of incarceration.

We began to gather the data reported here in response to the BOP's announcement in the summer of 2013 that it planned to transform its only facility in the Northeast for women—FCI Danbury, Connecticut—into a low-security facility for men. At the time of the announcement, FCI Danbury housed some 1,100 women, while the satellite camp adjacent to the main facility was designed to hold about 150 women (under the plan, the satellite camp would have remained a facility for women). According to data from the Sentencing Commission, about 10 percent of the women sentenced (to terms of incarceration or otherwise) in the federal courts each year come from the Northeast. Transforming Danbury into a facility for men would have meant that female prisoners from the Northeast, and those sentenced in the future, would have almost no opportunity to be incarcerated close to home.

We learned recently that, in response to concerns raised by numerous Senators from the Northeast region, eleven chief judges of federal district courts in the Northeast (see Appendix 1), the National Association of Women Judges (NAWJ) (see Appendix 2), the American Bar Association, the Osborne Association, and many others, the BOP modified its plans and has committed itself to making bed-space available at Danbury for women who are citizens and who are sentenced in or come from the Northeast.⁵

Much more needs to be done. Our research suggests that, although the BOP has a policy of aiming to keep inmates “reasonably close” to the communities to which they will be released, the BOP defines “reasonably close” as any location within 500 miles of a prisoner’s community.⁶ That distance is challenging and for low-income families, such distances may preclude all possibilities of visiting. Moreover, many male and female prisoners across the country are incarcerated even farther than 500 miles from home.

II. Inmates Who Have Programming Opportunities and Visitors Do Better While in Prison and Are Less Likely to Recidivate

Several studies conclude that prisoners who participate in educational programs and/or receive visits while incarcerated function better in prison⁷ and have a better chance of staying out once they are released.⁸ The explanations for these findings may be straightforward: a large literature suggests that “social connections that are maintained during the period of incarceration can be an important resource in helping released prisoners achieve positive post-release outcomes,”⁹ and that inmates who are connected to their families, friends, places of worship, and communities are better able to readjust to life outside prison.

Where inmates are incarcerated affects, among other things, what programs will be available to them, the likelihood that they will interact with volunteers from the surrounding community,¹⁰ and their ability to receive visits. A study released by the RAND Corporation in 2013 offers a “meta-analysis” of data on correctional education and concludes that taking educational courses while incarcerated reduces an individual’s risk of recidivism by 13 percent.¹¹ Further, while many programs can be and should be available to both women and men, some programming also needs to address the disparate social circumstances of prisoners of different genders. For example, many more female prisoners report having been victims of physical and sexual abuse, and men and women may take on different parental responsibilities.¹²

Indeed, research has demonstrated the importance of maintaining parent-child relationships and the particular relevance of parenting to women in prison. As of 2008, the United States imprisoned more than 810,000 parents; children under the age of 18 whose parents were incarcerated numbered more than 1.7 million.¹³ During the last few decades, the number of children with a mother in prison has more than doubled,¹⁴ and mothers entering prisons were far more likely than fathers to have lived with their children in single-parent households.¹⁵

Prison terms make it very difficult to maintain family ties, which is essential both to ensuring successful family reunification and to avoiding termination of parental rights under the federal Adoption and Safe Families Act (ASFA). That statute imposes timelines under which state authorities begin to terminate parental rights; under ASFA, unless they are in the care of relatives, children who spend a period of fifteen out of twenty-two months in foster care can

become the subject of such proceedings.¹⁶ Data also establish that children of female inmates have a five times greater probability of being in foster care than children of male inmates.¹⁷ Thus, incarceration of parents increases the risk that children may lose legal ties with their parents, and children of incarcerated women are especially at risk. 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.¹⁸

Programs for visitors, and for children in particular, may mitigate some of these problems.¹⁹ Because parents' relationships with young children depend more on physical expressions of affection and less on written communication than relationships between adults, contact visits are especially important. For example, in one study, Zoann K. Snyder, Teresa A. Carlo, and Megan M. Coats Mullins discussed the salutary effects of a mother-child visitation program on the reported and observed wellbeing of incarcerated mothers, on mother-child relationships, and on mothers' perceptions of their children's welfare.²⁰

Despite these findings, available information about the geography of federal prisons demonstrates that children have difficulty visiting their incarcerated parents, and that the obstacles to visitation are particularly 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.²¹ More recently, in an October 2010 report entitled *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.²²

Indeed, Karen Casey-Acevedo and Tim Bakken found that the majority (61%) of mothers incarcerated in the maximum-security state prison that they studied had not received any visits from their children, and 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."²³ This study also emphasized the importance of contact visits with children.

III. The Bureau of Prisons, Department of Justice, and the White House Have All Launched New Efforts to Enable Better Opportunities for Family Contact for Prisoners

In 2013, the Department of Justice (DOJ), with White House support, launched what it terms an "aggressive campaign" to mitigate the harms that incarceration of parents imposes on children.²⁴ As the DOJ website explains: "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."²⁵

In June of 2013, the White House recognized twelve Champions of Change For The Children Of Incarcerated Parents. At the event, Deputy Attorney General James M. Cole remarked:

[A]ddressing these children's needs requires a coordinated effort of multiple government agencies and social service entities to implement collaborative approaches. This Administration is committed to providing support to children of incarcerated parents and their caregivers. Through an interagency working group led by the White House, agencies across the Administration have been taking a hard look at the issues these children, their caregivers and their parents confront and how we can provide more support.²⁶

In August of 2013, the White House continued its efforts by hosting a conference to help social scientists, lawyers, and judges learn how to "reduce the collateral costs [of incarceration] to children."²⁷ The conference, "Parental Incarceration in the United States: Bringing Together Research and Policy to Reduce Collateral Costs to Children," was jointly sponsored by the American Bar Foundation and the National Science Foundation and was held in the White House Executive Office Building on August 20, 2013. Participants reviewed the latest research findings and began to develop recommendations for policymaking bodies. Emily Bever Nichols of the University of Virginia noted that "policy and programming should focus on expanding school-based services and drop-out prevention for youth with household member incarceration."²⁸ Myrna Raeder, Professor of Law at Southwestern Law School, urged that "judges should be better trained concerning the impact of parental incarceration on children to take better advantage of their discretion in sentencing, particularly when the defendant has committed a nonviolent crime and has sole or primary parenting responsibility."²⁹ She argued that to sustain parent-child contact, "judges should have the power to take distance from home into account in sentencing, as well as the power to decide where a prisoner should be housed."³⁰

The Justice Department has also directed the BOP to support "programs to enhance family relationships, improve inmate parenting skills, and redesign visitation policies in its system."³¹ On June 19, 2013, BOP Director Charles Samuels 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."³²

IV. The Distribution of Women and Men in the Six Federal Bureau of Prisons Regions

Our question is how these goals fit with what is known about the placement of prisoners, their distances from family, and the rules and regulations for visiting. As noted above, the BOP aims to put inmates within "reasonable" proximity to the areas of their "anticipated release,"³³ albeit defining "reasonably close" as distances that can make visiting, programming, and release plans difficult to achieve. Specifically, BOP Program Statement 5100.08, which was 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.³⁴

Our research makes plain that thousands of federal prisoners are sent far from the jurisdictions in which they were sentenced. More research is needed to learn the percentage of women and men whose security classifications permit them to be in less secure facilities and the relationship of anticipated release areas to placement. Further, data are needed on how the disciplinary transfer system works and where programs are available. Thus, the overview provided below offers just one facet of the research that needs to be done. The details underlying the summary that follows are provided in Appendices 4 and 5.

As of August 24, 2013, the BOP incarcerated 218,864 prisoners. The vast majority (204,289 or 93.3 percent) of these 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 vast majority of that post-conviction population—178,242 or 93.7 percent—were men. A smaller number (11,900 or 6.3 percent) were women.

The BOP divides its system into six Regions.³⁵ Public data permits analysis of the facilities and beds that are available for sentenced men and women in each of these six Regions. In addition to public information from the BOP,³⁶ we also rely on data from the United States Sentencing Commission on how many men and women are sentenced in each judicial district in the federal system.³⁷ Because the Sentencing Commission data include all sentences, whether to a term of incarceration or not, the numbers provided below do not differentiate among sentence types and include individuals who received non-incarcerative sentences, as well as those who are incarcerated in jails rather than prisons.

As is detailed below, the federal prisons in the United States are not distributed evenly across the country, nor are they placed in the same ratios to the districts in which people are sentenced. (Once again, more information is needed about the numbers sent to prison and where prisoners are placed in relationship to their homes.) For example:

- 15 percent of the men and 9 percent of the women in the federal system were housed in the Northeast Region. Of the total prisoners who received federal sentences, 13 percent of the men and 13 percent of the women received their sentences in the Northeast.
- 19 percent of the men and 22 percent of the women in the federal system were housed in prisons in the Southeast Region. In that Region, the contrast between the district of sentencing and the location of federal prisons is clear. Ten percent of the men and 13 percent of the women sentenced in the federal system received their sentences in the Southeast.
- 16 percent of the men and 17 percent of the women in the federal system were housed in the Mid-Atlantic Region, while 11 percent of the men and 13 percent of the women in the federal system received their sentences in the Mid-Atlantic Region.

- 12 percent of the men and 11 percent of the women in the federal system were housed in the North Central Region. In this region, the numbers of those sentenced comes closer to the numbers of those incarcerated. 12 percent of the men and 14 percent of the women in the federal system were sentenced in the North Central Region.
- 24 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 parallel; 28 percent of the men and 26 percent of the women in the federal system were sentenced in the South Central region.
- 13 percent of the men and 18 percent of the women in the federal system were housed in the Western Region. In the Western Region, the divergence between the districts where people are sentenced and the places they are housed is substantial. 26 percent of the men and 22 percent of the women in the federal system were sentenced in the Western Region.

Looking at the prison facilities and prison populations in each of the six regions in greater detail, the following picture emerges:

Northeast Region: 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. The Northeast has 2 facilities for women—FCI Danbury and the camp—that together house about 1,100 women (as of October 2013).

Note: The BOP includes Ohio in the Northeast region. Excluding Ohio, the Northeast has 25 facilities for men that house approximately 23,500 men, and 2 facilities for women that house about 1,100 women.

Southeast Region: The BOP defines the “Southeast Region” to include Puerto Rico and five states: Alabama, Florida, Georgia, Mississippi, and South Carolina. The Southeast Region has 30 facilities for men that house about 34,800 men. The Southeast Region has 5 facilities for women that house about 2,600 women.

Mid-Atlantic Region: The BOP defines the “Mid-Atlantic Region” to include Washington, D.C. and seven states: Delaware, Kentucky, Maryland, North Carolina, Tennessee, Virginia, and West Virginia. The Mid-Atlantic Region has 32 facilities for men that house about 29,000 men. The Mid-Atlantic Region has 3 facilities for women that house approximately 2,000 women. In addition, the Mid-Atlantic Region contains FMC Lexington, in Kentucky, a medical facility that houses about 1,800 male and female prisoners.

North Central Region: The BOP defines the “North Central Region” to include twelve states: Colorado, Illinois, Indiana, Iowa, Kansas, Michigan,

Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin. The North Central Region has 24 facilities for men that house about 21,500 men. The North Central Region has 2 facilities for women that house about 1,300 women.

South Central Region: The BOP defines the “South Central Region” to include five states: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. The South Central Region has 35 facilities for men that house about 43,400 men. The South Central Region has 3 facilities for women that house about 2,800 women.

Western Region: The BOP defines the “Western Region” to include ten states: Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming. The Western Region has 22 facilities for men that house about 22,300 men. The Western Region has 4 facilities for women that house about 2,000 women.

V. The Tools Available to Reduce Prison Populations and Recidivism: Second Chance Act, Individual Review, and Relocation Opportunities

The BOP faces a serious challenge in the large and growing population of federal prisoners. For example, when responding to inquiries about the planned changes at Danbury, the BOP explained to a group of Senators that it needed to move female inmates out of the Northeast to address overcrowding in its facilities for both men and women.³⁸ Yet neither using funds to transfer inmates (and in some instances exacerbating the challenges of distance) nor constructing more prisons is as cost-effective as identifying appropriate individuals to transfer to less secure settings. Indeed, the BOP has recognized that “female offenders are less likely to be violent or attempt escape,”³⁹ which suggests that review of incarcerated women might identify many who could benefit from alternative placements. Thus, by exercising its authority under the Second Chance Act as well as other federal statutes and its own regulations, the BOP can reduce overcrowding, improve educational opportunities for inmates, and strengthen family relationships.⁴⁰

In 2007, Congress enacted the Second Chance Act to “assist offenders reentering the community from incarceration to establish a self-sustaining and law-abiding life” and to “rebuild ties between offenders and their families.”⁴¹ The concerns that animated this legislation support housing inmates as close as possible to sites of re-entry, which are often the districts in which they were sentenced. The BOP’s “Release Preparation Program”—which provides inmates who have 30 months or less left to serve on their sentences with classes designed “to prepare [them] to re-enter the community successfully”—expressly contemplates partnerships with local businesses and service providers.⁴² Obtaining knowledge of and access to regional resources is facilitated when BOP staff are proximate to the anticipated release areas, just as developing release plans that include assurances of housing, support, and employment is made more difficult by distance.

In addition, Congress requires the BOP to provide a residential drug abuse program (RDAP) for eligible inmates. This program can reduce inmates’ sentences by up to 12 months

after they successfully complete it.⁴³ However, most inmates do not get the full reduction because, due to long waiting lists for the programs, prisoners typically have less than 12 months to serve by the time they are able to complete the program.⁴⁴ A recent report estimates that, if eligible inmates received the full 12-month reduction in their sentences, the BOP would save over \$45 million each year in prison costs.⁴⁵ Opening up bed space would also enable some inmates who remain incarcerated to move closer to home. Moreover, RDAP is only available in half of the BOP's facilities,⁴⁶ yet the BOP estimates that as many as 40 percent of its inmates may qualify for the program.⁴⁷ Thus, one priority to achieve more effective cost-saving strategies should be to increase RDAP capacity.

Another priority ought to be for the BOP to use its authority, under the Second Chance Act, to pre-release eligible inmates into home detention and residential reentry centers (RRCs) for as much as the final 12 months of their sentences. As we understand it, the BOP generally does not use that full twelve months, but instead offers inmates community corrections six months before the end of their sentence. Given the logistics involved in effectuating plans and transfers, inmates serve an average of just four months of their sentences in these prison alternatives.⁴⁸ Again, a recent report estimates that, were the BOP to increase the months inmates spend in "home confinement" by three months, the BOP could save an additional \$111.4 million each year.⁴⁹

A third option for reducing the prison population is to revisit decisions made under the rubric of sentence reductions for good behavior, known as Good Conduct Time (GCT). The BOP has chosen a method of calculation, which was upheld by the Supreme Court, that does not give inmates the full amount of GCT authorized by statute.⁵⁰ By awarding the full credit when earned, a recent report estimates that the BOP would realize about \$40 million in savings each year.⁵¹

In sum, we have learned about the great distances from home at which inmates are routinely incarcerated and the particular challenges facing women in the federal prison system. We have identified several techniques currently available to reduce prison overcrowding, to bring some inmates closer to home, and to place others in drug treatment programs and residential reentry centers, thereby saving millions of taxpayer dollars. While the BOP cannot modify mandatory minimum sentencing laws for drug offenders, who make up more than half of its prison population,⁵² the BOP does possess broad discretionary authority about where to place prisons and whether to reduce the time that prisoners spend in its custody. These measures would also help to make prisons safer and to buffer against the risk of recidivism.

Thank you for consideration of this statement and the materials appended.

Respectfully submitted,

Judith Resnik
Arthur Liman Professor of Law

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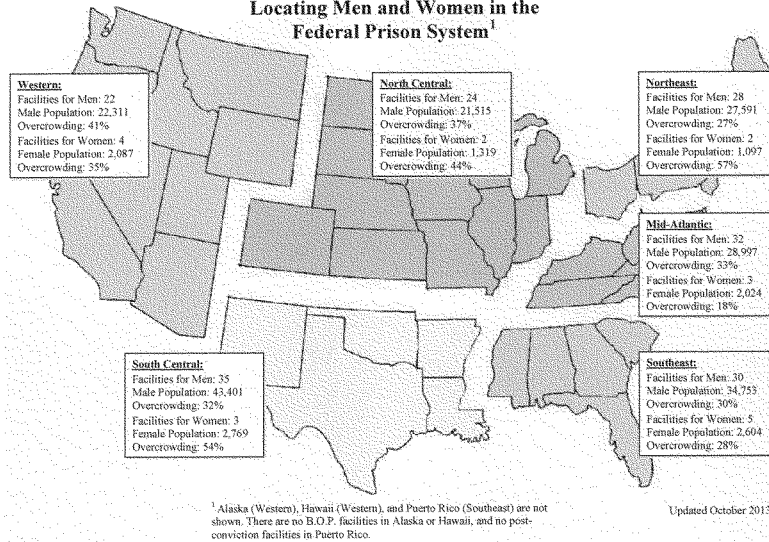
Anna Arons (Class of 2015)
Sinéad Hunt (Class of 2014)

Katherine Culver (Class of 2015)
Emma Kaufman (Class of 2015)

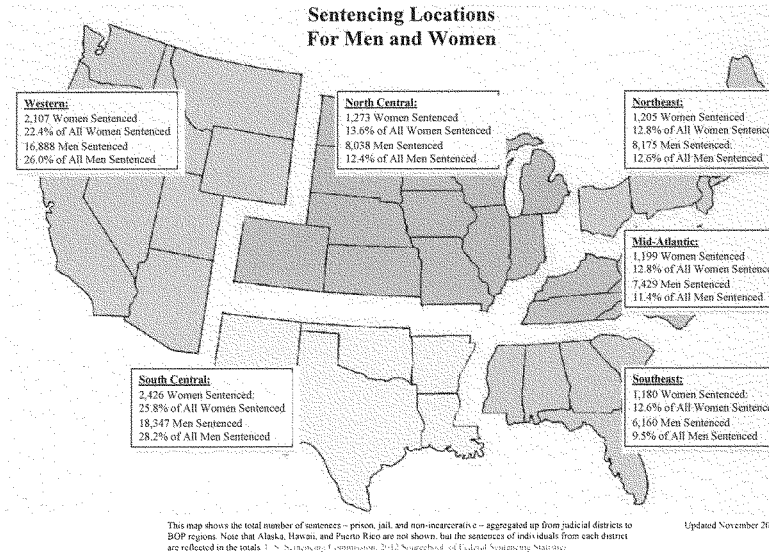
Arthur Liman Public Interest Program, Yale Law School

November 13, 2013

Locating Men and Women in the Federal Prison System¹



Sentencing Locations For Men and Women





**Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing
Recidivism**
**Testimony Submitted to the Senate Committee on Judiciary; United States Senate;
 Wednesday, November 6, 2013 at 10 a.m.**

The National Disability Rights Network (NDRN) would like to thank Senators Leahy and Grassley, and the Senate Committee on the Judiciary, for focusing their attention on efforts to reduce recidivism and provide effective re-entry programs. NDRN is the national membership organization for the Protection and Advocacy (P&A) System, the nationwide network of congressionally mandated, legally based disability rights agencies. A P&A and CAP agency exists in every U.S. state and territory. P&A agencies have the authority to provide legal representation and other advocacy services, under all federal and state laws, to all people with disabilities. The P&A network is the largest provider of legally-based services for people with disabilities in the country.

P&A's around the country represent people with disabilities in the criminal justice system to ensure that they receive appropriate individualized treatment, evidence-based programming, and re-entry support, three things that are key to preventing recidivism. P&As maintain a presence in all facilities that house people with disabilities, where they monitor, investigate and attempt to remedy adverse conditions, including prisons, jails and detention centers. The P&A's work in these settings often involves helping prisoners obtain accommodations so they are not prevented from equal participation in programming and received needed treatment.

Recent P&A cases include *Harold Cunningham and Center For Legal Advocacy, D.B.A. The Legal Center For People With Disabilities And Older People, Colorado's Protection And Advocacy System v. Federal Bureau Of Prisons*, Civil Action No. 12-Cv-01570-Rpm, filed in a U.S. District Court in Colorado. This case involves the failure by the Bureau of Prisons (BOP) to provide treatment to prisoners with serious mental illness at the United States Penitentiary Administrative Maximum in Florence, Colorado ("Supermax") facility. The lack of mental health services places the inmates at greater risk of being unstable upon release, and increases the possibility that they will reoffend. Studies have shown that intensive case management upon reentry is more likely to prevent people with mental

illness from returning to prison.¹ The P&A network helps ensure that people with mental illness receive this treatment.

We listened with great interest to the hearing testimony at the November 6 hearing, and were struck by how little of the discussion focused on the needs of individuals with disabilities, a large and increasing population in prisons and jails nationwide. Individuals with disabilities, including mental illness and cognitive disabilities, are prevalent in the federal system.² The programming needed to prevent a return to the prison system differs in some significant ways from other types of prisoners.

We were pleased to hear Director of the Federal Bureau of Prisons, Charles Samuels testimony regarding the "Skills" and "Stages" programs, which address the needs of two subpopulations of prisoners with disabilities, prisoners with Axis II diagnoses of Borderline Personality Disorder and prisoners with major mental illness and cognitive impairments. However, participation in those programs appears low,³ and there are other subpopulations that could benefit from specialized programming. As Director Samuels states in his written testimony,⁴ empirical research and testing have proven that BOP programs that prevent recidivism are effective.

The vast majority of prisoners in the federal system will eventually be released, and withholding needed treatment from those with significant mental illness will neither prevent recidivism nor help to ensure public safety. Programming should be provided from the beginning of the period of confinement so that it has time to be fully effective by the time of re-entry. The corrections system must work with community-based service providers to ensure continuity of care as appropriate to ensure that the prisoner does not re-offend.

The provision of mental health treatment not only makes sense from a policy perspective, it may also be a necessary element of medical treatment that the BOP must provide to inmates who require it.³

We were pleased to hear the testimony of Director Samuels that the use of solitary confinement ("SHU") is being reduced and that the Bureau maintains the highest level of quality of care when someone is in isolation. Solitary confinement has a disproportionately negative impact on individuals with particular types of disabilities, including mental illness and cognitive disabilities. Despite this, people with mental illness and cognitive disabilities

¹ See, e.g., Yamatani, H., "Overview Report of Allegheny County Jail Collaborative Evaluation Findings," Center on Race and Social Problems, School of Social Work, University of Pittsburgh, retrieved 11/13/13 from <<http://www.alleghenycounty.us/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=23760>>.

² According to the GAO's recent study (United States Bureau of Prisons, "Timelier Reviews, Plan for Evaluations, and Updated Policies Could Improve Inmate Mental Health Services Oversight," July 2013, available at <<http://www.gao.gov/assets/660/655903.pdf>>) male inmates with mental health issues in the Federal system alone totaled **150,452** on February 9, 2013. See ³

According to the GAO report above (page 49) in 2012 only 17 federal prisoners nation-wide participated in the "Stages" program and 2 were on a waiting list. Other programs designed for this population include the "Challenges" "Step Down" and "Resolve" programs. These also appear to have insufficient space to meet the need. ⁴ Page 5.

³ See for example, *Brown v. Plata*, 131 S. Ct. 1910 (2011)

are disproportionately placed in solitary confinement.⁴ Researchers estimate that, on average, about thirty percent of the prisoners held in solitary confinement have a mental illness.⁵ Many people in solitary confinement are prisoners who have broken rules or created a nuisance for staff, not people who have engaged in violent activity. Other methods should be used successfully to ensure safety and order within the facility.

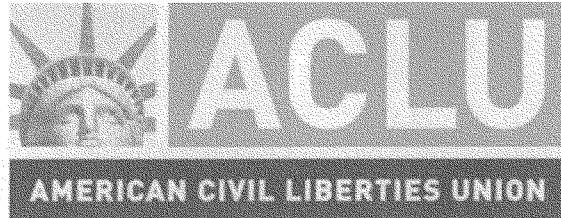
NDRN and the P&A network are eager to work with the Senate Judiciary Committee to explore strategies for the reduction of the use of solitary confinement and to encourage appropriate treatment of people with disabilities in the criminal and juvenile justice systems. As a nationwide network of agencies, NDRN and the P&As have numerous examples of the critical work that P&As have performed to advocate for people with disabilities and reduce recidivism.

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⁴ Craig Haney, *Mental Health Issues in Long-term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQUENCY 124, 127 (2003)

⁵ James Ridgeway, "Locking Down the Mentally Ill," Feb. 18, 2010, available at <<http://www.thecrimereport.org/archive/locking-down-the-mentally-ill>>.



**Written Statement of the American Civil Liberties Union
Before the United States Senate Committee on the
Judiciary's**

Hearing on

**Oversight of the Bureau of Prisons & Cost-Effective
Strategies for Reducing Recidivism”**

*Wednesday, November 6, 2013 10:00
a.m.*

Submitted by the

ACLU Washington Legislative Office
ACLU National Prison Project

For further information contact Jesselyn McCurdy, Senior Legislative Counsel at
jmccurdy@dcacclu.org

The American Civil Liberties Union (ACLU) welcomes this opportunity to submit testimony to the Senate Committee on the Judiciary's for its hearing on *Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism*" and urges the Committee to take action to bring the Bureau of Prisons into conformity with accepted legal, public-safety, and human-rights standards.

The ACLU is a nationwide, nonprofit, non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of liberty and equality embodied in our Constitution and our civil rights laws. Consistent with that mission, the ACLU established the National Prison Project in 1972 to protect and promote the civil and constitutional rights of prisoners. Since its founding, the Project has challenged unconstitutional conditions of confinement and over-incarceration at the local, state and federal levels through public education, advocacy, and successful litigation.

The Federal Bureau of Prisons (BOP) is the largest prison system in the country, comprising 119 prisons and jails and managing the detention of about 219,000 people.¹ While most federal prisoners are housed in BOP-operated jails and prisons, BOP also contracts with private prisons, as well as state and local prisons and jails, to house a significant proportion of its prisoners and detainees.² Many of BOP's facilities are out of compliance with legal standards, as well as with widely acknowledged human-rights and public-safety guidelines for the treatment of prisoners and detainees. In particular, BOP should improve its policies on the use of solitary confinement; on contracts with private, for-profit prisons; on compliance with the Prison Rape Elimination Act (PREA) and with requirements for treating transgender and transitioning individuals; on the abusive practice of using Special Administrative Measures and Communication Management Units; and on the proposed relocation of approximately 1,000 women to a new facility in Aliceville, Alabama. The testimony that follows will first suggest a cost effective strategy for reducing recidivism and second recommend issues that the Committee should explore with the BOP in its oversight role with the agency. *Cost Effective Strategies to Reduce Recidivism*

I. Congress Should Expand Time Credits for Good Behavior and Recidivism Reducing Programs.

Of the over 219,000 people are in federal prison almost half of them are serving time for drug-related crimes and the majority of those cases are non-violent.³ At the same time, BOP is operating at almost 40 percent over capacity and accounts for over 25 percent of the Department of Justice's (DOJ) budget.⁴ One approach to addressing BOP overcrowding while also helping individuals successfully reenter society after incarceration would be to expand the existing earned time⁵ credit that allows people to be released from federal prisons early based on their good behavior. The federal prison system's current method of calculating earned credit reduces a

prisoner's sentence to a maximum credit of 47 days per year – below the 54 days Congress intended. This decision results in unnecessary increases in prison sentences at significant cost. Congress should enact legislation that would allow individuals to receive the full 54 day credit and earn good time credit for successful participation in recidivism-reducing programs, such as education or occupational programming. If Congress would clarify the statutory language and enable BOP to provide more recidivism-reducing programs, it could save an estimated \$41 million in the first year alone.

Committee Oversight of the BOP

II. BOP's Use of Solitary Confinement Is Excessive and Should Be Monitored a. The BOP's Use of Solitary Confinement

Solitary confinement is an extreme form of punishment that should be reserved only as a measure of last resort. Prisoners housed in solitary confinement are typically held in a small cell—no bigger than a parking space—for 22 to 24 hours a day, with little to no human interaction aside from prison guards and the occasional healthcare provider or attorney. Many in the legal and medical fields criticize solitary confinement as both unconstitutional and inhumane. It is widely accepted that the practice exacerbates mental illness and undermines a prisoner's ability to successfully re-enter into society when his or her sentence is complete.⁶ An estimated 80,000 people are currently held in solitary confinement in prisons across the country. Many are nonviolent offenders, caught up in punitive disciplinary systems that sometimes send prisoners into solitary confinement for infractions such as “possession of contraband” or talking back.⁷ The United Nations Special Rapporteur on Torture has concluded that any period in solitary confinement over 15 days amounts to torture.⁸ Yet many American prisoners can end up spending months or years in solitary confinement.

Over the last two decades, corrections systems across the country have increasingly relied on solitary confinement, even building entire “supermax”—super-maximum-security—facilities, where prisoners are held in conditions of extreme isolation, sometimes for years on end. In addition to posing humanitarian concerns, this massive increase in the use of solitary confinement has led many to question whether it is an effective use of public resources. Supermax prisons, for example, typically cost two or three times more to build and operate than traditional maximum-security prisons.⁹

BOP currently holds about seven percent of its population—more than 12,000 prisoners—in solitary confinement.¹⁰ About 435 of these people are incarcerated at ADX Florence, the federal supermax prison, in Colorado.¹¹ Thousands more are held in “Special Housing Units” (SHU) or “Special Management Units” (SMU) within other prisons.¹² Prisoners can be sent to these solitary confinement units for administrative reasons, as punishment for

disciplinary rule violations, or as a result of gang affiliations or activity.¹³ That is to say, many prisoners held in solitary confinement are not particularly dangerous or even difficult to manage. Despite the human and financial costs of solitary confinement, the number of federal prisoners in solitary confinement and other forms of segregated housing has grown nearly three times as fast as the federal prison population as a whole.¹⁴

b. The Need for Monitoring of BOP's Use of Solitary Confinement, and Its Effects

Following a Senate hearing in summer 2012 on the overuse of solitary confinement in American prisons, BOP announced that it would arrange for a third-party audit of its use of solitary confinement.¹⁵ In particular, BOP planned to review the fiscal and public-safety consequences of solitary confinement.¹⁶ A BOP spokesman told reporters in February that the audit would begin “in the weeks ahead.”¹⁷

In May, the U.S. Government Accountability Office (GAO) added to public calls for more information on BOP's use of solitary confinement when it published a detailed report based on extensive investigations of BOP's use of solitary confinement.¹⁸ The report found that BOP does not adequately monitor its use of solitary confinement and other segregated housing. It also found that BOP should be evaluating the effects that solitary confinement has on people in BOP custody. GAO further reported that BOP has not conducted any research to determine how the practice impacts prisoners or whether it contributes to maintaining prison safety.¹⁹ The report noted that BOP officials refused to acknowledge that long-term segregation can seriously harm prisoners—even though BOP's own policy recognizes the potential for damaging lasting effects.²⁰

Solitary confinement does not make prisons safer. Indeed, the corrections departments in several states have limited their use of solitary confinement with little or no adverse impact on prison management and safety.²¹ Indeed, emerging research suggests that supermax prisons actually have a negative effect on public safety, because prisoners released from solitary confinement may be more likely to recidivate than those released from general population.²²

c. BOP Can and Should Limit Its Use of Solitary Confinement

U.S. Immigration and Customs Enforcement (ICE), which detains over 400,000 people annually in facilities across the country, recently released a new directive regulating the use of solitary confinement in immigration detention.²³ While not perfect, the new ICE directives represent a major step in curbing the inhumane and unnecessary use of solitary confinement. BOP should look to the ICE directives as an example of a policy designed to monitor and control the use of solitary confinement significantly more effectively than current BOP policies.

If strictly enforced, ICE's new directive will create a robust monitoring regime that will enable the agency to oversee the use of solitary confinement across its sprawling network of approximately 250 immigration detention facilities.²⁴ The new directive also takes important steps to impose substantive limits on the use of solitary. For example, it requires centralized review of all decisions to place detainees in solitary confinement for more than 14 days at a time, including an evaluation of whether any less-restrictive option could be used instead of solitary.²⁵ The directive requires heightened justifications to place vulnerable detainees—such as victims of sexual assault, people with medical or mental illnesses, and people at risk of suicide—in solitary confinement.²⁶ In addition, ICE now requires medically and mentally ill detainees to be removed from solitary if they are deteriorating.²⁷ It requires attorney notification in certain circumstances²⁸ and it requires regular reviews of all longer detentions in solitary.²⁹

In addition to examining ICE's new directive, BOP should look to states that have reformed their use of solitary confinement, as examples of how close monitoring and reduction of the use of solitary confinement can improve prison management and safety, and can bring BOP more in line with accepted human-rights standards.³⁰ We urge the Committee to inquire as to BOP's plans in this area and to push the agency to move forward with reforms that have worked elsewhere.

III. BOP's Contracts with Private Prisons Under the Criminal Alien Requirement Pose Human-Rights and Accountability Problems

Private prisons depend on and profit from America's high incarceration rates—more people in prison means, for these facilities, more business. In the past decade, BOP has become increasingly reliant on private prisons, and maintains 13 contracts, totaling a reported \$5.1 billion, with for-profit prison companies.³¹ This increase in privatization demands that the companies that run private prisons subject themselves to the same degree of public accountability as would a federal agency running the same prison. However, contract companies that run these facilities dedicate significant resources to lobbying against subjecting their BOP contract facilities to the same transparency requirements as BOP facilities.³²

According to the Sentencing Project, 33,830 BOP prisoners were held in private facilities in 2010 (a 67 percent increase from the number of prisoners in 2002); by the end of 2011, while overall numbers of state prisoners in private prisons decreased, the federal number continued to climb, to 38,546 (18 percent of the total BOP population).³³ And the number of people in private facilities continues to grow. For fiscal year 2014, BOP requested funding to add 1,000 more beds in private facilities.³⁴ Of the private facilities holding BOP prisoners, 13 are private prisons operating under Criminal Alien Requirement (CAR) contracts with BOP. These CAR prisons are specifically dedicated to housing non-citizens in BOP custody. These people are at low custody

levels, and many are serving sentences solely for unlawfully reentering the United States after having been previously deported.³⁵

For-profit prisons—even those under BOP contract, housing BOP prisoners—are not subject to the same disclosure requirements under the Freedom of Information Act (FOIA) as are BOP prisons. This is due to an executive branch interpretation of the statute, which established that most disclosure requirements that apply to federally-run prisons do not apply to private prisons.³⁶ As a result, it is extremely difficult for the public to obtain the information necessary to help ensure that the constitutional rights of those held in private facilities are respected, and that their living conditions are humane. BOP should be required to respond to FOIA requests regarding privately run CAR facilities as it is required to respond to FOIA requests regarding its own facilities. Furthermore, CAR facilities should be held to the same standards as BOP-run facilities.

Over the past several years, there have been reports of poor treatment—with devastating consequences—in BOP's CAR facilities. In one such instance, in 2009, at the GEO Group-operated Reeves County Detention Center in Pecos, West Texas, immigrant prisoners organized an uprising after a man with epilepsy died from a seizure while in solitary confinement. An ACLU lawsuit alleges that medical staff failed to provide the man anti-convulsant medication 90 times. His gums began to bleed and he suffered frequent seizures, but he was placed in segregation rather than treated. The lawsuit alleges that there was not even a nurse available on weekends.³⁷ And in 2012, immigrant prisoners at the Corrections Corporation of America (CCA)-operated Adams County Correctional Facility in Natchez, Mississippi, staged an uprising to demand better conditions of confinement. CCA staff then failed to quell the uprising, which resulted in 20 people being injured, one correctional officer being killed, and \$1.3 million in property damage.³⁸ Stories like these underscore the need for greater oversight and accountability of the conditions and policies at private, for-profit prisons within BOP's system—and the need for BOP to cancel contracts when the private prison companies fail to meet appropriate standards.

IV. BOP Should Share Results of Audits of the Implementation of the Prison Rape Elimination Act

The Prison Rape Elimination Act (PREA) passed unanimously through both houses of Congress and was signed into law in 2003. The Act charged the Department of Justice (DOJ) with gathering data on the incidence of prison rape,³⁹ and created a commission to study the problem and recommend national standards to DOJ.⁴⁰ After nine years of study and commentary by experts, the DOJ promulgated a comprehensive set of national standards implementing the Act in May 2012.⁴¹ The Federal government was immediately bound to implement the PREA regulations in federal prison facilities.⁴²

The PREA regulations include detailed requirements for the prevention, detection, and investigation of sexual abuse in both adult and juvenile correctional facilities, with specific guidance related to lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals. Testimony before Congress and National Prison Rape Elimination Commission (NPREC) highlighted the particular vulnerability of LGBTI people to sexual victimization at the hands of facility staff and other inmates and the Department of Justice recognized “the particular vulnerabilities of inmates who are LGBTI or whose appearance or manner does not conform to traditional gender expectations.”⁴³ This testimony led to the landmark inclusion of LGBTIspecific requirements for the prevention of sexual abuse.

Some of the most important regulations for protecting this vulnerable population include guidelines for housing, searches, and the use of protective custody. BOP’s implementation of PREA will set the tone for state and local agencies. It is essential that BOP take full and complete measures to comply with PREA’s mandate to eliminate sexual assault across the agency. We hope the Committee will ask BOP for details about its compliance plans and performance.

a. Individualized Assessments for Housing Transgender Individuals

The final PREA standards require adult prisons and jails to screen individuals within 72 hours of intake to assess the individual’s risk for sexual victimization or abuse.⁴⁴ This screening “shall consider, at a minimum...whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex or gender nonconforming.”⁴⁵

The standards also require agencies to make individualized housing and program placements for all transgender and intersex individuals.⁴⁶ This includes assignment of transgender and intersex individuals to male or female facilities.⁴⁷ All such program and housing assignments must “be reassessed at least twice each year to review any threats to safety experienced by the inmate”⁴⁸ and an individual’s “own views with respect to his or her own safety shall be given serious consideration” in these assessments.⁴⁹ Agencies are required to provide transgender and intersex individuals with access to private showers in all circumstances.⁵⁰

One year later, reports from transgender and intersex prisoners in BOP custody continue to reveal that the agency does not provide individualized assessments in making housing, program, work and other assignments. Transgender detainees regularly report that they are housed solely based on their genital characteristics and birth-assigned sex, and many transgender prisoners report violence from staff and other prisoners with no safety precautions being taken by BOP despite clear guidance under PREA.⁵¹

b. Searches of Transgender Individuals

The PREA regulations impose a number of requirements on how prison officials search transgender individuals. The regulations prohibit any search that is conducted for the sole purpose of determining an individual's genital status.⁵² All cross-gender searches are subject to strict guidelines under PREA, but restrictions on cross-gender pat searches of female individuals do not go into effect until August 2015.⁵³ Under the regular effective dates for PREA compliance, BOP is currently prohibited from conducting cross-gender strip and cavity searches except in exigent circumstances or when performed by a medical practitioner.⁵⁴

PREA further mandates that facilities implement policies to ensure that individuals are able to shower and undress without being viewed by staff of the opposite gender and that staff of the opposite gender announce themselves prior to entering any housing area.⁵⁵ These limitations apply to transgender individuals in custody. BOP should take clear steps to protect transgender individuals from abusive cross-gender searches.

c. Strict Limits on the Use of Protective Custody

PREA also strictly regulates the use of protective custody. Prisoners cannot be placed in "involuntary segregated housing" unless (1) an assessment of all available alternatives is made AND (2) a determination has been made that no available alternative means of separation is available (and this determination must be made within the first 24 hours of involuntary segregation).⁵⁶ The PREA standards recognize that protective custody is too often synonymous with solitary confinement by requiring that involuntary segregated housing should generally not exceed 30 days.⁵⁷ PREA also set standards geared to ameliorate isolation by requiring that, when prisoners are placed in protective custody, they must be given access to "programs, privileges, education, and work opportunities to the extent possible."⁵⁸ For all placements in protective custody, the nature of, reason for and duration of any restrictions to program, privilege, education and work opportunities must be documented.⁵⁹

If the PREA regulations are subject to stringent and consistent enforcement, compliance, and monitoring, they are likely to protect many vulnerable prisoners from abuse and assault. In August, 2013, BOP commenced a series of PREA-mandated third-party audits, but has yet to release data or results publicly.⁶⁰ These audits, along with publication of their results and implementation of follow-up compliance measures, should be a top priority and we urge the Committee to follow up on these reports.

V. BOP Should Ensure Compliance with Requirements To Provide Hormones and Other Medical Care to Transgender Individuals

In 2011, BOP changed its policy for treating individuals in custody for Gender Identity Disorder (GID). As part of a settlement with one transgender prisoner who challenged BOP's policy that limited transition-related healthcare such as hormones to the level of treatment received prior to incarceration, the new policy promised to provide "a current individualized assessment and evaluation" to any prisoner with a possible GID diagnosis.⁶¹

Despite this change, reports persist from transgender individuals who have not received evaluations for hormone therapy despite repeated requests. Others have had their ongoing hormone treatment disrupted without any clear medical basis for the disruption in care and with severe physical and psychological side effects. For individuals in BOP custody who experience gender dysphoria and/or other symptoms of GID, there continues to be delayed or in some cases no response from BOP medical staff.⁶²

BOP has an obligation under its own policy and the Eighth Amendment of the Constitution to provide necessary medical care, including transition-related medical care such as hormones, to prisoners in need of such care. To meet this obligation BOP should provide information on its compliance with the GID policy, and should take steps, including training of facility-level medical and mental health staff and contractors, to ensure that prisoners who are diagnosed or may be diagnosed with GID receive proper care.

VI. BOP Should Stop Monitoring Contact Between Prisoners and Attorneys, and Should Close Its Communication Management Units

When BOP chooses to designate certain people as terrorists—including both post-conviction prisoners and pre-trial detainees—the agency removes constitutional safeguards that apply to other detainees. In some circumstances, BOP denies prisoners the basic right to confer confidentially with an attorney or to have normal limited visitation with loved ones. There should be greater transparency and accountability in the federal Bureau of Prisons' use of "Special Administrative Measures" and in its operation of Guantanamo-like "Communication Management Units" within two federal prisons.

a. Special Administrative Measures

After the September 11 attacks, the Department of Justice (DOJ) issued a rule that expanded BOP's powers under the special administrative measures (SAMs) promulgated in the 1990s. These SAM regulations allow the Attorney General unlimited and unreviewable

discretion to strip any person in federal custody of the right to communicate confidentially with an attorney.⁶³ They apply to convicted individuals held by BOP, as well as others held by DOJ, even the pre-trial accused, material witnesses, and immigration detainees.⁶⁴

BOP should not have the power to monitor communications between detainees and attorneys; nor should it be able to restrict such communications. Because SAMs also permit extreme social isolation of certain prisoners, BOP should conduct a mental health screening of all those currently subject to SAMs: the seriously mentally ill should be relocated to an institution that can provide appropriate mental-health services.

b. Communication Management Units

After 9/11, BOP set up and began operating two Communication Management Units (CMUs) at federal prisons in Marion, Illinois, and Terre Haute, Indiana.⁶⁵ BOP opened these CMUs in violation of federal law requiring public notice-and-comment rulemaking.⁶⁶ The units severely restrict visitation privileges—for instance, prisoners in the CMU may receive fewer family visits per month than those in general population at even maximum-security prisons.⁶⁷ Many critics argue that this psychological punishment is arbitrary, and often the result of racial and religious profiling.⁶⁸ The criteria for placing prisoners in these extremely restrictive units remain so broad and ill-defined that they could apply to virtually anyone, inviting arbitrary, inconsistent and discriminatory enforcement.

VII. BOP Should Share Its Current Plan for FCI Aliceville

Earlier this year, BOP was enacting a plan to relocate approximately 1,000 women in the federal system to a new, \$250-million prison in Aliceville, Alabama, a small town 110 miles southwest of Birmingham.⁶⁹ The plan would leave only 200 federal prison beds for women in the northeast.⁷⁰ BOP planned to convert the vacated units at Danbury into more space for male prisoners. Last month, however, BOP suspended the relocation in the face of criticism from elected officials and the public.

Because of the remote location of the Aliceville facility, contact with family through visits would be severely limited. As Senator Chris Murphy noted, the “transfer would nearly eliminate federal prison beds for women in the Northeastern United States and dramatically disrupt the lives of these female inmates and the young children they often leave behind.”⁷¹ Maintaining relationships is crucial, and can be even more difficult for women prisoners than for men. One lawyer noted, in response to the proposed relocation that [w]omen get fewer visits in jail, they become alienated from families and children, husbands and boyfriends move on⁷²

The general public has a significant interest in prisoners' ability to stay connected with loved ones while serving a sentence. Maintaining important relationships helps former prisoners successfully reenter their communities after they are released. Upon release from prison, people who maintain strong family contact were shown to be more successful at finding and keeping jobs, and less likely to recidivate.⁷³ Disrupting the ability to visit a parent in prison, as the contemplated move would do in countless cases, can also victimize the children of incarcerated people.

BOP's plans to relocate many women from Danbury to Aliceville were criticized in the media and by a group of 11 senators in a high-profile public letter to BOP Director Charles Samuels.⁷⁴ As a result, plans to open Aliceville and relocate many women from Danbury have recently been suspended.⁷⁵ However, BOP currently describes Aliceville as a "low security institution for female inmates" that is "currently undergoing the activation process."⁷⁶ If the move occurs and the prison opens as originally planned, BOP will be the cause of hundreds of families being torn apart irreparably. We urge the Committee to put BOP on the record on this issue and urge members to oppose the relocation of women prisoners from Danbury to Aliceville.

Conclusion

The BOP has the enormous task of managing and detaining over 219,000 people. The ACLU is pleased that the Senate Judiciary Committee is conducting today's oversight hearing to ensure that the agency respects the constitutional rights of individuals in its custody and maintains safe and humane conditions. If you have any additional questions or need more information, please feel free to contact Jesselyn McCurdy, Senior Legislative Counsel at (202)675-2307 or jmccurdy@dealu.org.

¹ About the Bureau of Prisons, FEDERAL BUREAU OF PRISONS, <http://www.bop.gov/about/index.jsp>.

² *Id.*

³ Federal Bureau of Prisons, Weekly Population Report, http://www.bop.gov/locations/weekly_report.jsp ⁴ Nancy LaVigne, Julie Samuels, Urban Institute *The Growth & Increasing Cost of the Federal Prison System: Drivers and Potential Solutions* pgs.1 and 2 (2012) (hereinafter LaVigne Urban Institute Report). ⁵ 18 U.S.C. Sec. 3624(b)(1).

⁶ See, e.g., BUREAU OF PRISONS: IMPROVEMENTS NEEDED IN BUREAU OF PRISONS' MONITORING AND EVALUATION OF IMPACT OF SEGREGATED HOUSING 39, United States Government Accountability Office, Report to Congressional Requesters (May 2013) [hereinafter GAO Report].

⁷ See, e.g., Angela Browne, Alissa Cambier, Suzanne Agha, *Prisons Within Prisons: The Use of Segregation in the United States*, 24 FED'L SENTENCING REPORTER 46-47 (2011).

⁸ *Solitary Confinement Should Be Banned in Most Cases, UN Expert Says*, UN News Centre, Oct. 18, 2011, <https://www.un.org/apps/news/story.asp?NewsID=40097>.

⁹ See DANIEL P. MEARS, URBAN INST., EVALUATING THE EFFECTIVENESS OF SUPERMAX PRISONS ii (2006). ¹⁰ Highlights of GAO-13-4929, at 1 (May 2013).

¹¹ See GAO Report, *supra* note 6, at 2.

¹² See GAO Report, *supra* note 6, at 5, 6, 7-10.

¹³ See *id.* at 7-8, 60 (describing disciplinary and administrative segregation conditions).

¹⁴ From October 2007 through February 2013, the total prisoner population in BOP facilities increased by about six percent, yet the total prisoner population in segregated housing units increased approximately 17 percent. GAO Report, *supra* note 6, at 14.

¹⁵ *U.S. Bureau of Prisons To Review Solitary Confinement*, REUTERS, Feb. 4, 2013, <http://www.reuters.com/article/2013/02/05/us-usa-prisons-solitary-idUSBRE91404L20130205>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See generally GAO Report, *supra* note 6.

¹⁹ See GAO Report, *supra* note 6, at 33-34.

²⁰ See *id.* at 39 (outlining studies that document that adverse and long-lasting effects of solitary confinement on mental health); *id.* at 40 (citing BOP's own admission, in a Psychology Services Manual, that solitary confinement can have adverse effects on mental health).

²¹ See Erica Goode, *Prisons Rethink Isolation, Saving Money, Lives and Sanity*, N.Y. TIMES, March 11, 2012, <http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html?pagewanted=all> (noting that violence actually decreased after Mississippi closed its notorious supermax unit).

- ²² See JOHN J. GIBBONS AND NICHOLAS DE B. KATZENBACH, CONFRONTING CONFINEMENT: A REPORT OF THE COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS 55 (2006) (citing a study from Washington state that linked long-term solitary confinement to higher recidivism rates), *available at* http://www.vera.org/sites/default/files/resources/downloads/Confronting_Confinement.pdf.
- ²³ U.S. Immigration and Customs Enforcement Regulation 11065.1: Review of the Use of Segregation for ICE Detainees (Sept. 4, 2013) [hereinafter ICE Regulation 11065.1].
- ²⁴ See Fact Sheet: Detention Management, Nov. 10, 2011, <http://www.ice.gov/news/library/factsheets/detentionmgmt.htm>.
- ²⁵ ICE Regulation 11065.1, *supra* note 23, at Section 2 (Policy) and Section 5.1 (Extended Segregation Placements).
- ²⁶ ICE Regulation 11065.1, *supra* note 23, at Section 5.2 (Segregation Placements Related to Disability, Medical or Mental Illness, Suicide Risk, Hunger Strike, Status as a Victim of Sexual Assault, or other Special Vulnerability).
- ²⁷ ICE Regulation 11065.1, *supra* note 233, at Section 7.5.4 (Detention Monitoring Council).
- ²⁸ ICE Regulation 11065.1, note 23, at Section 5.2.4 (requiring notification of a detainee's attorney, if applicable, when a vulnerable detainee is placed in segregation).
- ²⁹ ICE Regulation 11065.1, *supra* note 23, at Section 5.1.
- ³⁰ See *State Reforms To Limit The Use Of Solitary Confinement*, https://www.aclu.org/files/assets/stop_solitary_recent_state_reforms_to_limit_the_use_of_solitary_confinement.pdf, (June 6, 2013).
- ³¹ Garance Burke & Laura Wides-Munoz, *Immigrants prove big business for Prison Companies*, ASSOCIATED PRESS (Aug. 2, 2012), *available at* <http://news.yahoo.com/immigrants-prove-big-business-prison-companies084353195.html>.
- ³² See Letter from Center for Constitutional Rights et al. to Rep. Sheila Jackson Lee 1 (Dec. 18, 2012) (citing the U.S. Senate's Lobbying Disclosure Electronic Filing System for the fact that Corrections Corporation of America has spent millions of dollars lobbying against the passage of various Private Prison Information Acts since 2005).
- ³³ THE SENTENCING PROJECT, DOLLARS AND DETAINEES: THE GROWTH OF FOR-PROFIT DETENTION, at 4 (July 2012); Prison Population Declined In 26 States During 2011, PR Newswire (Dec. 17, 2012), *available at* <http://www.marketwatch.com/story/prison-population-declined-in-26-states-during-2011-2012-12-17>.
- ³⁴ See FY 2014 Performance Budget Congressional Submission, Salaries and Expenses 86, U.S. Dept. of Justice, Federal Prison System, *available at* <http://www.justice.gov/jmd/2014justification/pdf/bop-se-justification.pdf> ("The BOP requests \$26.2 million to procure 1,000 contract beds to house low security male criminal aliens.").
- ³⁵ Illegal reentry cases are prosecuted subject to 8 U.S.C. § 1326 – Reentry of removed aliens. See *US: Prosecuting Migrants is Hurting Families*, HUMAN RIGHTS WATCH (May 22, 2013), <http://www.hrw.org/news/2013/05/22/usprosecuting-migrants-hurting-families>.
- ³⁶ See Letter from Center for Constitutional Rights et al., *supra* note 32, at 1.
- ³⁷ Forrest Wilder, "The Lawsuit West of the Pecos," Texas Observer (Dec. 8, 2010), *available at* <http://www.texasobserver.org/forrestforthetrees/the-lawsuit-west-of-the-pecos>.
- ³⁸ Judith Greene & Alexis Mazon, PRIVATELY OPERATED FEDERAL PRISONS FOR IMMIGRANTS: EXPENSIVE. UNSAFE. UNNECESSARY 7, Justice Strategies (Sept. 13, 2012), *available at* <http://www.justicestrategies.org/sites/default/files/publications/Private%20Operated%20Federal%20Prisons%20fo%20Immigrants%209-13-12%20FNL.pdf>. See also Associated Press, *FBI reports Mexican group "Paisas" started prison riot in Adams County* (Aug. 13, 2012) ("FBI spokeswoman Deborah Madden said Paisas are a loosely affiliated group within the prison, without ties to organized gangs."), *available at* <http://blog.gulfive.com/mississippi-press-news/2012/08/fbi-reports-mexican-group-paisas.html>.
- ³⁹ See Prison Rape Elimination Act (Sexual Violence in Correctional Facilities), Bureau of Justice Statistics (last visited May 31, 2013), *available at* <http://www.bjs.gov/index.cfm?ty=tp&tid=20> (listing Bureau of Justice Statistics data gathered since the act's passage).
- ⁴⁰ NAT'L PRISON RAPE ELIMINATION COMM'N, NAT'L PRISON RAPE ELIMINATION COMM'N REP. 18 (2009), *available at* <https://www.ncjrs.gov/pdffiles1/226680.pdf>.
- ⁴¹ See Press Release, Department of Justice, Justice Department Releases Final Rule to Prevent, Detect and Respond to Prison Rape (May 17, 2012), *available at* <http://www.justice.gov/opa/pr/2012/May/12-ag-635.html> (summary of regulations).

⁴² 42 U.S.C. 15601 §8(b) (2003). *See also* Memorandum from the President of the United States Implementing the Prison Rape Elimination Act (May 17, 2012), *available at* <http://www.whitehouse.gov/the-pressoffice/2012/05/17/presidential-memorandum-implementing-prison-rape-elimination-act>.

⁴³ <https://www.federalregister.gov/articles/2012/06/20/2012-12427/national-standards-to-prevent-detect-and-respond-to-prison-rape>

⁴⁴ 28 C.F.R. § 115.41(b); 28 C.F.R. § 115.241 (b). ⁴⁵ 28 C.F.R. § 115.41(c)(7). ⁴⁶ 28 C.F.R. § 115.42 (c) (“In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate’s health and safety, and whether the placement would present management or security problems.”).

⁴⁷ *Id.*

⁴⁸ 28 C.F.R. § 115.42 (d).

⁴⁹ 28 C.F.R. § 115.42 (e).

⁵⁰ 28 C.F.R. § 115.42 (e).

⁵¹ The reports referenced in this paragraph come from prisoners, by mail, to legal and human-rights organization that advocate for PREA compliance, including the ACLU, National Center for Lesbian Rights (NCLR), National Center for Transgender Equality (NCTE), Just Detention International (JDI), Gay & Lesbian Advocates & Defenders (GLAD), Lambda Legal, and Sylvia Rivera Law Project (SRLP).

⁵² 28 C.F.R. § 115.15 (e)

⁵³ 28 C.F.R. § 115.15 (b) and 28 C.F.R. § 115.215(b)

⁵⁴ 28 C.F.R. § 115.15 (a) ⁵⁵ 28 C.F.R. § 115.15 (d)

⁵⁶ 28 C.F.R. § 115.43 (a). ⁵⁷

28 C.F.R. § 115.43 (c).

⁵⁸ 28 C.F.R. § 115.43 (b).

⁵⁹ 28 C.F.R. § 115.43 (b).

⁶⁰ *See* Bureau of Justice Assistance, BJA PREA Audits, Aug. 29, 2013 (on file with the ACLU).

⁶¹ *See* Memorandum for Chief Officers from Newton E. Kendig and Charles E. Samuels, Jr., U.S. Dept. of Justice, Federal Bureau of Prisons, at 2 (May 31, 2011), *available at* <http://www.glad.org/current/pr-detail/federal-bureau-of-prisons-makes-major-change-in-transgender-medical-policy/>.

⁶² The reports referenced in this paragraph come from prisoners, by mail, to legal and human-rights organization that advocate for compliance with GID-treatment requirements, including the ACLU, National Center for Lesbian Rights (NCLR), National Center for Transgender Equality (NCTE), Just Detention International (JDI), Gay & Lesbian Advocates & Defenders (GLAD), Lambda Legal, and Sylvia Rivera Law Project (SRLP).

⁶³ 28 C.F.R. § 501.3(d); *see also* *Rights Groups Issue Open Letter on Upcoming NYC Trial of Syed Fahad Hashmi and Severe Special Administrative Measures*, Apr. 23, 2010, <https://ccrjustice.org/newsroom/press-releases/rightsgroups-issue-open-letter-upcoming-nyc-trial-syed-fahad-hashmi-and-sev>. ⁶⁴ 28 C.F.R. § 501.3.

⁶⁵ *See* Carrie Johnson and Margot Williams, “Guantanamo North”: Inside Secretive U.S. Prisons, NPR (March 3, 2011), <http://www.npr.org/2011/03/03/134168714/guantanamo-north-inside-u-s-secretive-prisons>.

⁶⁶ *See* Letter from David C. Fathi et al. to Sarah Qureshi, Rules Unit, Bureau of Prisons, June 2, 2010, at 1-2 (submitting comments to Notice of Proposed Rulemaking and noting that CMUs had already been in operation prior to the commencement of the notice-and-comment process), *available at* <https://www.aclu.org/files/assets/2010-6-2CMUComments.pdf>.

⁶⁷ *See* Johnson, *supra* note 65.

⁶⁸ *See* Scott Shane, *Beyond Guantanamo, a Web of Prisons for Terrorism Inmates*, N.Y. TIMES, Dec. 10, 2010, *available at* <http://www.nytimes.com/2011/12/11/us/beyond-guantanamo-bay-a-web-of-federalprisons.html?pagewanted=all> (noting that the CMUs are “Muslim-majority”).

⁶⁹ *See* Judith Resnik, *Harder Time*, SLATE, July 25, 2013, http://www.slate.com/articles/news_and_politics/jurisprudence/2013/07/women_in_federal_prison_are_being_shipped_from_danbury_to_aliceville.html

⁷⁰ *Id.*

⁷¹ Karen Ali, *Federal Prison Officials Will Answer Questions Before Moving Women*, CONN. LAW TRIBUNE, Aug. 16, 2013, http://www.ctlawtribune.com/PubArticleCT.jsp?id=1202615866626&Federal_Prison_Officials_Will_Answer_Questions_Before_Moving_Women_&slreturn=20130716182512.

⁷² *Id.*

⁷³ See Resnik, *supra* note 69 (“Being moved far from home limits the opportunities of women being moved out of Danbury; it hurts them in prison and once they get out. Recent research from Michigan and Ohio documents that inmates who receive regular visits are less likely to have disciplinary problems while in prison and have better chances of staying out of prison once released.”).

⁷⁴ See Letter from Chris Murphy, Senator, et al. to Charles E. Samuels, Jr., Director, Federal Bureau of Prisons (Aug. 2, 2013), available at <http://www.murphy.senate.gov/record.cfm?id=345491>.

⁷⁵ See Ali, *supra* note 711.

⁷⁶ FCI Aliceville, Federal Bureau of Prisons, <http://www.bop.gov/locations/institutions/ali/> (last visited Sept. 15, 2013).

CT FEATURE

Rhode Island Halts Growth in the Inmate Population While Increasing Public Safety

By A.T. Wall

During the second half of the 1980s, a surge in the inmate population overwhelmed the Rhode Island Department of Corrections (RIDOC). As a unified correctional system encompassing the state's prisons, jails, probation and parole services, the agency felt the impact on every front. The repercussions were particularly severe in the institutions. Fueled by statutory changes resulting from the "war on drugs" and prosecutorial demands that all potential probation violators be held without bail, the inmate population climbed by 85 percent in just six years.

The department, which had been on the verge of resolving a longstanding federal court order regarding conditions of confinement, found itself unried in additional decrees from the court as the rising number of inmates compromised the gains that had been made in the previous decade. By 1990, with a population more than three times that of a decade ago, pressure from the federal bench culminated in the mandate to abruptly release hundreds of inmates. The scene reinforced the perception of disarray in the correctional system on the part of Rhode Island's citizenry.

Meanwhile, in a race against time, the state had embarked on a massive building campaign to add more beds to the system. Hundreds of millions of dollars in construction — and millions more in operational expenses down the line — boosted jail and prison capacity by 50 percent as of 1992. At a tremendous cost to the taxpayers, the bleeding was stanchied. Forced releases were halted and the expanded capacity afforded the department the breathing room to settle the federal court order after 20 years of litigation.

The inmate population continued to grow, until, by the early years of the 21st century, it had consumed this additional bed space, and crowding began to make headlines again. After all the blood, sweat, tears, dollars spent and cost in public credibility, RIDOC was on the verge of repeating the same cycle. One reporter, who had covered the previous crisis, looked to Yogi Berra when he wrote, "It's like déjà vu all over again."

In the 15 years since 1992 the average daily population had risen by 35 percent until it was 5 percent shy of the agency's total operational capacity of 4,085 by July 2007. Due to restrictions associated with such issues as gender, protection and custody levels, no correctional system can make maximum use of all available beds, and there were a number of institutions operating at, and sometimes over, capacity on a routine basis.

The consequences were far reaching. Rhode Island's economy was fragile well before the current recession and soaring correctional costs were doing their part to wreak havoc on the state's budget. The rising tide of inmates was putting a strain on every aspect of institutional operations — from staffing and security to health services and programming. On the horizon, an even larger crisis loomed. The settlement order in the federal case stipulated maximum capacities at each institution, which, if exceeded for a set number of days, could trigger renewed judicial intervention. The Criminal Justice Oversight Committee, a statutory mechanism put in place as part of the federal court settlement, is responsible for monitoring the relationship of the inmate population to the court's settlement order. It is composed of leaders from every entity in the justice system. The committee was warned that if trends continued, the federally imposed cap would be triggered in the not-too-distant future.

Given the state's financial distress, there was no appetite for building and operating more correctional institutions. The state's leaders also realized that nibbling around the edges of criminal justice policy would not yield an outcome of the magnitude needed. At the same time, all involved were very well aware of the legitimate concerns and political sensitivity associated with public safety and the need to consider significant change in a thoughtful, rational and inclusive manner.

Investing in Justice Reinvestment

It was against this backdrop that in 2005 Gov. Donald Carcieri and the leadership of both houses in the legislature jointly wrote to the Justice Center of the Council of State Governments asking for its help. This organization was uniquely qualified to lend its support to resolving Rhode Island's dilemma. CSG is a nonprofit, nonpartisan membership association of officials from all three branches of state government. As such, it is ideally positioned to assist policymakers with data driven and evidence-based solutions as they grapple with difficult and controversial issues. The Justice Center, with financial support from the U.S. Justice Department's Bureau of Justice Assistance and the Public Safety Performance Project of the Pew Charitable Trusts' Center on the States, had begun working with a few jurisdictions on a pioneering initiative known as justice reinvestment. The concept recognizes the predicament posed by growing prison populations coupled with mounting fiscal pressures on state budgets. It contemplates the development of state-specific ways to manage growth of correctional populations. The savings generated by averting projected spending are reinvested in strategies that serve to increase public safety.

Rhode Island was fortunate enough to be selected as one of the first jurisdictions to implement the justice reinvestment model. Consistent with the project's approach, work began with a thorough analysis of the reasons for Rhode Island's inmate growth. This analysis was undertaken by James Austin, Ph.D., of JFA Associates/The JFA Institute. The Justice Center asked him to conduct this research because his firm was thoroughly familiar with the state's correctional system, having done its annual population

projections for almost 20 years. In addition, Austin was working with the Rhode Island Parole Board to develop risk-based guidelines for granting parole applications. In keeping with a state-centered approach, which recognizes that the drivers of correctional populations differ according to each jurisdiction's specific statutes, policies, practices and culture, Austin focused explicitly on these factors as they played out in Rhode Island.

Austin presented his findings on the threshold of the 2006 session in a forum at the state House. Leaders of all three branches, criminal justice officials, community leaders and members of the media were in attendance. His conclusions, as described at the session and in a subsequent analysis conducted during the following months, were sobering:

- The jail and prison population, which had risen by 15 percent from 1997 to 2007, was projected to grow at an accelerated rate in the next decade;
- The inmate census would increase by an additional 25 percent in the next decade; and
- Unless policymakers acted, the state would need to appropriate an additional \$300 million in operating costs at the adult correctional institutions during the coming 10 years to accommodate the projected increases.

Austin also pointed out that the outcomes of the current system were not particularly good: Nearly one-third of inmates released from the institutions were reincarcerated within 12 months of release on new sentences or violations of conditions of supervision. In addition, if the figures were included for released offenders who were back in corrections custody within one year but still awaiting trial, the number rose to 45 percent.

Faced with this evidence, the governor, legislative leadership and the judiciary's administrative judges asked the Justice Center to follow up by proposing options that could reduce projected growth by 500 beds within one year of their implementation (see Table 1). The center's staff delved into the data and generated a menu of ideas that, taken in the aggregate, would both accomplish this goal and would augment bed and dollar savings in subsequent years. Finalized in the spring of 2007, options ranged from expanding home confinement eligibility criteria and reforming the terms and conditions of probation supervision to reducing the number of offenders held awaiting trial and changing the length of stay for sentenced inmates. Given the sensitivity of the topic and the need for all affected parties to have an opportunity to weigh in on these ideas before a final set of options was agreed upon, the general assembly adjourned in June 2007 without acting on the package.

Although the initiative had been delayed, it certainly was not dead. Through the summer and fall, Gov. Carcieri, Senate Majority Leader Teresa Paiva-Weed and House Speaker William Murphy all expressed their resolve to pursue the justice reinvestment approach. As the inmate census soared to all-time highs in the summer and fall of 2007, the DOC sought the approval of chief counsel for the plaintiffs in the federal litigation to increase the capacities at

Table 1. Justice Center Proposed Policy Options to Reduce Projected Growth

<u>Policy Options</u>	<u>Estimated</u>	
	FY 2008 Bed Savings	FY 2017 Bed Savings ¹
1. Expand the capacity of the residential substance abuse treatment system to reduce the number of people approved for parole but awaiting treatment slots. ²	100	118
2. Improve the parole board's use of data regarding offender's risks/needs to ensure that release decisions are science-based.	4	18
3. Improve the effectiveness of parole supervision.	27	75
4. Target probation resources to supervise offenders when they are most likely to reoffend.	27	75
5. Make probation supervision responsive to the risks/needs of offenders.	55	81
6. Ensure that people in prison complete programs such as drug treatment and job training to reduce their risk to public safety before they are released.	20	20
7a. Provide less serious offenders with the same incentive for good behavior as more serious offenders.	84	288
7b. Make the standardized "earned time" policy retroactive for all currently sentenced offenders. ³	97	0
8. Ensure the payment of restitution to victims.	8	10
9. Reduce the number of people held at the ACI awaiting trial with bail set at less than \$500. ⁴	10	10
10. Increase the number of people placed on home confinement who would otherwise be held at the ACI.	70	70
Estimated Combined Impact Averted Costs (The cost of implementing the policy options is not included.)	502 FY 2008 \$4 million	765 FY 2008-2017 \$58.6 million

¹ Bed savings indicated for each policy are for the year identified and are not cumulative. For example, policy option 2 will require 43 fewer beds than projected in FY 2008 and 64 fewer beds than projected in FY 2017.

² Assumption: Additional treatment resources are sufficient to eliminate the backlog of people scheduled for release on parole who currently are held past their release date for a residential substance abuse treatment bed to become available. Further funding of the substance abuse treatment system could, if targeted appropriately, have an additional unknown impact on the prison population if used by judges to divert offenders who would otherwise have been sentenced to a term of incarceration.

³ The estimated bed savings for policy option 7b represents the impact this policy could have on the population at the ACI in addition to the impact stated in policy option 7a. The bed savings estimated in policy option 7b may be reduced by any increase in the parole grant rate if policy option 2 is adopted.

⁴ The estimate of bed savings associated with policy option 9 is based on data from calendar year 2006 and extrapolated over the 10 year period, unlike the rest of the bed savings estimates, which utilize a statistical model of the prison population.

several institutions in order to avoid violating the terms of the settlement order. He agreed, but stated in a meeting with the governor and in subsequent remarks to the media that his consent was explicitly contingent on his understanding that the state would enact solutions to the crowding crisis in the next legislative session.

Also in the fall of 2007, the Criminal Justice Oversight Committee convened a meeting in the state House to vet the options put together the previous spring. Present were the governor; the Senate president; a key aide to the House speaker; leaders of the Legislature's Finance and Judiciary committees; the chief judges of the state's trial courts and top staff to the Supreme Court chief justice; the parole board chair; the chief of the Criminal Division for the attorney general (who serves as Rhode Island's chief prosecutor); the state's public defender; the superintendent of the state police; and Rhode Island's leading victims' advocate. Recognizing the importance of consensus, they agreed that any option that met with resistance from any of those gathered would be tabled.

Key Solutions

Ultimately, all parties coalesced around three key ideas, which were introduced into the General Assembly in a series of budget articles that became known as the "Correctional Options" package. Enacted in May 2008 by an overwhelming majority, Correctional Options included three major reforms:

Standardization of earned time. Austin had highlighted a statutory scheme used by Rhode Island whereby inmates earned credit off sentences for complying with institutional rules. Under this inverted and illogical system, inmates who abided by the rules were given the number of days off each month that corresponded to the years of their sentence (up to a maximum of 10). This policy greatly benefited the inmates with long sentences for the most serious crimes while affording those serving short terms for petty crimes almost no time off. For example, an inmate with a three-month sentence served every single day of that term while an inmate doing 10 years saw his or her sentence reduced by one-third. The Legislature standardized the formula so that all inmates (except those serving only one month or less, sex offenders and lifers) could earn the same 10 days each month.

Inauguration of risk reduction program credits. Rhode Island's rehabilitative programs had been offered cafeteria-style: Interested inmates could sign up for available programs and were wait-listed when the slots were filled. Rhode Island law provided very limited incentives for the offender population to complete programs that would reduce their risk of re-offending upon release. Under the new legislation, inmates (except those excluded in the option above) who fully participated in programs that addressed their criminogenic factors are eligible for up to five days credit off their sentences each month. Completion of a program can earn an inmate up to 30 additional days. RDOC staff prequalify each program by deciding the maximum amount of days credit that can be earned for each program and then awarding participating offenders the number of days justified by their performance. As this

author explained at a meeting of the state's police chiefs, these inmates would of course be released eventually. It is preferable to discharge an offender a few weeks earlier knowing that he or she had dealt with addiction and other issues than waiting and discharging the inmate untreated. The chiefs are realists and they understood the advantages of this approach to public safety.

Risk assessment in parole decisions. The new legislation mandated that the parole board consider not only the seriousness of the crime and the offender's institutional behavior but also the potential to re-offend as determined by a validated risk instrument. This tool provides support to members of the board as they make the difficult decisions about whom to parole.

Improving Services

In keeping with the philosophy that underlies justice reinvestment, the legislation did not eliminate the full savings associated with these reforms from RDOC's budget. Instead, it retained a portion of the funds and redirected them to three areas of need:

Increased programming. Recognizing that the number of institutional programs must be expanded for inmates to earn risk reduction credits and leave better prepared to be law-abiding citizens, money was reinvested to increase the number of slots for such programs as substance abuse treatment, anger management and cognitive restructuring.

Investment in community corrections. As it was evident that Correctional Options would shift more offenders onto post-release probation and do so more quickly, money was reserved to augment discharge planning services and increase the number of probation officers. RDOC implemented a process to place the inmates released pursuant to Correctional Options on a heightened level of supervision until such time as they would otherwise have left an institution.

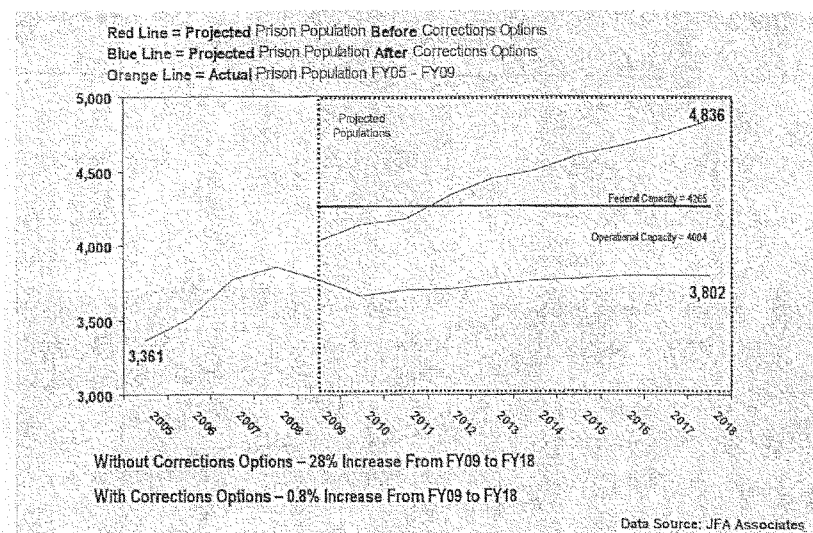
Computer enhancements. Money was provided for a one-time enhancement to the agency's databases in order to recalculate release dates using the new criteria established in the legislation. These upgrades were completed in November 2008.

Current Outcomes

Key outcomes to date of this fundamental change in Rhode Island's correctional policy are:

Impact on the census. Eighty-one percent of the sentenced inmates discharged in fiscal year 2009 were released earlier than they would have been under the old law. There were no significant changes in either the number of commitments and discharges or in the length of sentences between fiscal year 2008 and fiscal year 2009. The overall population dropped between the two years because of the decrease in length of time served. In other words, Correctional Options has had the intended effect on length of stay. This decline reversed longstanding trends. The dip in the average daily population has accelerated as the effects of the legislation continue to reverberate in the current fiscal year. The census for 2010 to date is 3,643; it was 3,860 in fiscal year 2008 and 3,773 in fiscal year 2009.

Figure 1. Population Projections Before and After Corrections Options Fiscal Year 2005 to Fiscal Year 2018



Impact on costs. The DOC's costs have decreased. While significant portions of the reduction have been due to the constraints on hiring and purchases because of the state's deteriorating financial picture, the savings are also census-driven. For example, Rhode Island has been able to close housing units at several of its largest male institutions on a periodic basis since the enactment of this legislation.

Impact on public safety. Insufficient time has elapsed for a credible study of the legislation's effect on recidivism. In order to calculate the impact, a group of inmates need to leave the system and be allowed a certain amount of time out in the community before a comparison of their return rates and comparisons to past departmental recidivism studies can be undertaken. The earliest one-year group released under the new earned time calculations encompasses releases from July 1, 2008 through June 30, 2009. Therefore, the return rates for the first one-year group released under this initiative will be calculated sometime after July 1, 2010.

Seeing Results

The fact that the number of admissions has not increased, even as inmates are being released earlier, is an encouraging sign. Larger numbers of inmates are better equipped for reintegration into the community as a result of the risk reduction program credits. The programs that awarded the most credits were high school equivalency,

residential substance abuse treatment, and adult basic and special educational services.

An interview with a former inmate from Pawtucket, R.I., published by the Associated Press on Oct. 15, 2009, put a human face on the impact. As reported in the article, 24-year-old Joshua Gomes has been working, passing drug screens, continuing substance abuse treatment and keeping appointments with his probation officer since his release from incarceration in June 2009. He acknowledges that the prospect of accelerated release through program credits gave him the added incentive to complete his drug treatment regime behind walls "for the sake of going home a couple of months earlier." In the process, he credits the program with changing his attitude about his behavior and its effect on others.

Rhode Island's experience shows that debates over correctional policy need not pit public protection against the costs of incarceration. Although corrections is a particularly volatile component of the public domain, a careful process, shaped by evidence and conducted among thoughtful leaders with the requisite political will, can yield a balance that respects both fiscal responsibility and public safety. For correctional professionals, it is an encouraging development indeed.

A.T. Wall is director of the Rhode Island Department of Corrections.

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Statement of Julie Stewart, President
 Families Against Mandatory Minimums
 Submitted to the Senate Judiciary Committee for
 a hearing on
 “Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism”

November 6, 2013
 Washington, DC

Introduction

I appreciate the opportunity to submit this written statement on behalf of Families Against Mandatory Minimums (FAMM). FAMM is a nonpartisan, nonprofit organization advocating for fair, proportionate, and individualized sentences that fit the crime and the offender and protect the public. FAMM supports punishment for those who violate our nation’s laws and believes incarceration is necessary to protect the public from dangerous and violent offenders. We know, however, that mandatory minimum sentences are not essential to reducing crime and in fact contribute to the public safety funding crisis our nation faces today. Common sense sentencing reforms are particularly important, urgent, and relevant today because they will increase public safety by ensuring that the Department of Justice (DOJ) spends its limited resources on investigating, arresting, and prosecuting the most violent and dangerous offenders, rather than wasting that money on the needless incarceration of thousands of nonviolent and lowlevel offenders serving excessive mandatory minimum sentences.

FAMM has enjoyed working with many members of this committee to make our federal sentencing laws more just and rational. We thank Chairman Leahy for his strong and steadfast leadership on this issue and on the Justice Safety Valve Act, S. 619. We thank Senator Whitehouse for chairing this important hearing and for his commitment to improving the federal prison system. We thank Senators Durbin and Lee for proposing reforms to federal mandatory minimum laws in S. 1410, the Smarter Sentencing Act. We also thank Senator Sessions for his leadership on reforming crack cocaine laws. In 1994, Senators Orrin Hatch and Chuck Schumer spearheaded the most important reform of mandatory minimum sentences to date: the creation of the drug “safety valve” in 18 U.S.C. § 3553(f).¹ That provision allows judges to sentence federal drug offenders below the mandatory minimum term if the judge finds that the defendant meets a strict, five-part test. Over 85,000 people have received fairer, more sensible sentences because of that reform, saving taxpayers billions in unnecessary incarceration costs. We would not be having today’s vibrant debate about mandatory minimum sentencing reform without this leadership from Senators Hatch and Schumer 20 years ago.

We submitted testimony to this Committee at its September 18, 2013, hearing on

¹ The drug safety valve is a five-part test: no one must have suffered serious bodily injury as a result of the offense, and the drug offender may not have more than one criminal history point under the U.S. Sentencing Guidelines, cannot have possessed a weapon or used violence in the course of the crime, cannot have played a leadership role in the drug offense, and must confess his role in the crime to the prosecutor. *See* 18 U.S.C. § 3553(f) (2012).

“Reevaluating the Effectiveness of Federal Mandatory Minimum Sentences,” and we incorporate by reference the substance of that testimony here.² Today, we hope that the members of the Committee will recognize the connection that experts, academics, government agencies and officials, Republicans and Democrats, law enforcement and civil liberties groups alike are increasingly seeing: three decades of mandatory minimum sentences have produced an unsustainable, costly, overcrowded prison system that is hindering the Justice Department from protecting communities across America. The time to reform mandatory minimum sentencing laws is now.

We understand that this hearing is designed to look primarily at Bureau of Prisons (BOP) reforms that could reduce overcrowding and recidivism, but this effort will surely fail unless Congress addresses front-end reform – specifically, reforming mandatory minimum sentencing laws. Today, the BOP consumes 25 percent of the DOJ budget; by 2018, if unchecked, it will reach 30 percent.³ The DOJ spends billions annually for a federal prison system overstuffed with nonviolent offenders; half of all federal prisoners are drug offenders.⁴ The average drug offender who lands in federal prison (96 percent of all federal drug offenders get prison sentences⁵) is not the violent, armed kingpin Congress hoped to incapacitate when it created mandatory minimums. In FY 2012:

- 53% of federal drug offenders had little or no prior criminal history;
- 85% of federal drug offenders had no weapons involved in their cases;
- Only 6.6% of federal drug offenders were considered leaders, managers, or supervisors of others in the offense.⁶

Despite this profile of an overwhelmingly low-level, nonviolent group of offenders, only 23 percent of them received sentences below the mandatory minimum because they met the strict, five-part test of the “safety valve” at 18 U.S.C. § 3553(f).⁶

The high cost of incarcerating tens of thousands of nonviolent offenders serving mandatory minimum sentences is depleting funds from the DOJ’s crime-fighting budget. Recently, the Justice Department reapportioned \$150 million in funds to cover BOP costs. Of

² Statement of Julie Stewart, President, Families Against Mandatory Minimums, submitted to the U.S. Senate Committee on the Judiciary for a hearing on “Reevaluating the Effectiveness of Mandatory Minimum Sentences,” Sept. 18, 2013, *available at* <http://www.judiciary.senate.gov/resources/documents/113thCongressDocuments/upload/091813RecordSubLeahy.pdf>.

³ Statement of Michael E. Horowitz, Inspector General, U.S. Department of Justice, before the U.S. House of Representatives Committee on Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies concerning Oversight of the Department of Justice 8 (Mar. 14, 2013), *available at* <http://appropriations.house.gov/uploadedfiles/hhrg-113-ap19-wstate-horowitzm-20130314.pdf>.

⁴ BUREAU OF PRISONS, QUICK FACTS ABOUT THE BUREAU OF PRISONS, <http://www.bop.gov/news/quick.jsp> (last updated Sept. 28, 2013).

⁵ U.S. SENTENCING COMM’N, 2012 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS Table 12 (2012), *available at* http://www.ussc.gov/Research_and_Statistics/Annual_Reports_and_Sourcebooks/2012/sbtoc12.htm. ⁶ *Id.* at Tables 37, 39, 40.

⁶ *Id.* at Table 44.

that sum, \$90 million had to be diverted from funds reserved for the FBI,⁷ which might have used that money to further its top priorities of fighting terrorism and cyberterrorism.⁸

Diverting money from police, investigators, and prosecutors to pay for unnecessarily lengthy prison sentences for nonviolent offenders contradicts what we've learned over the last 30 years about deterrence. If we want to discourage people from committing crime, we need to make detection and punishment more certain and swift by capturing and prosecuting more offenders. The DOJ cannot pursue this strategy if it must cut its number of investigators and prosecutors so that it can pay to incarcerate nonviolent offenders serving excessive mandatory prison terms.

Legislative Proposals for Mandatory Minimum Sentencing Reform

There are many ways the BOP population crisis can be addressed, thus saving money for crime-fighting priorities. Not all methods of prison population and cost reduction are created equal, however. Fortunately, Congress has several bipartisan mandatory minimum sentencing reform proposals to choose from, and over time both could restore up to billions of dollars in public safety funding to DOJ.

A report published yesterday by the Urban Institute⁹ provides compelling evidence that the legislative reforms that will save the most without harming public safety are so-called "frontend" reforms: creating broader safety valves that allow judges to sentence below the minimum term when doing so does not harm public safety, and reducing the length of our draconian mandatory minimum sentences for drug offenses. The Urban Institute's report provides conservative prison bed space and cost savings estimates that show that mandatory minimum sentencing reform far out-performs "back-end" reforms like expanding good time credit or permitting some low-level offenders to be released to home confinement if certain rehabilitative programs are completed.¹⁰ The Urban Institute suggests a combination of front- and back-end reforms to get a real handle on the BOP's high costs and overpopulation problem.

The Justice Safety Valve Act of 2013, S. 619

S. 619, the Justice Safety Valve Act of 2013, sponsored by Senator Rand Paul (R-KY) and Chairman Leahy, seeks to build on the success of the existing drug safety valve by authorizing judges to depart below the statutory minimum in more cases where the minimum is

⁷ Transcript of Testimony of Charles E. Samuels, Jr., Director of the Federal Bureau of Prisons, at the hearing on the Bureau of Prisons FY 2014 Budget Request before the U.S. House of Representatives Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, 6 (April 17, 2013) (on file with author).

⁸ FEDERAL BUREAU OF INVESTIGATION, QUICK FACTS, <http://www.fbi.gov/about-us/quick-facts> (last accessed Nov. 5, 2013).

⁹ URBAN INSTITUTE, *STEMMING THE TIDE: STRATEGIES TO REDUCE THE GROWTH AND CUT THE COST OF THE FEDERAL PRISON SYSTEM* [hereinafter *STEMMING THE TIDE*] (Nov. 2013), available at <http://www.urban.org/UploadedPDF/412932-stemming-the-tide.pdf>.

¹⁰ *Id.* at App. A.

not warranted. The bill does not repeal any mandatory minimum sentencing laws, but it represents the boldest reform introduced to date. According to the Urban Institute's report, the Justice Safety Valve could, by conservative estimates, save 81,000 prison bed years and \$835 million over 10 years.¹¹

The Smarter Sentencing Act, S. 1410

The Smarter Sentencing Act, S. 1410, reduces many drug mandatory minimum prison terms, applies the Fair Sentencing Act of 2010 retroactively (permitting over 8,000 federal prisoners to seek sentences in accord with that legislation's fairer treatment of crack cocaine offenses¹²), and expands the criminal history prong of the existing drug safety valve so that drug offenders with a criminal history category of I or II under the U.S. Sentencing Guidelines may be sentenced below the applicable mandatory minimum term. According to the Urban Institute, the Smarter Sentencing Act could conservatively save more than \$3 billion over 10 years.¹³

Conclusion

Public policy leaders, government officials, criminal justice experts, and advocates from across the political spectrum are supporting federal mandatory minimum reform, including the Department of Justice, former New York City police commissioner Bernard Kerik, former Bush administration attorney general Michael Mukasey, the American Correctional Association, the Council of Prison Locals-American Federation of Government Employees, over 50 former federal prosecutors and judges, Heritage Action, former National Rifle Association president David Keene, Americans for Tax Reform president Grover Norquist, conservative columnist George Will, Marc Levin of the Texas Public Policy Foundation's Right on Crime project, the National Association of Evangelicals, Justice Fellowship/Prison Fellowship Ministries, the NAACP, the ACLU, and the Leadership Conference on Civil and Human Rights, just to name a few.

As Congress considers many options for reducing the BOP's high population and price tag, we urge it to enact meaningful, broad reforms to mandatory minimum sentencing laws as soon as possible. Such reforms will reduce prison overcrowding, save prison beds for the most violent and dangerous offenders, and restore crime-fighting funding to the DOJ so that it can continue to protect our communities. These reforms would be simultaneously smart on crime and tough on crime and would benefit public safety, taxpayers, the Justice Department, and the federal prison system.

¹¹ *Id.* at App. A.

¹² U.S. Sentencing Comm'n, Statement of Judge Patti B. Saris, Chair, United States Sentencing Commission for the Hearing on "Reevaluating the Effectiveness of Federal Mandatory Minimum Sentences" before the U.S. Senate Committee on the Judiciary, Sept. 18, 2013, *available at* http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Submissions/20130918_SJC_Mandatory_Minimums.pdf.

¹³ STEMMING THE TIDE at App. A.

The New York Times

December 11, 2012

For Lesser Crimes, Rethinking Life Behind Bars

By JOHN TIERNEY

TALLAHASSEE, Fla. — Stephanie George and Judge Roger Vinson had quite different opinions about the lockbox seized by the police from her home in Pensacola. She insisted she had no idea that a former boyfriend had hidden it in her attic. Judge Vinson considered the lockbox, containing a half-kilogram of cocaine, to be evidence of her guilt.

But the defendant and the judge fully agreed about the fairness of the sentence he imposed in federal court.

“Even though you have been involved in drugs and drug dealing,” Judge Vinson told Ms. George, “your role has basically been as a girlfriend and bag holder and money holder but not actively involved in the drug dealing, so certainly in my judgment it does not warrant a life sentence.”

Yet the judge had no other option on that morning 15 years ago. As her stunned family watched, Ms. George, then 27, who had never been accused of violence, was led from the courtroom to serve a sentence of life without parole.

“I remember my mom crying out and asking the Lord why,” said Ms. George, now 42, in an interview at the Federal Correctional Institution in Tallahassee. “Sometimes I still can’t believe myself it could happen in America.”

Her sentence reflected a revolution in public policy, often called mass incarceration, that appears increasingly dubious to both conservative and liberal social scientists. They point to evidence that mass incarceration is no longer a cost-effective way to make streets safer, and may even be promoting crime instead of suppressing it.

Three decades of stricter drug laws, reduced parole and rigid sentencing rules have lengthened prison terms and more than tripled the percentage of Americans behind bars. The United States has the highest reported rate of incarceration of any country: about one in 100 adults, a total of nearly 2.3 million people in prison or jail.

But today there is growing sentiment that these policies have gone too far, causing too many Americans like Ms. George to be locked up for too long at too great a price — economically and socially.

The criticism is resonating with some state and federal officials, who have started taking steps to stop the prison population's growth. The social scientists are attracting attention partly because the drop in crime has made it a less potent political issue, and partly because of the states' financial problems.

State spending on corrections, after adjusting for inflation, has more than tripled in the past three decades, making it the fastest-growing budgetary cost except Medicaid. Even though the prison population has leveled off in the past several years, the costs remain so high that states are being forced to reduce spending in other areas.

Three decades ago, California spent 10 percent of its budget on higher education and 3 percent on prisons. In recent years the prison share of the budget rose above 10 percent while the share for higher education fell below 8 percent. As university administrators in California increase tuition to cover their deficits, they complain that the state spends much more on each prisoner — nearly \$50,000 per year — than on each student.

Many researchers agree that the rise in imprisonment produced some initial benefits, particularly in urban neighborhoods, where violence decreased significantly in the 1990s. But as sentences lengthened and the prison population kept growing, it included more and more nonviolent criminals like Ms. George.

Half a million people are now in prison or jail for drug offenses, about 10 times the number in 1980, and there have been especially sharp increases in incarceration rates for women and for people over 55, long past the peak age for violent crime. In all, about 1.3 million people, more than half of those behind bars, are in prison or jail for nonviolent offenses.

Researchers note that the policies have done little to stem the flow of illegal drugs. And they say goals like keeping street violence in check could be achieved without the expense of locking up so many criminals for so long.

While many scholars still favor tough treatment for violent offenders, they have begun suggesting alternatives for other criminals. James Q. Wilson, the conservative social scientist whose work in the 1970s helped inspire tougher policies on prison, several years ago recommended diverting more nonviolent drug offenders from prisons to treatment programs.

Two of his collaborators, George L. Kelling of the Manhattan Institute and John J. DiIulio Jr. of the University of Pennsylvania, have joined with prominent scholars and politicians, including Jeb Bush and Newt Gingrich, in a group called Right on Crime. It advocates more selective incarceration and warns that current policies "have the unintended consequence of hardening nonviolent, low-risk offenders" so that they become "a greater risk to the public than when they entered."

These views are hardly universal, particularly among elected officials worried about a surge in crime if the prison population shrinks. Prosecutors have resisted attempts to change the system, contending that the strict sentences deter crime and induce suspects to cooperate because the penalties provide the police and prosecutors with so much leverage.

Some of the strongest evidence for the benefit of incarceration came from studies by a University of Chicago economist, Steven D. Levitt, who found that penal policies were a major factor in reducing crime during the 1990s. But as crime continued declining and the prison population kept growing, the returns diminished.

“We know that harsher punishments lead to less crime, but we also know that the millionth prisoner we lock up is a lot less dangerous to society than the first guy we lock up,” Dr. Levitt said. “In the mid-1990s I concluded that the social benefits approximately equaled the costs of incarceration. Today, my guess is that the costs outweigh the benefits at the margins. I think we should be shrinking the prison population by at least one-third.”

Some social scientists argue that the incarceration rate is now so high that the net effect is “crimogenic”: creating more crime over the long term by harming the social fabric in communities and permanently damaging the economic prospects of prisoners as well as their families. Nationally, about one in 40 children have a parent in prison. Among black children, one in 15 have a parent in prison.

Cocaine in the Attic

Ms. George was a young single mother when she first got in trouble with drugs and the law. One of her children was fathered by a crack dealer, Michael Dickey, who went to prison in the early 1990s for drug and firearm offenses.

“When he went away, I was at home with the kids struggling to pay bills,” Ms. George said. “The only way I knew to get money quick was selling crack. I was never a user, but from being around him I pretty much knew how to get it.”

After the police caught her making crack sales of \$40 and \$120 — which were counted as separate felonies — she was sentenced, at 23, to nine months in a work-release program. That meant working at her mother’s hair salon in Pensacola during the day and spending nights at the county jail, away from her three young children.

“When I caught that first charge, it scared me to death,” she recalled. “I thought, my God, being away from my kids, this is not what I want. I promised them I would never let it happen again.”

When Mr. Dickey got out of prison in 1995, she said, she refused to resume their relationship, but she did allow him into her apartment sometimes to see their daughter. One evening, shortly after he had arrived, the police showed up with a search warrant and a ladder.

“I didn’t know what they were doing with a ladder in a one-story building,” Ms. George said. “They went into a closet and opened a little attic space I’d never seen before and brought down the lockbox. He gave them a key to open it. When I saw what was in it, I was so mad I jumped across the table at him and started hitting him.”

Mr. Dickey said he had paid her to store the cocaine at her home. At the trial, other defendants said she was present during drug transactions conducted by Mr. Dickey and other dealers she

dated, and sometimes delivered cash or crack for her boyfriends. Ms. George denied those accusations, which her lawyer argued were uncorroborated and self-serving. After the jury convicted her of being part of a conspiracy to distribute cocaine, she told the judge at her sentencing: "I just want to say I didn't do it. I don't want to be away from my kids."

Whatever the truth of the testimony against her, it certainly benefited the other defendants. Providing evidence to the prosecution is one of the few ways to avoid a mandatory sentence. Because the government formally credited the other defendants with "substantial assistance," their sentences were all reduced to less than 15 years. Even though Mr. Dickey was the leader of the enterprise and had a much longer criminal record than Ms. George, he was freed five years ago.

Looking back on the case, Judge Vinson said such disparate treatment is unfortunately all too common. The judge, an appointee of President Ronald Reagan who is hardly known for liberalism (last year he ruled that the Obama administration's entire health care act was unconstitutional), says he still regrets the sentence he had to impose on Ms. George because of a formula dictated by the amount of cocaine in the lockbox and her previous criminal record.

"She was not a major participant by any means, but the problem in these cases is that the people who can offer the most help to the government are the most culpable," Judge Vinson said recently. "So they get reduced sentences while the small fry, the little workers who don't have that information, get the mandatory sentences."

"The punishment is supposed to fit the crime, but when a legislative body says this is going to be the sentence no matter what other factors there are, that's draconian in every sense of the word. Mandatory sentences breed injustice."

Doubts About a Penalty

In the 1980s, stricter penalties for drugs were promoted by Republicans like Mr. Reagan and by urban Democrats worried about the crack epidemic. In the 1990s, both parties supported President Bill Clinton's anticrime bill, which gave states money to build prisons. Three-strikes laws and other formulas forced judges to impose life without parole, a sentence that was uncommon in the United States before the 1970s.

Most other countries do not impose life sentences without parole, and those that do generally reserve it for a few heinous crimes. In England, where it is used only for homicides involving an aggravating factor like child abduction, torture or terrorism, [a recent study](#) reported that 41 prisoners were serving life terms without parole. [In the United States](#), some 41,000 are.

"It is unconscionable that we routinely sentence people like Stephanie George to die in our prisons," said Mary Price, the general counsel of the advocacy group [Families Against Mandatory Minimums](#). "The United States is nearly alone among the nations of the world in abandoning our obligation to rehabilitate such offenders."

The utility of such sentences has been challenged repeatedly by criminologists and economists. Given that criminals are not known for meticulous long-term planning, how much more seriously do they take a life sentence versus 20 years, or 10 years versus 2 years? Studies have failed to find consistent evidence that the prospect of a longer sentence acts as a significantly greater deterrent than a shorter sentence.

Longer sentences undoubtedly keep criminals off the streets. But researchers question whether this incapacitation effect, as it is known, provides enough benefits to justify the costs, especially when drug dealers are involved. Locking up a rapist makes the streets safer by removing one predator, but locking up a low-level drug dealer creates a job opening that is quickly filled because so many candidates are available.

The number of drug offenders behind bars has gone from fewer than 50,000 in 1980 to more than 500,000 today, but that still leaves more than two million people on the street who sell drugs at least occasionally, according to calculations by Peter H. Reuter, a criminologist at the University of Maryland. He and Jonathan P. Caulkins of Carnegie Mellon University say there is no way to lock up enough low-level dealers and couriers to make a significant impact on supply, and that is why cocaine, heroin and other illegal drugs are as readily available today as in 1980, and generally at lower prices.

The researchers say that if the number of drug offenders behind bars was halved — reduced by 250,000 — there would be little impact on prices or availability.

“Mandating long sentences based on the quantities of drugs in someone’s possession just sweeps up low-level couriers and other hired help who are easily replaced,” Dr. Caulkins said. “Instead of relying on formulas written by legislators and sentencing commissions, we should let judges and other local officials use discretion to focus on the dealers who cause the most social harm — the ones who are violent, who fight for turf on street corners, who employ children. They’re the ones who should receive long sentences.”

These changes are starting to be made in places. Sentences for some drug crimes have been eased at the federal level and in states like New York, Kentucky and Texas. Judges in Ohio and South Carolina have been given more sentencing discretion. Californians voted in November to soften their state’s “three strikes” law to focus only on serious or violent third offenses. The use of parole has been expanded in Louisiana and Mississippi. The United States Supreme Court has banned some life sentences without parole for juvenile offenders.

Nonetheless, the United States, with less than 5 percent of the world’s population, still has nearly a quarter of the world’s prisoners.

A Mother Taken Away

Ms. George said she could understand the justice of sending her to prison for five years, if only to punish her for her earlier crack-selling offenses.

"I'm a real firm believer in karma — what goes around comes around," she said. "I see now how wrong it was to sell drugs to people hooked on something they couldn't control. I think, what if they took money away from their kids to buy drugs from me? I deserve to pay a price for that. But my whole life? To take me away from my kids forever?"

When she was sentenced 15 years ago, her children were 5, 6 and 9. They have been raised by her sister, Wendy Evil, who says it was agonizing to take the children to see their mother in prison.

"They would fight to sit on her knee the whole time," she recalled recently during a family dinner at their home in Pensacola. "It's been so hard for them. Some of the troubles they've had are because of their anger at her being gone."

The youngest child, William, now 20, dropped out of middle school. The older two, Kendra and Courtney, finished high school but so far have not followed their mother's advice to go to college.

"I don't want to blame things on my situation, but I think my life would have been a whole lot different if she'd been here," said Courtney, now 25, who has been unemployed for several years. "When I fell off track, she would have pushed me back. She's way stronger than any of us."

Ms. George, who has gotten a college degree in prison, calls the children every Sunday. She pays for the calls, which cost 23 cents a minute, with wages from two jobs: a regular eight-hour shift of data processing that pays 92 cents an hour, supplemented by four hours of overtime work at a call center in the prison that provides 411 directory assistance to phone companies.

"I like to stay busy," she said during the interview. "I don't like to give myself time to think about home. I know how much it hurts my daughter to see her friends doing things with their mothers. My boys are still so angry. I thought after a while it would stop, that they'd move on as they got older and had girlfriends. But it just seems like it gets worse every Mother's Day and Christmas."

She seemed undaunted, even cheerful, during most of the interview at the prison, where she sleeps on a bunk bed in an 11-by-7-foot cell she shares with another inmate. Dressed in the regulation uniform, khaki pants and work boots, she was calm and articulate as she explained her case and the failed efforts to appeal the ruling. At this point lawyers say her only hope seems to be presidential clemency — rarely granted in recent years — yet she said she remained hopeful.

She lost her composure only once, while describing the evening in 1996 when the police found the lockbox in her apartment. She had been working in the kitchen, braiding someone's hair for a little money, while Courtney, then 8, played in the home. He watched the police take her away in handcuffs.

"Courtney called out, 'Mom, you promised you weren't going to leave us no more,' " Ms. George recalled, her eyes glistening. "I still hear that voice to this day, and he's a grown man."

This article has been revised to reflect the following correction:

Correction: December 14, 2012

An article on Wednesday about growing skepticism over mandatory prison sentences referred incorrectly to Supreme Court rulings on sentencing for juvenile offenders. The court has banned sentences of life without the possibility of parole for juveniles convicted of crimes that did not involve killings; the justices also struck down laws that required such sentences in homicide cases without allowing judges or juries to consider individual circumstances. The court has not completely “banned life sentences without parole for juvenile offenders.”

