Transforming Prisons, Restoring Lives

Final Recommendations of the Charles Colson Task Force on Federal Corrections

January 2016

CCTF

Charles Colson
Task Force on
Federal Corrections

ABOUT THE CHARLES COLSON TASK FORCE ON FEDERAL CORRECTIONS

The Task Force was established by Congressional mandate in 2014 as a nine-person, bipartisan, blue ribbon panel charged with developing practical, data-driven recommendations to enhance public safety by creating a more just and efficient federal corrections system. Informed by over a year of fact-finding, rigorous data analysis, and discussions with key experts and stakeholders, the independent Task Force's recommendations to the US Congress, the President, and the Attorney General provide a blueprint for reforms to the federal corrections system that are sensible, cost-effective strategies to reduce crime and restore lives.

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The Federal Bureau of Prisons, including headquarters staff and countless other individuals in the field, provided critical data and insights regarding current policies and practices in the federal corrections system. The Task Force especially thanks the staff at the US Penitentiary, Atlanta for facilitating our September visit. We also appreciate the assistance of the US Sentencing Commission, which provided essential data about individuals sentenced in the federal system.

Over the past twelve months, a wide array of people and organizations committed time and resources to discuss the challenges facing the federal corrections system with the Task Force and our staff. This investment underscored the need for action, and their views and perspectives greatly informed our deliberations.

The Task Force's findings and recommendations build on decades of federal corrections reform and research by government officials, policy makers, advocacy groups, and scholars. This extensive groundwork provided the foundation for our efforts.

Lastly, we thank the staff of the Urban Institute and Center for Effective Public Policy for their dedication to our mission. Their knowledge of the federal corrections system and the larger field of criminal justice research and practice—along with their commitment to following the data—set the tone for the evidence-based recommendations embodied in this report.

Letter from the Task Force Chairs

When Donald Taylor graduated from high school in 1984 his goals were crystal clear: enlist in the US Army and make serving his country a lifelong career. The plan began well but ended badly when Taylor was struck by a motorist near Fort Rucker, Alabama, and honorably discharged in 1990. Haunted by injuries and the collapse of his dream, he returned home, fell in with the wrong crowd, and was convicted of selling powder cocaine in 1994. Although his crime was nonviolent, Taylor was sent to federal prison on a mandatory minimum sentence of 20 years since he had a previous state-level conviction for selling less than a gram of powder cocaine.

America is awash in Donald Taylors, people whose drug offenses or other nonviolent crimes drew excessive penalties that have filled prisons, squandered human potential, and sent correctional costs skyrocketing while producing only modest public safety benefits. Over the past year, the Charles Colson Task Force on Federal Corrections has gathered testimony from such formerly incarcerated people, corrections officials, prosecutors, defenders, and dozens of others as part of an extensive analysis of our nation's federal criminal justice system.

Established in 2014 by Congress in response to years of unsustainable prison population and cost increases, high rates of recidivism, and inaction on possible reforms, the Task Force was directed to conduct an independent assessment of the federal system to identify the dynamics driving increases in the Federal Bureau of Prisons' population and costs and produce recommendations for lasting reform. In the wake of successful reforms of state corrections systems over the last decade, which have demonstrated models to reduce costs and improve public safety, Congress sought a bipartisan review of the federal system to inform the public debate on possible reforms.

Throughout our work, we were ever mindful of the man for whom our Task Force was named. Chuck Colson, who served time in federal prison and upon release founded the world's largest prison ministry, was a vigorous advocate on behalf of the incarcerated at a time when criminal justice reform had virtually no support on either side of the aisle. We salute his leadership and we are grateful for the chance to move the cause forward with our efforts.

Those efforts, spanning more than a year of interviews, roundtable discussions, data analysis, and other research, have been far more enlightening than any of our members imagined—and have revealed both the causes of the bloated federal prison system and the results of decades of unbridled growth. We learned that one of the key drivers of the population has been extremely long sentences for drug offenses, including for those with no histories of violence. We also observed that the result of these policy choices is a federal prison system that is in a state of crisis. Indeed, even with our years of experience as elected officials with an interest in corrections policy, we were routinely startled by testimony illuminating the breadth of the problems and their consequences for those serving time and working within the Bureau of Prisons. From severe overcrowding to an insufficient array of effective programs and incentives to encourage behavioral change, the system is failing those it incarcerates and the taxpayers who fund it.

Yet while the scale of the challenge is greater than any of us anticipated, this Task Force is nothing but optimistic about the future. Recently, former Bureau of Prisons Director Charles E. Samuels, Jr. made great strides toward transforming his agency through a renewed emphasis on reentry preparation and a strengthened partnership with its employees union. At the same time, a bipartisan appetite for reform is readily apparent in actions taken by all three branches of government. With this promising foundation, we are confident our recommendations, if carried out as detailed in this report, will enable Congress, the President, and the Attorney General to reduce the federal prison population, increase public safety, and cut costs.

It is important to note that our recommendations were adopted unanimously by a Task Force featuring a bipartisan and exceptionally diverse membership, including a former prosecutor, practitioner and academic experts, and representatives from the judiciary, the defense bar, and the faith community. We were assisted by staff who not only brought extensive experience to the job but also ensured our blueprint for change was anchored in data and the best available science about what works to change the behavior of people involved in crime, reduce recidivism, and keep communities safe.

In closing, we are pleased to report that Donald Taylor was discharged from federal supervision in late 2014, graduated from college with the help of Veterans Administration benefits, and now makes his living as a counselor for troubled youth. But the lesson in his story is this: In our country, Donald Taylor was the exception, overcoming a disproportionately long sentence and a scarcity of rehabilitative offerings in prison to find his way to freedom, a college degree, and a job. It was our task to look at the correctional system and make recommendations that such outcomes will be the rule. That, in the end, will produce a safer society for all.

On behalf of the Colson Task Force, we respectfully submit this report to the Congress, the President, the Attorney General, and the American people with a strong belief that the enclosed findings and recommendations will help further our shared commitment to a reform of the federal corrections system that restores lives and improves public safety.

J.C. Watts, Jr.
Chair

Alan B. Mollohan
Vice Chair

Executive Summary

After decades of unbridled growth in its prison population, the United States faces a defining moment. There is broad, bipartisan agreement that the costs of incarceration have far outweighed the benefits, and that our country has largely failed to meet the goals of a well-functioning justice system: to enhance public safety, to prevent future victimization, and to rehabilitate those who have engaged in criminal acts. Indeed, a growing body of evidence suggests that our over-reliance on incarceration may in fact undermine efforts to keep the public safe. Momentum is strong for a new direction, for a criminal justice system guided by proven, cost-effective strategies that reduce crime and restore lives. But translating this impulse for reform into lasting change is no small challenge.

This report provides both an urgent call to action and a roadmap for reforming the federal prison system, which, with 197,000 people behind bars, was the largest in the nation as 2015 drew to a close. By adopting the recommendations detailed here, and committing sufficient resources to ensure their effectiveness, we can reduce the federal prison population by 60,000 people over the coming years and achieve savings of over $5 billion, allowing for reinvestment in programs proven to reduce crime. Most important, these proposed reforms and savings can be achieved through evidence-based policies that protect public safety.

Such savings will not only bring fiscal responsibility to a policy area long plagued by the opposite tendency, but will also free critical funds the US Department of Justice (DOJ) needs for other priorities, such as national security, state and local law enforcement, and victim assistance. And just as critically, these reforms will make our communities safer by ensuring we send the right people to prison and that they return to society with the skills, supervision, and support they need to stay crime free.

While enacting these initiatives may seem daunting, doing nothing is not a sustainable option. The United States has the highest incarceration rate in the world, confining more than 2.2 million people in its jails and prisons on any given day. Sentencing reform and other policy changes will reduce our reliance on prison and cut costs as we reconsider which people truly need to be behind bars and for how long. But the country still faces the enormous challenge of reintegrating millions of formerly imprisoned people back into society, where the enduring stigma of a criminal record complicates their efforts to find housing and jobs.

Fortunately, signs of meaningful progress shine brightly in the states. Lawmakers from Texas, Utah, Georgia, South Carolina, and a host of other states have re-examined government's expensive preference for incarceration and have embraced a more diversified, evidence-based approach that delivers better public safety at less cost.

Reform has come much more slowly at the federal level. Despite recent reductions, the federal Bureau of Prisons (BOP) has experienced a seven-fold increase in its population since 1980. Costs have spiked right along with that growth. Now almost $7.5 billion, federal prison spending has grown at more than twice the rate of the rest of the DOJ budget and accounts for about one-quarter of the total.

Unfortunately, these expenditures have not yielded the public safety we seek. About 40 percent of those who leave federal prison are re-arrested or have their supervision revoked within three years. And inside federal prisons, serious problems persist, with overcrowding a particular challenge. Even with recent reductions in the population, the system operates at 20 percent above rated capacity. Such overcrowding presents serious challenges throughout the BOP's facilities, jeopardizing the safety of both correctional officers and those they oversee. Crowding also forces treatment staff into security duties, limiting the availability of mental health care, substance abuse programs, and other interventions proven to reduce recidivism. And crowding is most severe at the highest security institutions, the very facilities that house those who have the greatest need for intensive programming and present the gravest potential safety threat.

In response to mounting concern about the scale and cost of the federal prison system, Congress established the Charles Colson Task Force on Federal Corrections (Task Force), named in honor of a former federal prisoner and founder of the world's largest prison ministry. The Task Force, which includes lawmakers, criminal justice practitioners and other experts and stakeholders with experience at both the state and federal level, has conducted a year-long fact-finding mission. These efforts have helped us to identify the drivers of prison population growth, supporting the development of policy recommendations designed to improve public safety, increase accountability of those in the criminal justice system, and reduce recidivism.

Twelve months of interviews, data analysis, and other research revealed a clear picture of the dynamics that caused the federal prison population to swell, and also laid a convincing foundation for the Task Force proposals. We learned that the dramatic prison population expansion was caused largely by drug and weapon offenses and by the mandatory minimum sentences that, beginning in the mid-1980s, dictated long prison terms for both types of crimes. Other contributors were the abolition of parole, federal limits on the use of "good conduct time" and other credits to shorten sentences, and increased enforcement of immigration crimes.

More surprising than what we found to explain prison growth, however, was what we *did not* find. Very few people convicted in federal court are sentenced to an alternative to prison. The vast majority of federal sentences (90 percent) incorporate a term of incarceration, and most judicial districts do not operate specialty courts or offer front-end diversion from prison. It is a one-size-fits-all model and it contrasts starkly with the states, where policymakers are reducing both costs and crime through heavier emphasis on evidence-guided correctional approaches tailored to the risk and need profiles of each individual.

These and other findings informed a set of principles that guided Task Force deliberations. Inherent in each of these principles is the overarching goal of enhancing public safety:

- **Sentencing decisions and correctional interventions should be individualized.** The unique circumstances and attributes of each case and each person entering the federal criminal justice system should inform the sentence and the rehabilitation programs, treatment, and services provided.

- **Correctional policy should improve public safety.** Federal corrections policies should be designed to ensure that people involved in the federal criminal justice system are provided the tools for successful release and reentry, which will improve safety in our nation's communities.
- **Incarceration, with its attendant costs to both those in prison and taxpayers, should be employed judiciously.** When imprisonment is warranted, it should be used only long enough to accomplish the goals of sentencing: incapacitation, deterrence, retribution, and rehabilitation.
- **Data and research should guide practice.** Analyses to identify causes of growth should guide the creation of reforms, and best practices documented by research should be implemented throughout the corrections system.
- **Reforms should both address prison growth and improve public safety outcomes.** Addressing the growth of the federal system will lead to fewer people behind bars. The resulting population reductions and attendant cost savings will in turn enable the BOP to better administer programming and provide a safer environment for both its staff and the people incarcerated in its facilities.

The recommendations found in this report reflect these principles and the Task Force's commitment to bipartisan, consensus-based decision-making. With this report, the Task Force intends to provide Congress, along with the Executive and Judicial Branches, with tools to reform the federal system, as well as a structure and mission that reflect contemporary criminal justice knowledge about how to prevent reoffending and rebuild lives. The bulk of our work focused on producing a blueprint for that shift, complete with comprehensive recommendations for reform to improve each phase of the federal criminal justice system. For these recommendations to achieve optimal results they should be carried out in a concerted manner. While savings will ultimately follow, up-front investment will be required to expand evidence-based programs behind bars, strengthen community supervision and improve federal halfway houses. Without sufficient initial resources to carry out reforms, the benefits—lower costs, less crime, and a formerly incarcerated population better prepared to resume life as good neighbors, good parents, and good taxpayers—will be uncertain at best.

Recommendation 1

At sentencing, the federal system should reserve prison beds for those convicted of the most serious federal crimes.

Significant reform of the federal system cannot be achieved without addressing mandatory minimum drug penalties—the primary driver of BOP overcrowding and unsustainable growth. This policy should be revisited, with drug mandatory minimums reserved for only the most serious offenses and judges empowered with greater discretion to consider the specific circumstances of each individual and case when determining a sentence. Increasing the use of specialty courts, probation, and other prison alternatives for individuals whose crimes make a community sanction appropriate is also recommended.

Recommendation 2

In prison, the federal Bureau of Prisons should promote a culture of safety and rehabilitation and ensure that programming is allocated in accordance with individual risk and needs.

Federal prisons should be characterized by conditions of confinement that are safe, humane, and conducive to self-betterment. Staffing levels should be sufficient to ensure a safe environment, and housing, treatment, and program offerings should be tailored to the specific needs of the many diverse populations in federal custody. Contact with relatives and other loved ones should be facilitated during incarceration as an important component of a rehabilitative environment. In support of such rehabilitation, a validated risk and needs assessment should be administered periodically to guide development of individualized case plans and delivery of the targeted services and programs necessary to support reintegration.

Recommendation 3

Throughout the prison term, correctional policies should incentivize participation in risk-reduction programming.

Public safety and rehabilitation are best achieved through meaningful incentives for participation in needed evidence-based programming. The most powerful incentive—earned time off one's sentence—should be used to encourage participation in addiction treatment, cognitive behavioral therapy, educational classes, faith-based programs, and other self-betterment activities prescribed in accordance with individualized case plans. And those who have served substantial time behind bars should be subject to a review of their sentences and circumstances with the opportunity for sentence reduction.

Recommendation 4

Prior to and following release, the federal correctional system should ensure successful reintegration by using evidence-based practices in supervision and support.

Successful reintegration demands close coordination between correctional facilities and supervision agencies. All relevant federal criminal justice agencies should be encouraged to share case-level data in support of providing those leaving prison with the tools, services, supervision, and support necessary for successful reintegration.

Recommendation 5

The federal criminal justice system should enhance performance and accountability through better coordination across agencies and increased transparency.

To ensure success, federal agencies should operate collaboratively to carry out reforms in pursuit of the twin goals of minimizing incarceration and reducing recidivism. Performance measures and ongoing oversight are necessary to improve outcomes, hold agencies accountable for results, and enhance the effectiveness of the entire criminal justice system.

Recommendation 6

Congress should reinvest savings to support the expansion of necessary programs, supervision, and treatment.

Up-front investments are critical to achieve successful implementation and desired public safety outcomes. The BOP requires an initial funding infusion to carry out the practices and programs necessary to prepare individuals for release. Federal probation needs sufficient staffing and services to shoulder the projected increase in its caseload. The courts and federal oversight entities require resources to support new review, oversight, and coordination roles. And grant programs to courts and prosecutors' offices are necessary to incentivize problem-solving courts and front-end diversion programs. These expenditures will be recovered in savings realized through a reduced prison population.

Our report concludes with a strong call for action. The states have demonstrated that it is possible to have both less crime and less incarceration. We applaud recent steps taken by Congress, the Judiciary and the Administration to improve the federal corrections system, but the work has just begun. While many elements of congressional reform packages are laudable, far more must be done to reserve prison beds for those who endanger public safety, to individualize sentencing decisions and correctional programs, and to encourage successful reintegration for those leaving custody. We must also support in-prison and community programs with sufficient resources to achieve the recidivism reduction we seek. Savings from reduced incarceration will come to support this investment, but not overnight.

Most important, we must capitalize on this rare moment in time. Political leaders on both sides of the aisle agree that our current correctional approach has yielded poor dividends while squandering human potential. The science of criminal justice has never been better, illuminating ways to wring the best results from correctional work. Let us harness this momentum for change and enact wise, cost-effective reforms that promote a safer society and make our criminal justice system work better.

Recommendations for Reform[i]

Recommendation 1: Reserve prison for those convicted of the most serious federal crimes

1. Maintain drug mandatory minimum penalties for only the most serious offenses and revise the Sentencing Guidelines accordingly
   a. Congress should repeal mandatory minimum penalties for drug offenses, except for drug kingpins as defined in the "continuing criminal enterprise" statute
      i. Apply both prospectively and retroactively, with a delayed retroactive application of 24 months
      ii. Apply Fair Sentencing Act retroactivity immediately
   b. The US Sentencing Commission (USSC) should revise the Sentencing Guidelines to better account for factors that reflect role in and culpability for an offense, while considering alternatives to incarceration for lower-level drug trafficking offenses
2. Allow judges to sentence below the mandatory minimum for certain weapon possession offenses associated with nonviolent crimes
   a. Congress should create a new mechanism to enable judges to sentence below the mandatory minimum weapon enhancement if the details of the case warrant such a departure
      i. Individuals sentenced for a mandatory minimum for gun possession (i.e., five-year 18 USC § 924(c) associated with a nonviolent offense) would be eligible
      ii. Judges would weigh individual characteristics and factors outlined in 18 USC § 3553(a)
      iii. Apply prospectively
   b. Congress and the USSC should monitor the impact of this proposed change and consider similar departure mechanisms for other mandatory minimum penalties
3. Review all other mandatory minimum penalties, establish a "sunset provision" for any future mandatory minimums, and require prison, fiscal, and racial impact statements for proposed legislation and Sentencing Guidelines
   a. The USSC should update its report on mandatory minimum penalties to identify those that produce unwarranted disparities or disproportionately severe sentences, and recommend needed changes
   b. Congress should apply a sunset provision to any future mandatory minimum penalties, requiring congressional reauthorization after no more than five years
   c. The Administration and the Judiciary should prepare prison, fiscal, and racial impact assessments for proposed legislative and Sentencing Guidelines changes to improve information available to policymakers and the public
4. Encourage and incentivize alternatives to incarceration
   a. The USSC, as it revises its Guidelines for drug offenses, should encourage probation for lower-level drug trafficking offenses
   b. The USSC should consider probation for other offense types and promulgate information regarding the availability of and the evidence for alternatives to incarceration
   c. Prosecutors and judges should employ alternatives to incarceration in their districts when appropriate, including front-end diversion courts, problem-solving courts (such as drug courts), and evidence-based probation (such as employment of swift and certain sanctions)

[i] See appendix A for a list of the recommendations by authority.

   d. Congress should encourage alternatives to incarceration by authorizing and funding front-end diversion programs and problem-solving courts, evaluating alternatives, and sharing information regarding best practices

5. Limit the types of cases prosecuted federally
   a. The Department of Justice (DOJ) and federal prosecutors should continue reviewing case selection and charging practices to ensure that only the most serious cases that represent a substantial federal interest or that require unique federal jurisdiction or expertise are prosecuted federally
   b. The DOJ should review data from all US Attorneys' offices to determine how consistently Smart on Crime directives and principles are being applied

Recommendation 2: Promote a culture of safety and rehabilitation in federal facilities

1. Enhance safety and security within federal correctional facilities
   a. The BOP should assess staffing levels across all facilities, identify staffing shortages, and reallocate staff across facilities to support appropriate inmate-to-staff ratios as the population declines
   b. The BOP should review all housing assignments to ensure individuals are housed in accordance with rated cell capacity
   c. Congress should pass legislation clarifying the good conduct time calculation to enable sentence reduction of up to 15 percent (consistent with the law's original intent) to incentivize positive behavior

2. Deliver adequate and appropriate in-prison programming and services based on individual risk for recidivism and identified need
   a. The BOP should implement an actuarial risk and needs assessment tool, ensuring that the tool is used only to inform treatment, programming, and service-delivery decisions
   b. The BOP should develop case plans and deliver programming based on individual risk to reoffend, criminogenic needs, and other personal factors and characteristics that may influence the rehabilitative process

3. Identify programming shortages and expand program offerings to meet the assessed needs of the prison population
   a. The BOP should develop an aggregate criminogenic risk and needs profile of its population
   b. The BOP should conduct a systemwide assessment to identify surpluses and shortages in programming capacity at each facility
   c. The BOP should allocate its resources to ensure that programming capacity matches the risk and needs of the populations in each facility
   d. The BOP should expand educational and occupational opportunities in response to demonstrated need across facilities

4. Ensure conditions of confinement are conducive to rehabilitation
   a. The BOP should train all staff on effective communication, problem solving, and procedurally just resolution practices as a core component of academy and in-service training
   b. The BOP should use segregated housing as a punitive measure only in extraordinary circumstances and for no longer than necessary
   c. The BOP should ensure that housing and security procedures accommodate the specific needs of its diverse population

   d. The BOP should develop appropriate and nonrestrictive housing options and security procedures for individuals seeking or needing protective custody within the federal prison system

5. Develop greater opportunities for family engagement
   a. The BOP should house people as close to their home communities as possible
   b. The BOP should establish a visitation and family affairs office to oversee and ease the burden of facility-level visitation procedures
   c. The BOP should expand video conferencing and other visitation programs
   d. The BOP should enhance support for families of people in prison

Recommendation 3: Incentivize participation in risk-reduction programming

1. Improve public safety by incentivizing high- and medium-risk individuals to participate in risk-reduction programming
   a. Congress should authorize that individuals not serving life sentences may earn up to 20 percent off time served by complying with an individualized case plan
      i. Program requirements would vary by risk level and nature of case plan, with those at high or medium risk required to complete rigorous programming
      ii. Requirements would apply prospectively (and would include people currently in prison)
   b. The BOP should allow all individuals, including those serving life sentences, to be eligible for earned privileges other than earned time
      i. Earned privileges would apply prospectively (and would include people currently in prison)
   c. Congress should expand eligibility for the one-year Residential Drug Abuse Program credit to include all individuals who can fulfill the program requirements (except individuals with life sentences)

2. Establish a Second Look provision to ensure judicious use of incarceration and encourage rehabilitation
   a. Congress should establish a Second Look provision
      i. Anyone who has served more than 15 years may apply for resentencing
      ii. Process:
         1. Congress designates a judicial decisionmaker; at least one judge in each circuit is assigned to hear petitions for review
         2. Judge conducts full judicial review to assess whether the sentence should be modified, based on current circumstances and the purposes of sentencing
   b. The USSC should develop guidelines for judges responsible for conducting Second Look reviews and modifying sentences

Recommendation 4: Ensure successful reintegration by using evidence-based practices in supervision and support

1. Conduct a comprehensive assessment of BOP procedures and practices surrounding prerelease custody, particularly Residential Reentry Centers (RRCs)
   a. The BOP Performance, Accountability, and Oversight Board (see Recommendation 5) should develop findings and offer recommendations regarding:

    i. Appropriate allocation of RRC beds to meet the needs of medium- and high-risk individuals
    ii. Alternatives to RRC placement for low-risk individuals, including housing vouchers and expanded use of federal location monitoring
    iii. Implementation of performance-based contracts for RRCs to emphasize programming, treatment, and recidivism reduction

2. Improve the transition of individuals transferring from BOP facilities to community agencies to ensure a safe and seamless reintegration
    a. The BOP, US Probation, and RRCs should improve coordination by establishing a shared information system, improving the transfer of case-level information, and expanding prison in-reach
    b. Information sharing should include assessment and evaluation information, details about program participation and performance, proof of program and vocational completion, medical and mental health status, and aftercare information

3. Strengthen supervised release and expand use of early termination for successful individuals

Recommendation 5: Enhance system performance and accountability through better coordination across agencies and increased transparency

1. Establish a joint Department of Justice/Judiciary working group (Joint Working Group) on sentencing and corrections to oversee implementation of recommended reforms
    a. The Joint Working Group should monitor implementation of recommended legislative and policy changes
    b. The Joint Working Group should submit an annual report to Congress on reform progress and key performance metrics, in conjunction with the Performance, Accountability, and Oversight Board and the USSC

2. Expand and disseminate public information and knowledge about federal corrections and supervision
    a. The Joint Working Group should review annual reporting of caseload data for the corrections and supervision population and recommend modifications
    b. The Joint Working Group should develop metrics and an ongoing review for performance measurement
        i. Review existing agency performance measures, develop metrics to fill identified gaps, and coordinate annual reporting to Congress
        ii. Ask the USSC to annually compile and release recidivism data, using multiple measures and definitions developed in consultation with the Joint Working Group

3. Establish a BOP Office of Victim Services as a point of contact for victims seeking information or support

4. Expand the role and capacity of the USSC to include more diverse perspectives and greater responsibility for cross-agency collaboration
    a. The USSC should include representatives of victims, formerly incarcerated individuals, defense attorneys, and experts in sentencing and corrections as full voting members
    b. The USSC should continue to monitor and report on the impact of changes in sentencing
    c. The USSC should revise its 2011 mandatory minimum report, including updated recommendations

5. Establish a permanent BOP Performance, Accountability, and Oversight Board (Board) to ensure the BOP carries out the recommended reforms while maintaining high standards of correctional practice
    a. The Board should work with the BOP to develop and promulgate performance metrics (at both organizational and staff levels) that emphasize risk and needs assessment and risk reduction activities, reentry preparation, and postrelease outcomes
    b. The Board should monitor the development of the new risk and needs assessment and implementation of the new earned time credits
    c. The Board should review BOP data on internal performance, safety, and security metrics for external consumption to support routine system assessment and identify needed improvements
    d. The Board should oversee development and implementation of a comprehensive 10-year plan to restructure the federal prison system in light of significant reductions in the prison population
    e. The Board should review BOP oversight, accreditation, auditing, and compliance mechanisms to ensure sufficient checks and balances are in place to support the BOP's system transformation
    f. The Board should conduct special studies as needed, such as a review of prerelease custody practices and procedures, focused on RRCs
6. Review federal collateral consequence laws, regulations, and practices that, without a public safety basis, bar civic participation and access to programs, then make recommendations for repeal
    a. The Joint Working Group should review federal collateral consequence laws
    b. Congress should allow Pell grants for incarcerated persons
    c. The President should eliminate executive branch criminal history disclosure on employment applications (i.e., "ban the box") for federal contractors, to parallel action already taken by the President for federal employees
    d. Congress should codify criminal history disclosure changes for federal employees and contractors

Recommendation 6: Reinvest savings to support the expansion of necessary programs, supervision, and treatment

1. Congress should provide funds immediately for recommended reforms:
    a. The BOP to implement a validated risk and needs assessment tool, to catalog current program offerings and capacity, and to expand necessary programs and treatment
    b. US Probation to increase staffing, programs, and services
    c. US Courts to establish the Second Look function
    d. The USSC to expand capacity and training
    e. DOJ Office of Justice Programs to incentivize front-end diversion programs, problem-solving courts, and other alternatives to incarceration, through grant programs to judicial districts and prosecutors' offices
2. The Joint Working Group, led by the DOJ and the federal Judiciary, should develop recommendations for reinvesting savings from the reduced BOP population, including continuation of funding for efforts specified above and support for other Task Force recommended reforms as they come online

Overview of the Task Force

Congress established the Charles Colson Task Force on Federal Corrections in January 2014 with a mandate to examine challenges in the federal corrections system, develop practical, data-driven policy responses to these challenges, and deliver recommendations to Congress, the President, and the Attorney General.[1] Congress named the Task Force for Chuck Colson, who devoted the second half of his life to supporting and advocating for individuals affected by incarceration. For more information on the life of Chuck Colson, see **box 1**.

BOX 1

The Life and Legacy of Charles "Chuck" Colson

The Task Force was named for Charles ''Chuck'' Colson who, because of his involvement in the Watergate scandal, went from working as counsel to President Richard Nixon to serving time in a federal prison. As a result of his prison experience and a spiritual transformation in 1973, Colson went on to found the Prison Fellowship to support and minister to incarcerated individuals and their families in the United States and around the world. He later started the Justice Fellowship as an advocacy organization to champion the rights of the incarcerated and fight injustices within the criminal justice system. Colson was honored with many awards during his lifetime, including a Presidential Citizens Medal awarded by President George W. Bush in 2008. Colson passed away in 2012 at the age of 80. In recognition of Colson's critical work surrounding prison reform, Congress sought to honor his life and legacy by naming the Task Force after him.

"Chuck made arguably one of the biggest impacts on prison reform following his own incarceration. By channeling his impactful work we are bound to see positive change in our prison system."
Frank Wolf, former Congressman (R-VA, 1981–2015); Chairman of the House Commerce-Justice-Science Appropriations Subcommittee (2001–2007, 2011–2015)

The Task Force is led by Chair J.C. Watts, Jr., former Congressman (R-OK), and Vice Chair Alan B. Mollohan, former Congressman (D-WV). It includes prominent criminal justice practitioners and experts with experience at both the state and federal levels. For the complete Task Force membership, see **box 2**. Full biographies of Task Force members can be found in **appendix B**.

BOX 2

Task Force Membership

J.C. Watts, Jr., Chair
Chairman, J.C. Watts Companies; Congressman (R-OK) (1995–2003)

Alan B. Mollohan, Vice Chair
Congressman (D-WV) (1983–2011)

Craig DeRoche *(began serving November 2015)*
Senior Vice President of Policy and Advocacy, Prison Fellowship; Member, Michigan House of Representatives (R-38th District) (2002–2009, Speaker 2005–2006)

David C. Iglesias
Director, Wheaton Center for Faith, Politics, and Economics at Wheaton College; US Attorney for the District of New Mexico (2001–2007)

Jim Liske (*served until November 2015*)
President and CEO, Prison Fellowship Ministries (2011–2015)

Jay Neal
Criminal Justice Liaison, Georgia Criminal Justice Coordinating Council; Representative, Georgia General Assembly (R-Lafayette) (2005–2013)

Laurie O. Robinson
Clarence J. Robinson Professor of Criminology, Law and Society, George Mason University;
Assistant Attorney General, US Department of Justice Office of Justice Programs (1993–2000; 2009–2012)

Cynthia W. Roseberry
Project Manager, Clemency Project 2014; Executive Director, Federal Defenders of the Middle District of Georgia (2009–2014)

Judge Ricardo M. Urbina
Arbitrator and Mediator, JAMS; Judge, US District Court for the District of Columbia (1994–2012)

John E. Wetzel
Secretary, Pennsylvania Department of Corrections; Warden, Franklin County (PA) Jail (2002–2010)

As directed by Congress, the Task Force analyzed relevant criminal justice data and identified factors driving cost and population growth in the federal corrections system; examined the degree and impact of overcrowding in Bureau of Prisons (BOP) facilities; reviewed BOP policies on conditions of confinement, program and treatment offerings, case management, and discharge planning; studied "lessons learned" from the Justice Reinvestment Initiative (JRI) and other successful state reform efforts (see **box 3** for more information on JRI); identified current and promising cost-effective criminal justice policies; developed practical, data-driven policy recommendations to address factors driving growth of the federal corrections population; and identified best practices for the federal corrections system to increase public safety, improve accountability of people convicted of federal crimes, and reduce recidivism.

BOX 3

The Justice Reinvestment Initiative

The Justice Reinvestment Initiative (JRI) is a public-private partnership between the US Department of Justice, Bureau of Justice Assistance and the Pew Charitable Trusts. JRI provides technical assistance to states and local jurisdictions to apply the principles of the justice reinvestment model to their corrections systems, seeking to cut costs while improving public safety. More than two dozen states have participated in JRI.

The justice reinvestment model focuses on using criminal justice data to identify factors that drive correctional spending and developing solutions supported by policymakers and stakeholders. Jurisdictions reinvest a portion of savings achieved through reforms in programs designed to increase public safety and reduce recidivism. A 2014 assessment of state progress under JRI found significant savings in corrections spending through reduction of prison beds and averted system growth.

Sources: "Justice Reinvestment Initiative," Bureau of Justice Assistance, accessed December 30, 2015, https://www.bja.gov/programs/justicereinvestment/index.html; La Vigne et al. 2014.

To accomplish its mandate, the Task Force engaged in a year of fact finding, data analysis, discussions with key experts and stakeholders, and deliberations to produce science-based and data-driven recommendations. As a central component of its work, the Task Force analyzed data provided by the BOP and the US Sentencing Commission to identify factors driving federal prison population growth and develop strategies to contain it. Through the course of its work, the Task Force released three policy briefs focusing on the drivers and consequences of federal prison growth and the individuals incarcerated in federal prisons, all of which were published on the Task Force website (www.colsontaskforce.org).[2] The Task Force also worked with the Urban Institute to develop the Federal Prison Population Forecaster.[3]

These analyses informed Task Force deliberations over the course of five two-day meetings between January and December 2015, during which the Task Force engaged in discussions and activities to examine challenges in the federal corrections system. At a series of public hearings, Task Force members heard testimony from more than three dozen invited speakers and members of the public, including key federal justice system officials, victims' advocates, federal criminal justice practitioners overseeing innovative programs, members of the defense bar, current and former corrections staff, formerly incarcerated individuals, and representatives of numerous advocacy groups. (A full list of public hearing speakers can be found in **appendix C**.) Task Force members also visited a US penitentiary and federal prison camp to meet with BOP employees and individuals incarcerated in those facilities.

Further discussions were held with key stakeholders through roundtables involving more than 100 participants. Each roundtable featured an in-depth conversation between Task Force members and participants about challenges in the federal justice system and their recommendations for reform. The roundtables featured perspectives from the following stakeholders: people currently in prison, the defense bar, formerly incarcerated people and their relatives, judges, law enforcement representatives,

probation and pretrial officers, prosecutors, residential reentry center operators, and victims' advocates. (A full list of roundtable participants can also be found in **appendix C**.)

In addition to formal roundtables, the Task Force held meetings with government officials and other experts and received public input through written testimony, e-mail correspondence, and telephone conversations. The Task Force also reviewed the BOP's classification and risk and needs assessments, program and treatment planning, and transition and reentry procedures. Earlier studies of the federal corrections system were reviewed as well.

The above-referenced activities informed the Task Force's discussions and decision-making, yielding the recommendations that follow.

The Transformation of the Federal Corrections System

Decades of unrelenting growth within the federal prison system have created an urgent need for action, in the interests of both public safety and fiscally responsible governance. Since 1980, the federal prison population grew eight-fold, peaking at almost 220,000 in 2013.[ii] This upward trend has only recently begun to reverse, with the December 2015 population at 197,000 people.[4] The growth was caused by a profound transformation in federal criminal justice law and policy, which required the BOP to house ever-larger numbers of people for longer periods of time. The passage of stiff sentencing laws and tough prosecution charging policies, combined with the abolition of parole, led to substantially longer prison stays, driving the population up. Meanwhile, the volume of federal drug prosecutions expanded steadily. More recently, immigration cases have proliferated as well. Before these shifts, the federal prison population had stayed virtually flat for four decades, between 1940 and 1980, in contrast to its expansion by more than 170,000 between 1980 and today.[5]

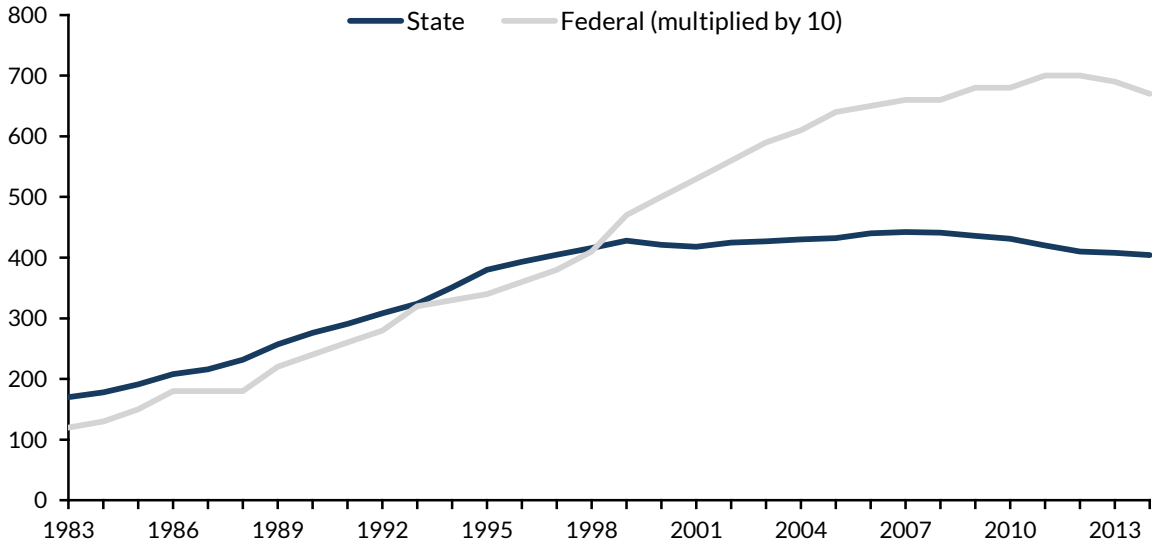
This unprecedented growth has far outpaced the rise in state prison populations (see **figure 1**), making the BOP the largest prison system in the country. Federal prison costs have spiked as well, growing at almost twice the rate of the rest of the US Department of Justice (DOJ) budget and threatening to undermine other funding priorities.

Despite the increase in spending and recent population reductions, the BOP continues to struggle under the weight of overcrowding and its harmful impacts. Staffing is insufficient to maintain a safe and secure environment, resulting in dangerous conditions for corrections officers and the men and women they oversee. Overcrowding also compromises the BOP's ability to provide adequate programming, treatment, and case management. As noted in a recent DOJ Inspector General report, "Though the number of federal inmates has declined for a second year in a row, the Department of Justice continues to face a crisis in the federal prison system."[6] While this crisis is largely not of its own making, the Task Force found that the BOP has in some instances failed to adopt state-of-the-art correctional practices in areas such as risk assessment that could help ameliorate it.

[ii] Unless otherwise noted, the source of all data presented in this report is Task Force staff analysis of data provided by the BOP and the US Sentencing Commission, FY 1994–FY 2014, and the analyses pertain only to those who have been federally sentenced. The offense information presented is the most serious as determined by the BOP. Though most of those in the BOP are convicted of a federal crime, in 1997 the BOP assumed responsibility for the confinement of individuals convicted of District of Columbia (DC) code felonies. In FY 2014 there were 5,000 people sentenced for DC code felonies in federal prison, including people returned to prison following a revocation of probation or parole.

FIGURE 1

The BOP incarceration rate has grown faster than the states



Source: "Corrections Statistical Analysis Tool (CSAT) - Prisoners," Bureau of Justice Statistics, accessed December 30, 2015, http://www.bjs.gov/index.cfm?ty=nps.

The BOP's rapid population growth, while creating hazardous conditions in its facilities, has produced only modest public safety benefits—at best. Many scholars have attempted to measure the nuanced relationship between incarceration and crime; the most credible research estimates that about one-quarter of the violent crime drop of the 1990s was attributable to increased imprisonment.[7] However, research shows that each additional person sent to prison does not result in an equal public safety benefit.[8] As more people are incarcerated for a wider variety of offenses, the public safety payoff diminishes significantly. In addition, for those admitted to prison, there is growing consensus that longer sentences do not result in lower rates of recidivism.[9] Moreover, a 2015 systematic review found that prison is often no better than community-based sanctions in reducing re-offending.[10] In fact, many states have shown that it is possible to reduce the use of incarceration while also reducing crime rates.[11] Thus, legitimate concerns exist about the public safety return from a federal prison system deeply invested in long sentences.

Who is in the BOP?

FIGURE 2

Characteristics of the Bureau of Prisons standing population

At the end of FY 2014, there were 213,849[iii] people in federal prison (standing population).

Characteristic	Share of standing population
Commitment Type	
Federally sentenced (new crime or supervision violation)	92%
DC code felony	2%
Pretrial detention or other commitment type	6%
Security Level	
Minimum	18%
Low	41%
Medium	30%
High	11%
Facility Type	
BOP	80%
Private[a]	14%
Pre-release custody	6%
Age[b]	
Under 18[c]	0%
18 to 24	5%
25 to 34	30%
35 to 44	35%
45 to 54	20%
55 to 64	8%
65 and older	3%
Sentence Length	
1 year and less	4%
1.1 to 5 years	29%
5.1 to 10 years	29%
10.1 to 20 years	26%
20 or more years	12%
Race and Ethnicity	
Hispanic/Latino	35%
Black/African American	35%
White/Caucasian	27%
Native American	2%
Asian American	1%
Citizenship	
US citizen	76%
Noncitizen	24%
Gender[d]	
Male	93%
Female	7%

Source: Task Force staff analysis of BOP FY 2014 data.
a. Almost all people held are non-US citizens in low-security facilities.
b. Percentages may not total 100 because of rounding.
c. There are 13 individuals under 18, making up 0.01 percent of BOP population.
d. The BOP reported 109 people in their custody identified as transgender in 2015. However, this number does not include people who did not request services.

[iii] Except for commitment type, all other analyses reflect only the federally sentenced population.

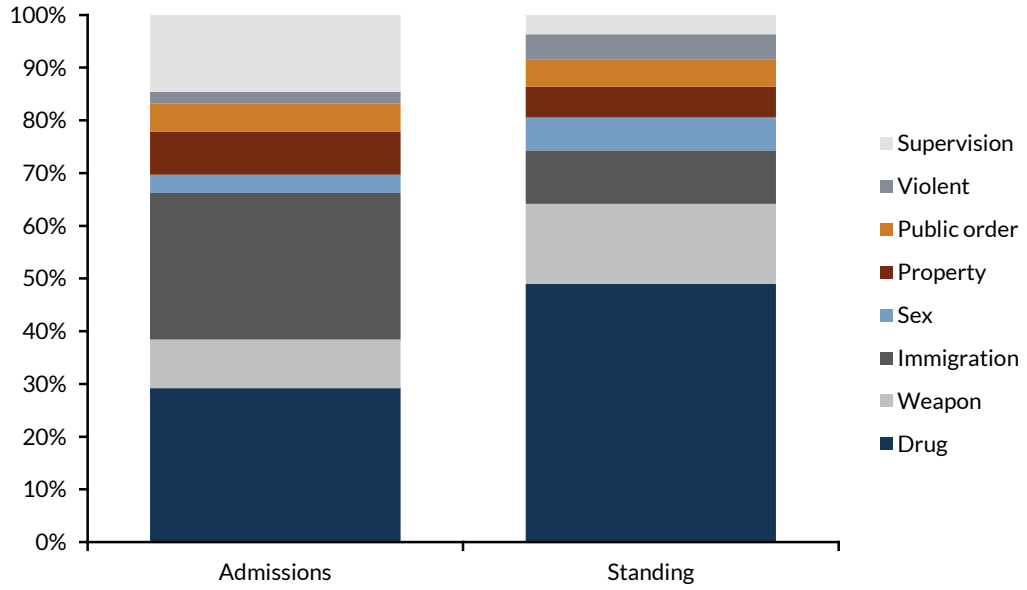
FIGURE 3

Comparison of admissions and standing populations by offense type

There were 75,030 people admitted to federal prison in FY 2014 (admissions population). The composition of the admissions population differs from that of the standing population because the standing population has a greater share of people with longer lengths of stay.

Common offenses	Admissions	Standing
Drugs	29%	49%
Weapons	9%	15%
Immigration	28%	10%

Drug offenses are the most frequent admission type, accounting for close to half of the BOP standing population.



Source: Task Force staff analysis of BOP FY 2014 data.

Federal Sentencing Reform in the 1980s

The growth of the federal prison system is the result of significant changes in federal criminal justice policy and practice in the 1980s. The centerpiece of today's sentencing regime is the Sentencing Reform Act of 1984 (SRA), bipartisan legislation designed to eliminate indeterminate sentencing, structure judicial sentencing discretion through the creation of sentencing guidelines, reduce sentencing disparity, and increase uniformity and proportionality.[12] Key features of the SRA, which established the US Sentencing Commission and required the development of Sentencing Guidelines,[iv] are summarized in **box 4**. Legislation establishing mandatory minimum penalties for drug offenses soon followed, beginning with the Anti-Drug Abuse Act (ADAA) in 1986. The law and subsequent amendments prescribed long prison terms for many drug crimes based solely on the type and quantity of the drug.[13]

BOX 4

Sentencing Reform Act: Key Features

1. Defined purposes of sentencing: just punishment (sometimes called retribution), deterrence, incapacitation, and rehabilitation
2. Established the US Sentencing Commission to develop mandatory guidelines for all felonies and Class A misdemeanors (made advisory by *United States v. Booker* in 2005)
3. Abolished parole and imposed truth-in-sentencing rules, requiring individuals to serve 85 percent of their prison terms
4. Created a separate term of post-prison supervised release distinct from a prison term
5. Provided appellate review of sentences

Sources: US Sentencing Commission 2011a; *United States v. Booker* 543 US 220 (2005).

Judges are responsible for imposing sentences in light of the federal Sentencing Guidelines, along with statutory penalties and case law. (See **box 5** for additional information about probation, financial penalties, and supervised release.) The Guidelines take into account the seriousness of the offense and the criminal history of the individual, as well as specific offense characteristics and adjustments based on other factors such as the type of victim, an individual's role in the offense, and whether there was obstruction of justice. Taken together, these factors provide judges with an advisory range of possible sentences (the Guideline range).

[iv] While the Guidelines were originally created as mandatory, the 2005 *United States v. Booker* Supreme Court decision rendered them advisory.

BOX 5

Federal Probation, Financial Penalties, and Supervised Release

Most statutes do not require a term of imprisonment, and instead allow either a term of probation or incarceration. Two exceptions are statutes that include a mandatory minimum term of imprisonment or statutes that explicitly forbid a term of probation but do not indicate a required length of imprisonment. Probation is authorized for up to five years, and must be at least one year for a felony. Federal laws may also include financial penalties, including fines, restitution, and special assessments.

When a term of imprisonment is imposed at sentencing, there is generally also a term of supervised release. The primary intent of supervised release in the federal system is to facilitate reintegration.

Source: US Sentencing Commission 2015c.

The US Sentencing Commission chose to incorporate the mandatory penalties for drug crimes into its Guidelines to ensure consistency and avoid unwarranted sentencing disparities. Because mandatory minimum sentences for drugs are tied to drug quantity, the advisory Guideline range for a drug sentence is also based on quantity, and is proportional to the mandatory minimums.

The Guidelines include opportunities for departures when a sentence above or below the advisory range is warranted. But judges have only two options for reducing sentences for those convicted of a drug offense carrying a mandatory minimum:

1. when the defendant provides substantial assistance[v] to prosecutors who are investigating related crimes[14] or
2. when the defendant meets the five judicial "safety valve" criteria: (1) no more than one criminal history point; (2) no violence or weapon; (3) no death or serious bodily injury; (4) no leadership role adjustment; and (5) full and truthful disclosure.[15]

Those convicted of other mandatory minimum penalties are eligible for a reduction based on substantial assistance but the safety valve is only available to individuals convicted of drug crimes.

Perhaps not surprisingly, since the passage of SRA and ADAA in the 1980s, the probability of receiving a term of incarceration, rather than probation, has risen, as have the number of cases prosecuted federally. These changes have fundamentally transformed federal prosecution and the resulting sentencing outcomes. Between 1985 and 2014,

- convictions in US courts nearly doubled from 40,924 to 76,835,[16] and
- the probability of receiving a term of incarceration at sentencing increased dramatically from 50 percent to 90 percent.[17]

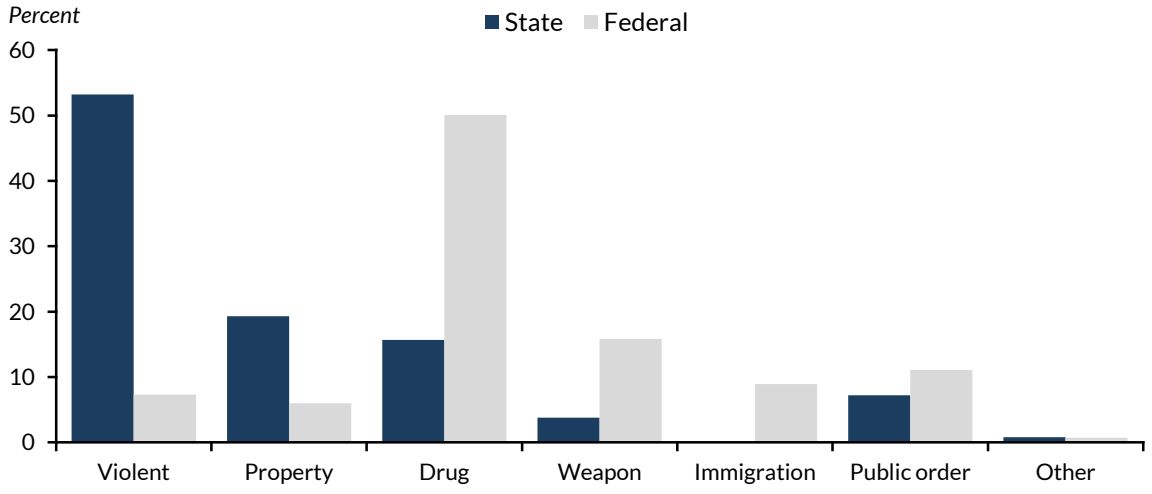
[v] This creates a situation in which those who hold the most information, arguably people in leadership roles in criminal organizations, have the greatest ability to reduce their sentences while those who play lesser roles may remain subject to mandatory minimums.

The federal criminal justice system continues to be guided by Congress, which determines which offenses constitute federal crimes and chooses the type of sentence available for each offense. While there are more than 4,000 criminal statutes,[18] most are rarely used.[19] Federal jurisdiction is very broad, and much of it is held concurrently with states. For example, most drug and violent crimes could be prosecuted either by the federal government or the states. Where there is concurrent jurisdiction with the states, federal prosecutors are encouraged to pursue only cases that represent a substantial federal interest (such as interstate or international crimes) or that require federal investigative expertise. Areas of exclusive federal jurisdiction include immigration, espionage, counterfeiting, fraud against the government, and crimes committed in federal enclaves.

The reforms and unique characteristics of the federal system make for a prison population markedly different from the mix of people incarcerated by states, as depicted in **figure 4**. Sixteen percent of people in state prison have been convicted of a drug crime, for example, but that figure is 50 percent in the federal system. And almost all people in federal prison for drug crimes are convicted of drug trafficking as opposed to possession. Violent offenses account for about half of the offense profile in state prisons, but only seven percent in the BOP. Immigration offenses are not prosecuted by the states, but more than one in four people admitted to federal prison and about one in ten individuals housed in a federal facility have been convicted for immigration offenses. And most people in federal prison for property crimes are convicted of fraud, generally associated with losses in the hundreds of thousands, if not millions, of dollars. Public order crimes in the federal system include white collar regulatory offenses and racketeering, while those in the states consist of court offenses, driving under the influence, and liquor law violations, among others.[20]

FIGURE 4

Drug offenses dominate the federal system, whereas violent offenses dominate state systems



Source: Carson 2015, as modified by Task Force staff.
Note: Timeframe and offense categorization in Carson differ from Task Force staff analysis.

In addition, supervision violators make up about three percent of the federal prison population, a much smaller proportion than in state systems. Moreover, most people in federal prison for sex crimes were convicted of possessing, trading, selling, or producing child pornography versus sexual assault, which is more common in state corrections systems. Significant shares of those convicted of federal sex crimes are subject to extremely lengthy sentences with few opportunities for reductions post-conviction.

The Abolition of Parole and Increase in Time Served

In keeping with its goal of increasing certainty and transparency in sentencing (sometimes called truth in sentencing), the SRA abolished parole, established a specified term of post-prison supervised release, and reduced good conduct time to a maximum of 15 percent of an individual's sentence. As a result, in the federal system today, the sentence imposed largely determines the length of time served. Combined with mandatory minimum sentences, this means that not only are more people receiving long sentences, but they are also required to serve a substantially larger proportion of those sentences. Between 1985 and 2014, the average time served for individuals released from federal prison increased slightly from 35 months[21] to 39 months. But this average, which is heavily influenced by the substantial increase in the number of people receiving short sentences for immigration offenses, masks significant increases in time served for other offense types. In particular, time served for drug offenses increased from 27 months to 58 months. Time served for weapon offenses increased from 24 months to 60 months.[22]

Moreover, there are limited opportunities for people to have their sentences reduced after they begin their federal prison terms.[vi] Prosecutors can request reduced sentences for those who provide substantial assistance to investigators and prosecutors after sentencing,[23] and individuals can petition to have their sentences commuted (or reduced) by the President through executive clemency.[24] But the BOP itself has limited options for modifying time served.

One avenue is through the good conduct credit. Those with sentences of more than a year are eligible to earn up to 54 days of good conduct time annually, or a sentence reduction of up to 15 percent.[25] Because of the way the good conduct time is calculated, however, people in federal prisons can earn a maximum of only 13 percent instead of 15 percent.[vii]

Only one program, Residential Drug Abuse Program (RDAP), enables participants to earn time off their prison term. Based on cognitive behavioral therapy, RDAP is the BOP's most intensive substance abuse treatment program and involves three treatment phases: residential treatment (intensive half-

[vi] The United States also has prisoner transfer agreements with 77 nations and territories that enable eligible individuals to serve the remainder of their prison terms in their countries of origin. While foreign nationals make up about one-quarter of the BOP population, very few individuals are transferred under the International Prisoner Transfer Program. See Office of the Inspector General 2011, 2015a.

[vii] To calculate a full 15 percent, after an individual serves 311 days, the remainder of the year (54 days) is credited to their sentence, thus adding up to 365 days. The BOP, however, calculates the 54 days as only accruing after an individual has served 365 days, meaning that the cycle occurs in 419-day intervals. As a result, the BOP calculates good time such that individuals can only earn up to 47 days (or about 13 percent) off their sentences each year.

day programming, five days a week, for nine to twelve months), nonresidential follow-up treatment, and community-based treatment services. Those eligible for RDAP who complete the full program can earn up to one year off their sentences.[26] However, those who have a demonstrated history of substance abuse but have committed a violent offense or have a history of violence are ineligible for a sentence reduction, although they may participate in the program.

Another mechanism for sentence reduction within the BOP's purview is to file a motion asking a judge to reduce a person's prison term through compassionate release if "extraordinary and compelling reasons" exist. Until recently, that was taken to mean only advanced, terminal illnesses. Criticism of the small number of people granted compassionate release prompted the BOP to expand its eligibility criteria to include more people who are older, who are ill, and who have served a set period of time. Nonmedical criteria, such as having a child who lost his or her primary caretaker, are also available but are rarely, if ever, used. Indeed, the number of compassionate release cases remains small, with about 100 benefiting from the program in FY 2015.[27]

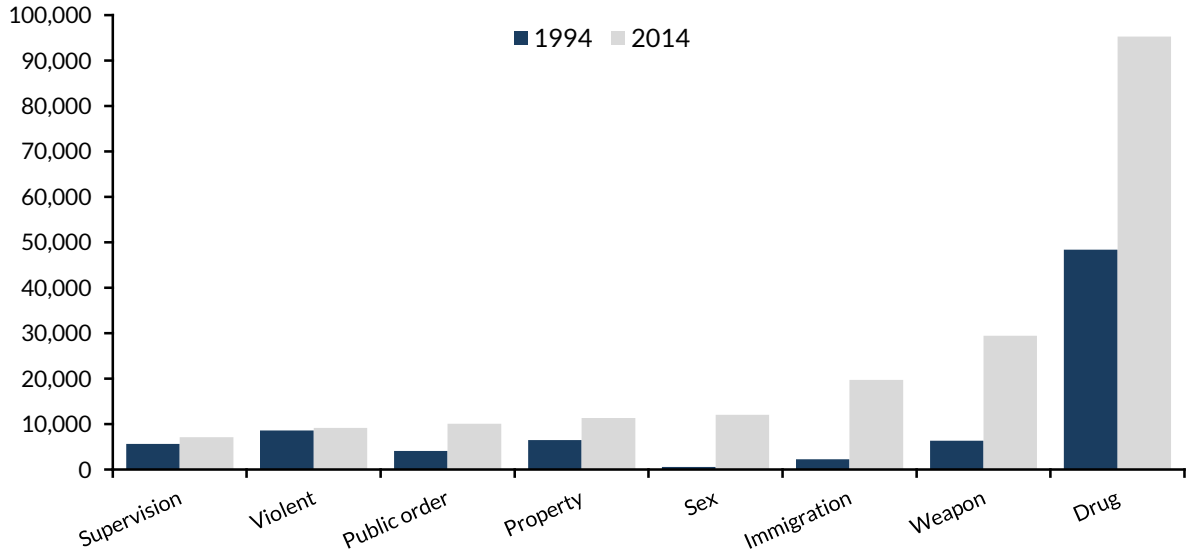
The Policy Changes Driving BOP Growth

Two simple factors have driven growth in the federal prison population: **more people have been sent to federal prison** and **for longer periods of time**.[28] The BOP does not control either factor. Policy and statutory changes in the 1980s directly influenced these dynamics, and today's federal prison population looks very different than it did decades ago, as shown in **figure 5**. The Task Force analysis yielded four key findings:

- Federal prison growth was driven largely by drug and weapon offenses;
- Mandatory minimums drove long sentences for drug crimes;
- Many people convicted of drug crimes have minimal or no criminal histories; and
- Mandatory minimums also drove growth in long sentences for weapon offenses.

FIGURE 5

The size and composition of the federal prison population has changed markedly



Source: Task Force staff analysis of BOP FY 1994 and 2014 data.

Federal prison growth driven largely by drug and weapon offenses

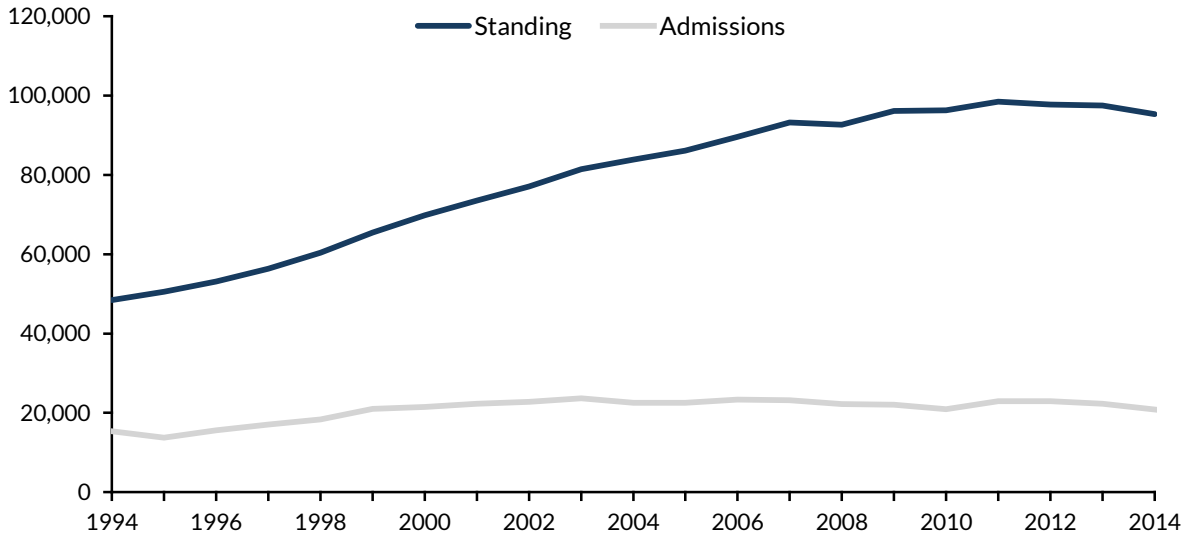
The number of people in federal prison for drug offenses dwarfs that for any other offense type. The growth in weapon and drug offenses together makes up over 60 percent of all growth in the federal prison system for the past two decades. The number of people in prison for sex crimes and immigration offenses has also grown sharply since 1994, but drug and weapon offenses have had a greater impact on the overall BOP population.[viii]

As shown in **figure 6**, the number of people *entering* federal prison for drug offenses has been relatively constant since the late 1990s, but the number of people *in* federal prison for these crimes continued to grow, largely because of the long sentences and resulting prison time served for such crimes. Every year, more than 20,000 people are admitted to federal prison for drug crimes, making it the most common type of admission. Many of those convicted receive sentences in excess of five or ten years. Because of these sentences, the population has continued to grow even as admissions have stayed constant.

[viii] Over the past two years, the number of criminal convictions for immigration offenses dropped 20 percent; with it, the number of people in federal prison for immigration offenses dropped considerably. See "Criminal Immigration Convictions Drop 20 Percent," Transactional Records Access Clearinghouse, June 12, 2015, http://trac.syr.edu/immigration/reports/392/.

FIGURE 6

The number of people in prison for drug offenses has grown despite flat admissions



Source: Task Force staff analysis of BOP FY 1994–2014 data.

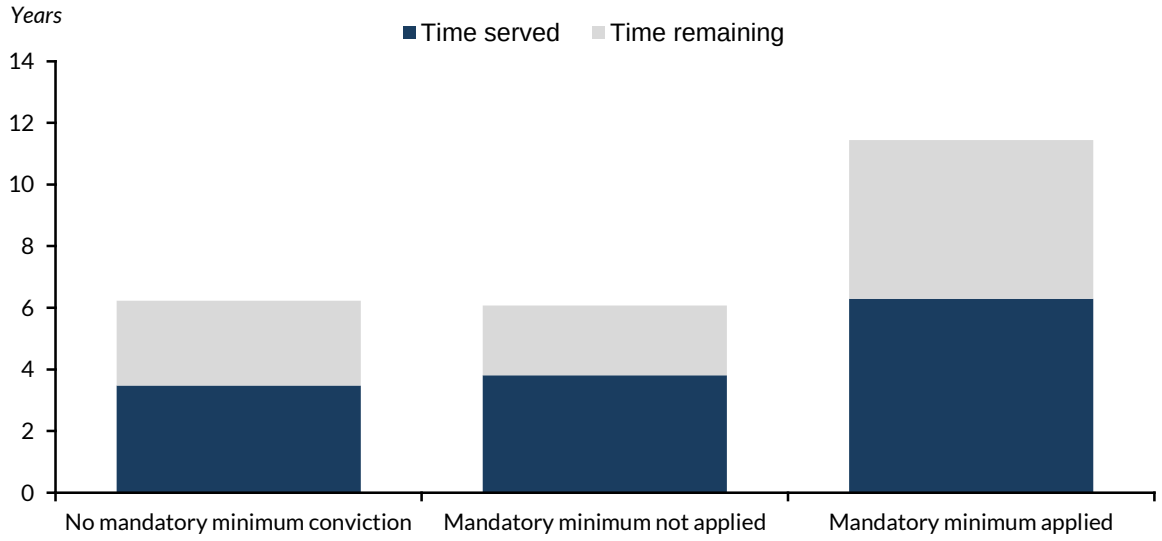
Mandatory minimum sentences drove long sentences for drug crimes

As described previously, mandatory minimum penalties play a large role in determining the ultimate sentence for a drug trafficking offense. Almost all are based solely on the quantity of the drug and do not take into account the role individuals play within drug trafficking organizations or the use of violence in the commission of a crime.[ix] For example, a courier driving a truck with drugs in it may be subject to the same mandatory minimum penalty as the person who employs him or her—based solely on the quantity of the drug involved. The average expected time served for the 55,000 people in prison sentenced pursuant to a mandatory minimum for drug offenses (59 percent of those in federal prison for drugs) is more than 11 years. The effects of mandatory minimum penalties, however, can extend even further to those *not* convicted of an offense carrying such penalties (22 percent). This is largely because the US Sentencing Commission structured its Guidelines for drug trafficking around the mandatory minimum penalties. As a result and shown in **figure 7**, the average expected time served for those not convicted of a mandatory minimum penalty is still more than six years. The same is true for the remaining 19 percent of those convicted of drug crimes who were relieved from the mandatory sentence; they have an average expected time served of 6 years.

[ix] Some mandatory penalties can be enhanced if death or serious bodily injury resulted, if the individual was previously convicted of a drug felony, or if the case is prosecuted under 21 USC § 848, the Continuing Criminal Enterprise statute.

FIGURE 7

Time served for drug offenses is long, regardless of mandatory minimum application



Source: Task Force staff analysis of BOP and USSC FY 1994–2014 data.

Many people convicted of drug crimes have minimal or no criminal histories

Almost half (45 percent) of the 95,305 people serving time for drug crimes in federal prison are in the lowest two criminal history categories, meaning they have few, if any, prior convictions. They also have a low risk of recidivism.[29] In fact, more than one-quarter of all people in prison for drug offenses have no prior criminal history. And almost 80 percent of all individuals in federal prison for drug crimes had no serious history of violence before their current offense. Specifically, more than half have no violent history at all, and 22 percent have only minor histories of violence, such as simple assault and other crimes that do not typically lead to serious injury.

Similarly, people incarcerated for drug crimes were typically not convicted of playing a leadership or violent role[x] in drug trafficking conspiracies:

- Only 14 percent were sentenced for being a manager, supervisor, leader, or organizer in the offense
- Fewer than 25 percent were sentenced for the use or presence of a weapon during the offense
- Only 14 percent were sentenced for using violence, making a credible threat to use violence, or directing the use of violence during the offense[xi]

[x] The US Sentencing Commission found that individuals' roles can range from courier to high-level supplier or importer (2011b).

[xi] This factor only became incorporated in sentencing starting in the 2011 amendment year.

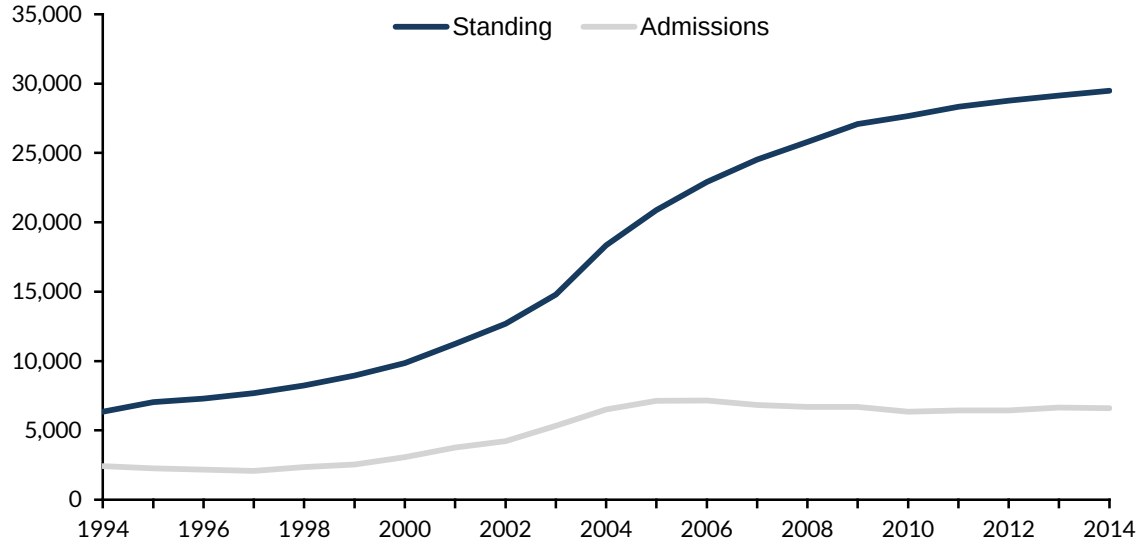
Mandatory minimum sentences also drove growth in long sentences for weapon offenses

Like lengthy sentences associated with mandatory minimum penalties for drug offenses, weapon-related sentencing enhancements can yield long prison terms. The most frequently applied enhancement is 18 USC § 924 (c), which mandates that people who possess, brandish, or fire a weapon during the commission of a drug trafficking or violent offense are subject to an additional penalty on top of the sentence imposed for the main offense, the length of which varies depending on how the weapon was used.

As shown in **figure 8**, the number of people in federal prison for weapon offenses has grown considerably in the past two decades, increasing by 23,000 people. Many of these individuals were convicted of this weapon enhancement, often on top of a drug offense subject to a mandatory minimum. The long lengths of stay associated with mandatory weapon enhancements have driven growth in the federal system; long after the number of admissions for weapon offenses plateaued (and even declined), the population continued to climb rapidly.

FIGURE 8

The number of people incarcerated for weapon offenses has increased rapidly, despite a plateau in admissions



Source: Task Force staff analysis of BOP FY 1994–2014 data.

There are 20,000 people in federal prison who were convicted of this weapon enhancement, 89 percent of them having it applied at sentencing. The length of the enhancement varies based on the details of the offense, so people who fire weapons have longer mandatory sentences than people who merely possess (but do not brandish or fire) their weapons. The mandatory minimum penalty for possession, however, is still five years on top of whatever sentence is imposed for the underlying offense, be it a drug or a violent offense. For example, if an individual is convicted of trafficking a quantity of drugs that would trigger a five-year mandatory minimum sentence, and possessed a weapon while doing so, then the person could be subject to a ten-year mandatory minimum sentence.

Those convicted of possession make up a majority of those in federal prison convicted of 18 USC § 924 (c), but possession can cover a wide variety of behaviors, many of which do not involve the use of violence. For example, the courts have found that having a weapon in one's house or in one's car could qualify as possession, resulting in this lengthy enhancement.[30] Individuals in federal prison who received the mandatory enhancement for a single count of possession have average prison terms of almost 15 years.

Importantly, histories of violence are not a prerequisite for applying the 18 USC § 924 (c) mandatory minimum. About 40 percent of individuals convicted of possession were in the lowest two criminal history categories at sentencing. Most individuals convicted for weapon possession have minimal histories of violence, with 72 percent having no serious histories of violence prior to the current offense and almost half having no histories of violence whatsoever.

With Growth, Comes Consequences

Rising costs

The BOP's growth and size have created a tremendous financial burden for the federal government, requiring significant investment in basic housing and infrastructure and leaving few resources for the important work of supporting rehabilitation and successful reentry.[xii] The BOP's budget remains persistently high despite recent reductions, with $7.5 billion appropriated in FY 2016.[31] Adjusting for inflation, the cost of federal prisons grew from $950 million to almost $7.5 billion in the past 35 years, an increase of 687 percent.[32] These expenditures have increased at twice the rate of the rest of the DOJ budget. The BOP accounts for 25 percent of that budget today, up from approximately 20 percent in 2009.[33] This rapid growth in spending has had a limited—and likely diminishing—impact on public safety as federal prisons filled with people convicted of less serious offenses.

[xii] In FY 2014, the average annual cost of incarceration was $30,620 per person. The average annual cost to confine an individual in a Residential Reentry Center was $28,999.

More prison spending also means less support for treatment, prevention, and intervention programs ... And, unless we address it, the situation will only get worse and will have a real, negative effect on public safety.

Richard Hartunian, US Attorney for the Northern District of New York, January 28, 2015

The toll on individuals, families, and communities

The significant growth of incarceration in the federal system—and across the country at both state and local levels—has come at tremendous cost to individuals, families, and communities, and to society overall. Incarceration not only imposes an opportunity cost in the form of lost wages and livelihoods, but also takes a damaging toll on the mental health of those serving time, many of whom exhibit higher rates of depression, posttraumatic stress disorder, and other mental illnesses.[34] Absent effective rehabilitative programs, the experience of incarceration can be criminogenic, or likely to cause the very behavior it is punishing.[35] Moreover, the collateral consequences of having served time in prison can last for life. Legal barriers to employment, housing, and voting, to name only a few obstacles, can have a profound impact on a person's likelihood of success following release from prison. In addition, the stigma associated with a criminal background presents a significant challenge for those seeking to resume life outside prison walls.

Incarceration also takes a toll on the children and families left behind. Children of incarcerated parents have been found to exhibit more negative behavioral, academic, and emotional outcomes, and are more likely than their peers to end up in prison.[36] Families of the incarcerated typically experience financial hardship because of the loss of a key wage earner and the costs of prison visits and telephone calls.[37] These economic challenges lead many families with loved ones behind bars to move frequently, resulting in an expensive, disruptive pattern of residential relocation that makes retaining jobs and succeeding in school more difficult.[38]

Overall, the removal and return of community members through incarceration at both the federal and state levels weakens the social fabric and vibrancy of communities, particularly communities of color.[39] When large populations of adult men cycle in and out of their neighborhoods, community support systems are destabilized.[40]

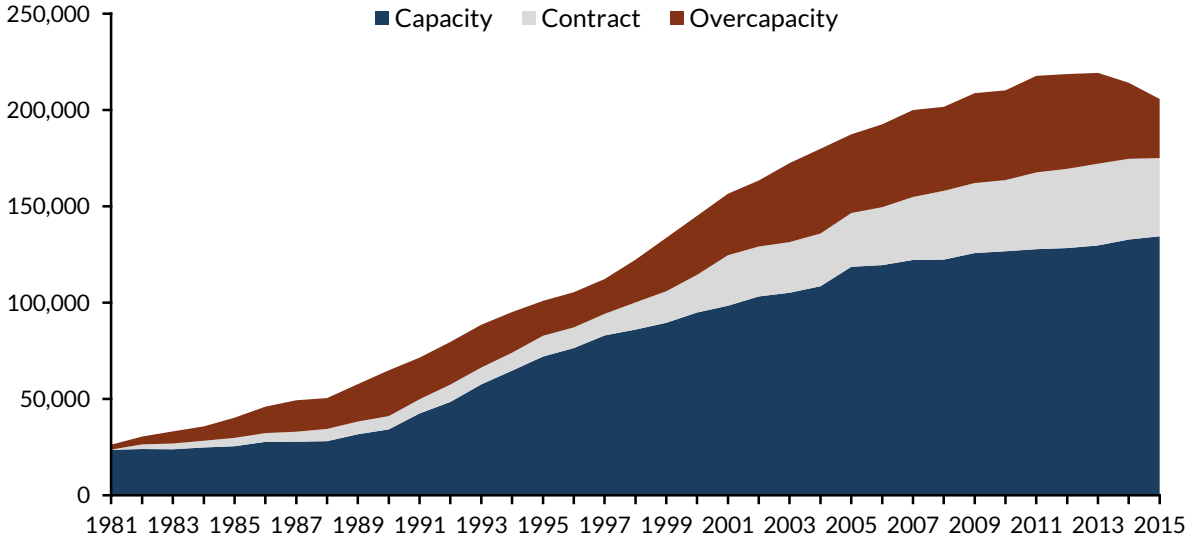
Overcrowding and poor conditions of confinement

Despite a massive prison construction effort, growth of the federal prison population since 1980 has overwhelmed capacity at many of the BOP's 122 correctional facilities. Overcrowding, defined as the percentage of the prison population that exceeds a facility's rated capacity, has been the norm in the BOP for years and continues despite the recent dip in population. **Figure 9** shows that growth in the BOP population has outpaced capacity. The federal prison population would need to drop by about 50,000 to be in compliance with rated capacity and enable the BOP to end its reliance on private facilities. While crowding in any correctional facility creates challenges, it is particularly disturbing that

the BOP's most overcrowded institutions tend to be those housing those who pose the greatest security risk. Overcrowding across all BOP facilities was at 20 percent at the end of calendar year 2015, but the figure was 45 percent at high-security institutions.[41]

FIGURE 9

Growth in BOP population has outpaced capacity



Sources: James 2014; Federal Bureau of Prisons 2015; Federal Bureau of Prisons, correspondence with the Task Force, 2016. As modified by Task Force staff.

Prison overcrowding is not merely an inconvenience or a cause of discomfort for the incarcerated. The excessive numbers in prison escalate tensions behind bars and stretch staff, creating conditions that threaten safety and security for corrections officers and those they oversee. Overcrowding, coupled with insufficient staffing, restricts the ability of wardens to foster a rehabilitative environment because staff time is dominated by custody duties. The large populations also strain facility infrastructure, including sewage, ventilation, and power systems, which leads to unsafe and unhealthy conditions for all. Task Force members observed the realities of overcrowding firsthand when touring the medium-security facility at the US Penitentiary, Atlanta. The prison's tiny cells held two or sometimes three men, many of whom had spent years living in such cramped conditions.

Crowding means… cramming three inmates into a cell made for two in areas of the prison not suitable for inmate housing. Crowding means fights or disturbances over phones, showers, televisions, and basketball courts.

Eric O. Young, President of the American Federation of Government Employees Council of Prison Locals, March 11, 2015

As the Task Force's visit to Atlanta vividly demonstrated, BOP facilities are badly overcrowded and beset with staffing limits that are detrimental to the safety and wellbeing of officers as well as the incarcerated. As the population in federal prisons ballooned, new prison construction was unable to keep pace. Even the growth in the BOP budget has been insufficient to minimize crowding and ensure adequate staffing. The BOP's case management program makes the staffing shortage clear. The program was originally designed for roughly *twice* the number of staff it currently employs.[42] Moreover, the BOP's medium- and high-security facilities have even higher degrees of overcrowding; this can breed misconduct within incarcerated populations, resulting in increased violence. The BOP has estimated that every 1 percent-age point increase in overcrowding results in an increase of 4.1 assaults per 5,000 people in prison.[43]

Inadequate programming

In addition to creating security problems, overcrowding undermines the BOP's ability to provide programs, health services, case planning, and treatment that can help those in prison successfully return to the community. In the BOP, every staff member is trained to assist with security duties. In overcrowded prisons, that fact means that teachers, psychologists, and other non-custody staff can be diverted to fill security posts when a shortage of correctional officers occurs.[44] This practice is so widespread it has an official name, "augmentation." It was described to Task Force members multiple times by BOP staff and management at all levels.

Aside from the disruptions in programs caused by augmentation, the sheer volume of people in prison means that demand for many programs far exceeds capacity. Such overloaded programs include graduate equivalency, postsecondary education, vocational training, and treatment programs for individuals convicted of sex offenses;[45] many of these programs have been found to reduce recidivism or increase an individual's employment prospects upon release.[46]

A New Path

As detailed above, decades-long unprecedented growth has created daunting challenges for the federal prison system. Overcrowding not only creates danger for staff and those they oversee, but also limits the availability of programs to prepare the incarcerated for a productive future. Prison spending has

shot up rapidly, straining resources needed for other DOJ priorities, yet there has been little thoughtful evaluation of the public safety return on our investment, or consideration of less expensive and more effective alternatives. Total costs remain unsustainably high, yet budgets are insufficient to provide the environment and case management necessary to promote rehabilitation for an incarcerated population so large.

Despite this web of problems, there are hopeful signs. The prison population has fallen for the first time in more than 30 years, and recent policy changes to accelerate release have not been accompanied by a spike in recidivism.[47] All branches of government have contributed to recent reductions in the prison population by enacting both legislative and policy changes, including the Fair Sentencing Act, the Smart on Crime initiative, and a modification by the US Sentencing Commission known as Drugs Minus Two (see **box 6**).

BOX 6

Key Changes in Legislation and Policy

- **The Fair Sentencing Act**, passed by Congress in 2010, reduced the sentencing disparity between crack and powder cocaine by increasing the quantities that triggered a mandatory minimum penalty for trafficking crack cocaine and removing a mandatory minimum penalty for possession. Since then, the number of people convicted of and sentenced for crack offenses has dropped sharply, average crack sentences are lower, and, based on guideline changes applied retroactively, more than 7,700 individuals had their sentences reduced. The retroactive changes, however, did not change the mandatory minimum for those sentenced before 2010.
- **Smart on Crime**, an initiative launched by former Attorney General Eric Holder in 2013, shifted Department of Justice priorities, directing prosecutors to focus on the most important law enforcement priorities and to reserve mandatory minimum penalties for the most serious drug cases. This reform built on 2010 DOJ policy changes that enabled prosecutors to take individual characteristics into account in making charging decisions and reversing the requirement that prosecutors charge the most serious, readily provable offense(s) in all prosecutions. Smart on Crime urged prosecutors to exercise their prosecutorial discretion and refrain from charging offenses that carry mandatory minimum penalties in less serious cases. Guidance to federal prosecutors explicitly stated that "long sentences for low-level, non-violent drug offenses do not promote public safety, deterrence, and rehabilitation." In the first year of this policy, 20 percent fewer people were convicted of a drug offense carrying a mandatory minimum penalty.
- **Drugs Minus Two**, or the 2014 Drug Amendment (Amendment 782) from the US Sentencing Commission, modified the recommended guideline level and reduced sentences for most drug offenses. The amendment also included a retroactive application, which will modify sentences for up to 40,000 people currently in federal prison by an average of 25 months. This was responsible for the November 2015 release of about 6,000 individuals. The US Sentencing Commission estimates that the change in the way drug sentences are calculated will benefit most people sentenced for drug crimes, but this reform does not alter underlying mandatory minimum penalties.

Sources: Holder 2010, 2013; US Sentencing Commission 2014a, Table 43; 2014b; 2014c; 2014e; 2015a, Table 43; 2015e.

But while the recent ten percent drop in population is significant and encouraging, it is greatly overshadowed by the tremendous growth that preceded it. Fixing the widespread problems spawned by that growth is a complex task, one requiring a thorough overhaul of federal policies and practices to ensure the right people are sentenced to prison and more effective alternative sanctions are available for the rest.

However, the BOP cannot take on this challenge alone. In fact, the BOP has very little control over who is confined in federal facilities or how long they stay there. True reform, the kind that will improve public safety while helping more people leave prison with the tools they need to rebuild their lives, requires a systemwide approach. Recommendations to accomplish that shift are outlined in the chapters that follow.

Recommendation 1: Reserve Prison for Those Convicted of the Most Serious Federal Crimes

Incarceration is a highly punitive, costly, and potentially harmful intervention that should be used sparingly and judiciously. The sanction of imprisonment is justified by the need to punish individuals, ensure accountability, and protect the public. But any sentence longer than necessary is unjust, inconsistent with the goals of sentencing as codified in federal statute, and potentially at cross-purpose with the goal of keeping communities safe. The Task Force analysis makes clear that lengthy terms of incarceration have become the norm in the federal prison system. Less severe—and less costly—alternatives to incarceration are used infrequently. And many federally prosecuted individuals receive lengthy mandatory minimum sentences that do not accurately reflect the true severity of their offenses.

To address these problems, the Task Force recommends the following actions:

- **Maintain drug mandatory minimum penalties for only the most serious offenses and revise the Sentencing Guidelines accordingly**
- **Allow judges to sentence below the mandatory minimum for certain weapon possession offenses associated with nonviolent crimes**
- **Review all other mandatory minimum penalties, establish a "sunset provision" for any future mandatory minimums, and require prison, fiscal, and racial impact statements for proposed legislation and Sentencing Guidelines**
- **Encourage and incentivize alternatives to incarceration**
- **Limit the types of cases prosecuted federally**

Background

Long sentences for drug trafficking and weapon offenses are not necessarily determined by individuals' specific conduct. Instead, broad federal statutes that carry stiff, and often excessive, minimum penalties are based on blunt indicators such as the type or quantity of drug or the mere presence of a weapon. These mandatory minimums apply regardless of critical context, such as the role an individual played in a drug-trafficking enterprise or whether a weapon was brandished or used during a drug-related crime. Though federal judges are required by federal law (see 18 USC § 3553(a)) to "impose a sentence sufficient, but not greater than necessary" to achieve the societal goals of incarceration, this instruction is not always followed. The Task Force reviewed research and sentencing data, heard extensive testimony from a diverse array of people with experiences in the federal system, and met with people currently and formerly incarcerated in federal prisons. Based on this extensive investigation, the Task Force reached two key conclusions: terms of incarceration in federal prison are often substantially greater than necessary to meet the goals of sentencing, and mandatory minimum penalties have been a primary contributor to this imbalance.

Under federal law, judges rarely have discretion to sentence an individual below the statutory minimum. As a result, even if "the nature and circumstances of the offense and the history and characteristics of the defendant"[48] do not warrant a lengthy sentence, judges are often legally required to impose a much greater term than may be necessary. This can result in tremendous cost for taxpayers, the correctional system, and the lives of those sentenced to prison.

Congress has proposed reforms to ensure that fewer people are subject to mandatory minimum sentences for lower-level or less serious offenses. These fixes represent a positive step, but they do not go far enough to address the underlying drivers of prison growth or to prevent sentencing excesses in the future. The Task Force has concluded, as a result of its year-long fact-finding process, that the mandatory minimum framework for these offenses is fundamentally broken. Rather than being allowed to tailor sentences to account for all facets of the crime and the defendant or to encourage rehabilitation and reentry, judges find their hands tied by an extraordinarily punitive one-size-fits-all structure.

As discussed in the previous chapter on the transformation of the federal correction system, incarceration yields diminishing marginal returns. As more people are federally prosecuted and sentenced to prison, more people who are not direct threats to public safety are incarcerated. Tens of thousands of people are now in federal prison for drug crimes, including people who have minimal criminal histories, did not use violence, and did not play leadership roles in drug enterprises.

Long sentences also incur opportunity costs, as they divert resources and attention from other public safety measures.

Marc Mauer, Executive Director of the Sentencing Project, March 11, 2015

Moreover, recent reforms have demonstrated that policymakers can shorten sentences and time served in federal prison for drug offenses without a corresponding increase in crime or drug abuse. In 2010, the Fair Sentencing Act reduced crack cocaine penalties to levels more in line with powder cocaine. The USSC found that the policy reform reduced disparity in sentencing between the two drugs, cut the number of people in federal prison, and reduced federal prosecutions for crack cocaine—results achieved without any increase in the use of crack cocaine.[49]

A similar change enacted in 2007 reduced the advisory sentencing ranges for crack cocaine offenses by 20 percent and made the change retroactive,[50] but did not change the mandatory minimum. A study that followed people for five years after their release under this policy change found that they had lower recidivism rates than a prior cohort of individuals who served longer sentences.[51] In short, USSC research has demonstrated that reductions to sentence length and time served do not harm public safety.

The Task Force recommendations would significantly reduce applicability of the most common mandatory minimum penalties, but judges would continue to impose long sentences when appropriate.

At the end of FY 2014, more than 74,000 people in federal prison were not convicted of an offense that carried a mandatory minimum penalty.[xiii] Their average sentence was more than 80 months. Judges are clearly comfortable imposing lengthy sentences for the tens of thousands of cases in which they are warranted, but for which there is no statutory minimum.

As noted above, this may in some cases reflect judges hewing closely to punitive guidelines in drug cases. If so, that pattern of behavior provides additional evidence supporting a new approach. If the Guidelines better reflect actual offense conduct, then those most culpable will still receive the appropriate punishment from sentencing judges.

The Task Force is confident that judges will be able to exercise their discretion within the framework of the Sentencing Guidelines. The Guidelines are the starting point for all sentences, and incorporate dozens of factors related to criminal history and offense conduct. There are sufficient safeguards, including sentencing appeals, to ensure that even without mandatory penalties, those most culpable will receive lengthy prison terms. Moreover, this Task Force does not recommend abolition of the "kingpin" mandatory minimum, which applies to individuals who organize "continuing criminal enterprises," or large cartels. This penalty is rarely applied and is used only in the most serious cases. It was therefore not included in the Task Force analysis and not considered within the scope of these recommendations.

Recommendations

The Task Force has several recommendations to ensure that prison beds are reserved for the most serious federal crimes. The recommendations will restore proportionality, individualization, and judicial discretion to federal sentencing, while allowing scarce resources to flow toward other programs and agencies that promote public safety.

Maintain drug mandatory minimum penalties for only the most serious offenses and revise the Sentencing Guidelines accordingly

The Task Force recommends that Congress repeal the mandatory minimum penalties for drug offenses, except for drug kingpins as defined in the "continuing criminal enterprise" statute. This reform should be applied prospectively for all eligible drug offenses at sentencing. In addition, retroactive application of this policy should be phased in starting 24 months after the changes are made prospectively. (Individuals eligible for a sentence reduction under the Fair Sentencing Act, instead, should be considered for resentencing immediately.) The 24-month phase-in period will ensure individuals adequate time to prepare for release and will enable the system to prepare for the effect of this reform.

[xiii] This figure excludes supervision violators.

Once drug-trafficking mandatory minimum penalties are restricted to high-level drug traffickers, the USSC should revise the Sentencing Guidelines to better account for role and culpability and to rely less on imprecise proxies such as drug quantity. The USSC should revisit the Guidelines to assess whether they adequately account for the following at sentencing:

- Revenue or profit derived from drug trafficking
- Clearly defined aggravating and mitigating role factors
- Alternatives to incarceration for lower-level drug trafficking offenses

Allow judges to sentence below the mandatory minimum for certain weapon possession offenses associated with nonviolent crimes

The Task Force recommends that Congress create a new mechanism akin to the drug safety valve but for certain convictions for weapon possession. This mechanism would enable judges to sentence below the mandatory minimum weapon possession enhancement for nonviolent offenses, when details of the case warrant it. The reform would apply to people sentenced for a mandatory minimum for gun possession (i.e., five-year 18 USC § 924(c)), excluding those who committed a violent offense in which a firearm was possessed or any offense in which a firearm was brandished or fired. Instead of imposing the mandatory minimum, judges would be instructed to weigh the circumstances of the offense, the characteristics of the individual, and other factors outlined in 18 USC § 3553(a) to assess whether each sentence enhancement is appropriate or disproportionately severe. The Task Force calls for this reform to be applied prospectively.

Based on data, testimony, and stakeholder outreach, the Task Force found that mandatory minimum sentences for firearms should be applied more selectively. In the federal system, individuals are subject to a mandatory minimum penalty for "possessing" a weapon, regardless of whether the weapon was actually used in the offense. The applicable law imposes a five-year mandatory minimum penalty on top of any other sentence imposed. This is the most prevalent gun-related mandatory minimum, affecting more than 10,000 people in federal prison; the average total sentence for these individuals is about 15 years. While no data exist to describe how each of these individuals possessed the weapon, the Task Force encountered numerous cases in which a person was subject to the mandatory minimum for having a weapon in the trunk of his or her car, in another room, or in another building altogether.

Such sentences are excessive. In addition, most people convicted under this statute do not have serious criminal histories and did not brandish or fire a weapon. Moreover, this mandatory minimum falls especially heavily on people of color: 53 percent of people convicted of 18 USC § 924(c) for possession were black, and 24 percent were Hispanic.

This recommended judicial mechanism should be a model for other mandatory minimum penalties. Although the Task Force did not fully review every mandatory minimum penalty, it amassed substantial evidence that many of these penalties are applied inconsistently and could be longer than necessary to satisfy the societal objectives of incarceration. The Task Force recommends that Congress and the

USSC monitor the impact of this proposed change on prosecutorial practices, sentencing, in-prison conduct and overcrowding, and recidivism. After careful review of the data, Congress should consider expanding this mechanism to other mandatory minimum penalties.

Review all other mandatory minimum penalties, establish a "sunset provision" for any future mandatory minimums, and require prison, fiscal, and racial impact statements for proposed legislation and Sentencing Guidelines

The Task Force recommends that the USSC update its report on mandatory minimum penalties to identify those that violate the principles of sentencing as outlined in 18 USC § 3553(a). The Task Force also calls on Congress to apply a "sunset provision" to any future mandatory minimum penalties, requiring congressional reauthorization after no more than five years. In addition, the Task Force recommends that the Administration and the Judiciary prepare prison, fiscal, and racial and ethnic impact statements. These analyses should also be conducted for proposed changes to the Sentencing Guidelines or to criminal law (authority or penalty) to improve information available to policymakers and the public.

USSC updated mandatory minimum report

The Task Force did not review the application of all 200 mandatory minimum penalties in the federal criminal code to ensure consistency with 18 USC § 3553(a). Based on the data and testimony about drug and weapon offenses, some other mandatory penalties are likely to drive unwarranted disparities and longer-than-necessary prison sentences. Therefore, the USSC, which in 2011 reviewed the application of mandatory minimum penalties and its effects, should periodically update that report to identify other potential areas of reform.[52] This review should compare the underlying conduct, sentence length, prison misconduct, and recidivism rates of people who were subject to mandatory minimums with those who were not.[xiv] Penalties found to drive unwanted disparities or unnecessarily long periods of incarceration should be identified and the USSC should recommend changes to Congress.

Sunset provision

As demonstrated with drug trafficking and weapon mandatory minimum penalties, even the most well-intentioned law can be applied more broadly or more severely than necessary. These experiences suggest it is unlikely that Congress would subsequently reduce or remove any future mandatory minimum penalty, even if it produces counterproductive results. The Task Force therefore proposes that all future mandatory minimum penalties include "sunset clauses," requiring congressional reauthorization at a regular interval of no more than five years following enactment. This step would ensure that counterproductive and overly punitive penalties are not retained due to inertia.

[xiv] The USSC has already laid a blueprint for this review in its analysis of child pornography offenses (2012).

Impact assessments

The Task Force believes that policymakers and the public should be better informed about the projected prison population, as well as the fiscal, racial, and ethnic impacts of proposed changes to criminal laws and sentencing guidelines. While impact statements are by necessity projections or estimates, they can be essential to those considering changes in law and policy.

Although prison impact assessments that estimate fiscal impacts are currently required for all legislation proposed by the executive and judicial branches and upon request by 18 USC § 4047, they are not always submitted. Moreover, when population and cost estimates on proposed legislation are prepared by the DOJ or the USSC at the request of congressional committees, they are not always publicly released.[xv] The USSC prepares sentencing impact assessments when considering amendments to the Sentencing Guidelines; it also prepares sentencing and prison impact assessments for Congress, including for the Congressional Budget Office.[xvi]

No parallel federal requirement exists to prepare a racial and ethnic impact statement, which would examine the potential disparities of proposed legislation before its adoption. Connecticut, Iowa, and Oregon currently have racial and ethnic impact statement laws.[53] The Task Force believes strongly that policymakers should fully understand and discuss the potentially disparate impact of legislation on racial and ethnic minorities before bill passage, when there is still opportunity to consider alternatives. More than three-quarters of people in the BOP for a drug offense are either black or Hispanic, highlighting the need to monitor the racial and ethnic impact of future changes to the federal prison population.

Encourage and incentivize alternatives to incarceration

The Task Force recommends that the USSC, as it revises its Guidelines for drug offenses, encourage probation for lower-level drug trafficking offenses. The Task Force recommends that any statutory prohibition on probation be eliminated, enabling the USSC to determine the most appropriate sentence under the Guidelines. The USSC should also consider probation for other offense types and develop information regarding the availability and evidence base of alternatives to incarceration. The Task Force calls on prosecutors and judges to establish and use alternatives to incarceration, including front-end diversion courts, problem-solving courts (such as drug courts and veterans courts), and evidence-based probation that employs swift and certain sanctions or other proven strategies. Finally, the Task Force recommends that Congress encourage alternatives to incarceration by authorizing and funding such front-end diversion programs, along with evaluating alternatives and sharing information

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[xv] The USSC has made its estimates publicly available when it testifies or submits a written statement on pending bills. See, for example, its submission to the Senate Judiciary Committee regarding the Sentencing Reform and Corrections Act of 2015 (Saris 2015).

[xvi] As part of the legislative process, the Congressional Budget Office (CBO) is required to prepare a cost estimate for bills and resolutions approved by congressional committees. In addition, CBO provides congressional staff informal estimates for proposals earlier in the legislative process ("Frequently Asked Questions About CBO Cost Estimates," CBO, last updated February 20, 2013, https://www.cbo.gov/about/products/ce-faq).

regarding best practices. Federal judges and prosecutors should also explore partnerships with existing state problem-solving courts to most effectively use training and resources.

The Task Force repeatedly heard testimony from both state justice reform experts and federal justice practitioners that alternatives to incarceration, when used in appropriate cases, can reduce recidivism while saving taxpayers money. While the federal docket may differ from those of the states, many individuals would still qualify as low level and be eligible for nonprison sanctions. As discussed above, almost half of those convicted of a federal drug crime are in the lowest two criminal history categories and one in four have no prior criminal history. Almost 80 percent have no history of violence and nearly 85 percent were not sentenced for being managers, supervisors, leaders, or organizers of a drug enterprise. The Task Force does not believe that all these individuals should receive a sentence other than prison, and recognizes that noncitizens and other individuals may be ineligible to receive alternatives to incarceration.[54] Nonetheless, carefully crafted guidelines coupled with judicial discretion should help identify those for whom alternatives are appropriate, and in such cases, what the most suitable alternatives would be.

Different people pose different risks to the public, and some may best be held accountable in the community. Probation may be a reasonable alternative to incarceration in many cases, though it is infrequently used in the federal system. Other models are also gaining traction. A nationwide review of drug courts found they were effective at reducing recidivism and drug use and at addressing needs related to employment and education.[55] This 23-site evaluation also found that drug courts are cost beneficial.[56] Other models, such as programs that engage swift and certain sanctions, have proven highly effective at reducing crime, even among people addicted to methamphetamine.[57]

Alternative sentences are rarely used at the federal level, but experiments with diversion programs are under way in a number of judicial districts.[58] One such program highlighted for the Task Force operates in the Eastern District of New York and is described by Deputy Attorney General Sally Yates in this way:

> I visited a drug court in federal court in Brooklyn that focuses on giving offenders a chance to escape the grip of drugs. Instead of lengthy prison sentences, the program is designed to hold the defendants accountable, but to do it in a way that offers support, drug treatment, and job opportunities. While it's true that there are dangerous defendants from whom society needs to be protected, there are others, like the defendants I saw today, for whom alternatives to incarceration make a lot more sense.[59]

Although a small proportion of cases are handled through this program,[60] it is nonetheless a promising model for expansion throughout the country.

The Task Force also heard testimony about a program in the Central District of California, the post-plea diversion program known as CASA (Conviction and Sentence Alternatives), which features collaboration among prosecutors, defenders, judges, and pretrial services officers. Under this two-track program, participants successful in track one can have their charges dismissed, while participants successful in track two receive a noncustodial sentence.[61]

While this experimentation is heartening, the vast majority of federal sentences (90 percent) incorporate a term of incarceration. What's more, most judicial districts lack alternatives besides probation, such as specialty courts or post-plea diversion from prison. In some instances, this may reflect the seriousness of cases that warrant prosecution. And in light of the other Task Force recommendations related to prosecution and sentencing, prosecutors may be less likely to bring lower-level cases in the future. But in other instances, alternatives to prosecution or incarceration may be most appropriate, and a wider array of nonprison sanctions will be necessary. The Task Force recommends that the USSC provide judges with more concrete guidance about the evidence base behind rehabilitation and the appropriateness of the following alternatives in each case:

- Probation for low-risk individuals who commit less serious offenses
- Swift and certain sanctions for individuals who violate probation
- Drug courts or other problem-solving courts
- Veterans courts
- Front-end diversion courts

To ensure that appropriate alternatives to incarceration exist, each judicial district should establish front-end diversionary programs. Judicial districts that create such programs should receive grants to support this work, and prosecutors' offices should also receive funding to support interagency diversion and treatment programs. In addition, grants should be made available to support judicial districts developing pilot diversion programs based on evidence-based principles not yet tested at the federal level. Such grants should also fund evaluations to promote information sharing and the adoption of evidence-based practices across judicial districts. These models are promising, but will continue to be underused until all districts can afford them and receive sufficient incentives to adopt them.

Limit the types of cases prosecuted federally

The Task Force recommends that the DOJ and federal prosecutors continue reviewing case selection and charging practices to ensure that only the most serious cases that reflect a substantial federal interest or that require unique federal jurisdiction or expertise are prosecuted federally. The Task Force appreciates the unique capabilities of the federal government in addressing complicated interstate and international crimes of any type, including certain drug trafficking, national security, immigration, and white-collar crime.

Federal prosecutors have wide latitude in choosing the types of cases that they prosecute and what they charge. In addition to the broad *Principles of Federal Prosecution*,[62] the Attorney General sets national priorities and policies, which are supplemented by district-level prosecutorial policies and declination practices. These policies vary across the 94 judicial districts based on, among other things, the nature and extent of local crime, resource constraints, and intergovernmental concerns, such as whether the case may be prosecuted locally.

The Attorney General's Smart on Crime policy, described above, encourages prosecutors to take individual characteristics into account while charging cases, to ensure that only the most serious cases

are brought into the federal system and that mandatory minimum penalties are deployed more judiciously. The initial results of Smart on Crime are promising but as yet incomplete. The Task Force urges the DOJ to review data from all US Attorneys' offices to determine how consistently the Smart on Crime directives and principles are being applied across the country. While the Task Force understands the need to tailor priorities and practices to particular districts, concerns remain that certain districts may not be following the spirit of the change in policy. Moreover, it is unclear whether this discretion is being used judiciously for crimes other than lower-level drug-trafficking offenses.[63]

The Task Force also encourages prosecutors to expand the use of pretrial diversion as an alternative to prosecution when the case needs to be prosecuted in the federal system. While the US Attorneys' Manual authorizes pretrial diversion for eligible individuals,[64] the option is rarely used.[xvii]

[xvii] The eligibility requirements are set out in the US Attorneys' Manual 9-22.000 Pretrial Diversion Program, and include any individual who could be prosecuted and is not accused of an offense that should be referred to the state for prosecution, convicted of two prior felonies, a current or former public official, or accused of an offense related to national security.

Recommendation 2: Promote a Culture of Safety and Rehabilitation in Federal Facilities

Decades of growth in the federal prison population have made it increasingly difficult for the BOP to maintain a secure environment conducive to rehabilitation. Persistent and long-term overcrowding has inhibited the correctional policies and practices proven to reduce recidivism and protect public safety. Despite years of involvement in various stages of the criminal justice system and firsthand experience working in challenging correctional environments, Task Force members were surprised and alarmed by the substandard policies, practices, and conditions in BOP facilities.

Public safety should be the goal and logical consequence of good corrections policy. In pursuit of this outcome, the Task Force recommends that the President, Attorney General, and Congress provide resources and guidance enabling the BOP to:

- **Enhance safety and security within federal correctional facilities**
- **Deliver adequate and appropriate in-prison programming and services based on individual risk for recidivism and identified needs**
- **Identify programming shortages and expand program offerings to meet the assessed needs of the prison population**
- **Ensure conditions of confinement are conducive to rehabilitation**
- **Develop greater opportunities for family engagement**

Background

The BOP has the twin responsibilities of ensuring safety inside correctional facilities and promoting safety outside the prison walls. But extreme overcrowding has thwarted the BOP's efforts to maintain and carry out policies and practices necessary to achieve these goals. Facing overcrowding that peaked at 39 percent systemwide, the BOP has been forced to triple-bunk individuals, transform classroom space into housing, reassign treatment and program staff to security duties, and increase caseloads for institutional case managers.[65] Crowded conditions have also fueled an increase in assaults.[66] To deal with these immediate safety concerns, emergency security measures have become standard within the BOP, compromising its ability to establish the rehabilitative environment necessary for both facility security and public safety.

The consequences of such conditions were recently highlighted by the National Academy of Sciences, which documented a significant body of literature on the adverse effects of prison overcrowding on the health, behavior, and morale of those behind bars.[67] Research and practice show that facility-based safety and public safety are compatible—if not mutually dependent—goals. A firm body of evidence demonstrates that programming aimed at reducing risk for recidivism also reduces misconduct inside prisons.[68]

According to the BOP, 40 percent of people released from federal prison are rearrested or have their supervision revoked within three years.[69] Studies have shown that treatment targeting each individual's criminogenic risk factors is the most effective way to reduce recidivism.[70] Further, researchers have found that to reduce reoffending, prioritizing resources toward individuals at high risk to commit more crimes is critical.[71] Although the Task Force repeatedly heard BOP officials say that "reentry begins on day one," the limited programs and resources inside its prisons suggest there is much work to be done to promote rehabilitation and improve outcomes for individuals returning to the community.

Victims' rights are important in providing accountability, but victims are also interested in efforts to prevent offending, including reducing recidivism.

Susan Howley, Director of Public Policy for the National Center for Victims of Crime, March 11, 2015

Recommendations

Today, the BOP sits at a crossroads, presented with an opportunity to embrace widescale system reform and take on a more proactive role in promoting of public safety. Overcrowding has recently declined to 20 percent above the system's rated capacity. While this is still unacceptably high, it affords the BOP some breathing room to reassess housing assignments and the use of private correctional facilities. Moreover, after 16 years of negotiations, in July 2014 the BOP signed a collective bargaining agreement with the union representing 85 percent of BOP staff, the Council of Prison Locals, American Federation of Government Employees.[72] This improved working relationship with the union has enabled the BOP to enact significant policy changes that promote safety inside correctional facilities and improve public safety when individuals in BOP custody return home. Considering these positive changes, the Task Force recommends the BOP refocus its energies on evidence-based risk reduction strategies that have been proven effective at the state and local levels. The Task Force provides the following recommendations to enhance safety and security, to base programming on individual risk and needs and thus improve both system and individual outcomes, and to establish a culture and environment conducive to rehabilitation.

Enhance safety and security within federal correctional facilities

The Task Force recommends the BOP assess current staffing levels, identify staffing shortages, and reallocate workers across facilities to support appropriate inmate-to-staff ratios as the overall population declines. In addition, the BOP should review current housing assignments to ensure individuals are housed in accordance with rated cell capacity. Last, the Task Force recommends that Congress pass legislation clarifying the good conduct time calculation to enable sentence reduction of up to 15 percent (consistent with the law's original intent) to incentivize positive behavior.

Sufficient staffing

The safety of both federal correctional staff and those housed in federal facilities is paramount to a functional corrections system. Staff must be able to do their jobs with the knowledge that their risk of victimization is minimized through appropriate staffing levels. Likewise, those incarcerated were sentenced to a term of imprisonment, not to a period of confinement during which they live in fear of violence. Analyses conducted within the BOP found that serious assaults in prison are associated with rising inmate-to-staff ratios.[73] With consideration of recent population reductions and projected future declines following additional reforms, the BOP should assess staffing levels and needs across its facilities to reallocate staff as appropriate to ensure all institutions are staffed at appropriate levels to maintain prison safety and security.

Housing assignments consistent with rated capacity

As the Task Force observed firsthand, overcrowding has forced the BOP to triple-bunk cells across its facilities, exceeding their rated capacity.[74] Wardens at each BOP facility have discretion to provide temporary housing space by adding an additional bunk within a cell or converting program space to housing.[75] As a result, more individuals in federal custody share cells designed for fewer residents, increasing opportunities for violence and victimization.[76] As the federal prison population declines, the Task Force recommends that the BOP review all housing assignments to ensure individuals are housed in accordance with rated cell capacity.

Good conduct credits

Other strategies that can help produce a safe environment for correctional officers and incarcerated individuals include the use of an incentive known as "good conduct time." Under federal law, people in federal prison are eligible to earn up to 54 days off their sentence each year for demonstrating good behavior. While the law's intent was to provide a 15 percent good conduct credit and ensure everyone served 85 percent of their sentences, the law was written ambiguously, resulting in varying interpretations of how the credit should be calculated. The BOP's calculation method, for example, reduces the amount of potential good time that can be earned to about 13 percent of a given sentence, or 47 days per year.

> *The greatest tool that the Bureau of Prisons has to encourage proper inmate behavior, to foster the rehabilitative process, and to reduce the inmate population and the cost of incarceration is the expanded use of good time credit. The sincerest desire of almost every inmate is to get out of prison.*
>
> *Charles and Susan Lytle, parents of an individual currently incarcerated in federal prison, March 11, 2015*

Clarifying the appropriate calculation to realize the original intent of federal good time law will require congressional action. The BOP has supported legislation to accomplish this,[77] and the Task Force recommends that Congress fix the technical error and ensure that all individuals demonstrating good conduct in prison are afforded their full opportunity to receive good time.

Deliver adequate and appropriate in-prison programming and services based on individual risk for recidivism and identified needs

The Task Force recommends that the BOP use an actuarial risk and needs assessment tool to predict individual risk for recidivism and identify criminogenic need areas. Using these data, the Task Force recommends that the BOP develop tailored case plans and deliver programming based on individual risk to reoffend and criminogenic needs.

Actuarial risk and needs assessment

Recognizing the role of correctional policies that reduce recidivism in improving public safety, states and localities across the country are using tools such as the Risk-Needs-Responsivity (RNR) (see **box 7**) model to guide program offerings and assignments both inside prison and under community supervision.[78] Such tools capture both static factors related to risk for re-offense and dynamic factors that influence risk and can be addressed through programs and treatment. Validated assessment tools also allow correctional systems to identify individuals at a high risk to commit future crime, and thus ensure those individuals are a high priority for programs and treatment. Such prioritization has been proven to reduce recidivism and, thus, improve public safety. Indeed, decades of research have shown that empirically based actuarial tools to predict human behavior are more accurate than professional judgment, which dominated the business of criminogenic risk assessment up until the 1970s.[79]

Unfortunately, the BOP's classification and designation tool does not conform to this current standard of dynamic risk and needs assessment adopted by the field as best practice. While the BOP currently uses empirical tools to determine an individual's risk for institutional misconduct, it does not use actuarial assessment instruments to identify individuals' risk of recidivism or programming needs.[xviii] The BOP believes its current classification and designation tool adequately predicts recidivism, noting how closely misconduct and recidivism are correlated, and is currently evaluating how well it predicts recidivism. However, the tool is currently validated solely to predict risk of institutional misconduct.[xix] Moreover, the BOP relies on staff discretion to determine risk-reduction

[xviii] BOP employees in the centralized Designation and Sentence Computation Center (DSCC) are responsible for classification (custody level and level of supervision needed) and designation (initial facility assignment), based on a review and coding of sentencing material, including the presentence report, provided by the sentencing court, probation, and the US Marshals.

[xix] In determining risk of misconduct and facility placement, the DSCC weighs several quantitative and qualitative factors, such as criminal history, prior substance abuse, education level, public safety factors, and program needs. In FY 2014, the DSCC evaluated more than 75,000 individuals for risk for institutional misconduct, classifying 65 percent as low or minimum risk, 28 percent as medium risk, and 7 percent as high risk (Federal Bureau of Prisons, correspondence with the Task Force, 2015).

programming placement; while such assessments usually include a clinical evaluation by a psychologist and subsequent assessments by case managers, the process lacks an empirically validated assessment of criminogenic needs. Further, assessments of individual programming needs are not typically conducted until an individual has been assigned to a specific facility—one that may not offer programming to meet his or her needs.

BOX 7

Risk-Needs-Responsivity Model

Based in cognitive social learning theory, the Risk-Needs-Responsivity (RNR) model holds that certain dynamic criminogenic risk factors can help predict an individual's likelihood to commit crime in the future, and that addressing those factors through programs and treatment can help reduce recidivism. With a strong empirical foundation, the RNR model provides practitioners with a framework for assessing risk for future crime and helping individuals prepare for successful reintegration:

- **Who?** The **risk principle** dictates that the level of treatment provided should match an individual's risk for re-offense.
- **What?** The **need principle** holds that treatment should target specific criminogenic factors that contribute to an individual's risk for re-offense.
- **How?** The **responsivity principle** holds that the intensity and type of evidence-based treatments should be tailored to the individual's risk-level, criminogenic needs, and individual learning style.

Studies indicate that programs that adhere fully to RNR principles are associated with recidivism reductions, while those that fail to target programming based on risk and needs information yield minimal reductions or no reductions in criminal reoffending.

Sources: Andrews and Bonta 2010; Andrews, Bonta, and Wormith 2006, 2011; Andrews et al. 1990.

Without collecting recidivism risk and criminogenic needs data for each individual in its custody, the BOP cannot ensure that its programming resources are targeted to the right recipients, aligned to the risk level and unique needs of each individual, and delivered at the intensity and frequency needed to reduce the likelihood of future offending. Further, the lack of consistent measurement of risk factors means such information cannot be seamlessly shared with community supervision agencies on release.

Given these factors, the Task Force concluded that it is unclear whether the BOP's assessment process can effectively guide an individual's programming and predict the likelihood of reoffending after release. Consistent with best practice now widely used in state corrections, the Task Force recommends the BOP adopt a validated risk for recidivism and needs assessment tool. To support ongoing and individualized treatment that extends through correctional custody and release, the BOP's current risk assessment tool should be calibrated to capture both static and dynamic factors that predict recidivism in the community, and also expanded to integrate treatment needs to guide case management and program participation.

The risk and needs assessment tool should be compatible with the US Probation's Post Conviction Risk Assessment (PCRA) to improve information sharing at reentry to the community. Such coordination across correctional agencies is critical to reentry success, and is explored further in the following chapter. It is also imperative that corrections officials be aware that using static risk factors can exacerbate unjust disparities,[80] and take care to ensure that assessment tools are employed solely to guide the individualized delivery of treatment and programming to improve reentry success.

Risk- and needs-based case plans

Once in place, the empirical risk and needs assessment should help shape the development of individual case plans. Consistent with the RNR model, treatment should target the dynamic criminogenic factors that contribute to an individual's risk for reoffense. The BOP's case plans should also be responsive to the specific needs of special populations within its facilities, including women, the elderly, the infirmed, those with mental health issues, LGBTQ individuals, persons with medical, mental, or physical impairments, and all others with needs or personal factors and characteristics impacting the rehabilitation process. Risk and needs assessments should be revisited throughout the period of incarceration upon a significant triggering event (such as program completion or misconduct incident), or annually, whichever comes first, to measure treatment progress and reentry preparedness.

Identify programming shortages and expand program offerings to meet the assessed needs of the prison population

The Task Force recommends that the BOP use aggregate risk and needs data on its population to conduct a systemwide assessment and identify surpluses and shortages in program capacity at each facility. The Task Force recommends that the BOP, based on the outcome of that assessment, allocate its resources to ensure that programming capacity matches the risk and needs of the population in each institution. The Task Force also recommends that the BOP immediately expand educational and occupational opportunities in response to demonstrated need across its facilities.

Aggregate risk and needs population profile

Without a validated risk and needs assessment that supports an aggregate risk and needs profile of its population, the BOP cannot ensure it is allocating resources most effectively to addresses the criminogenic needs of those in its custody. After adopting a validated risk and needs assessment instrument, the BOP should use individual-level data to develop an aggregate profile of its population's criminogenic need areas. These profiles should also be developed at each facility to understand institution-level program needs. The current approach, utilizing security level as a proxy for risk, may be sufficient for the daily management of prisons, but certainly is not the current state of practice for reentry preparation.

Systemwide program assessment

The BOP currently offers several programs that have been shown to reduce recidivism, including the Residential Drug Abuse Program[81] and prison industries.[82] Others include elements of evidence-based practice, such as cognitive-behavioral approaches or modified therapeutic communities.[83] However, such evidence-based programs are not available at all BOP facilities,[84] and a lack of resources, program staff, and treatment space restricts widespread and regular participation. Program access is further constrained by facility-level eligibility requirements and prioritization of individuals close to release.

The BOP's national program catalog[85] is a publicly available inventory of evidence-based programming offered in BOP facilities. However, the catalog does not provide clear guidance on the specific criminogenic risk factors addressed through these programs, information essential to successful case planning and program placement. Moreover, each facility offers programs that are not national or fully compiled into a systemwide directory. The BOP's national program catalog should be revised to indicate the specific criminogenic need areas addressed through each national program and treatment offering. In addition, the catalog should incorporate information on facility-specific programs, while continuing to include documentation on whether programs are grounded in scientific evidence.

By pairing the aggregate risk and need data with the BOP's inventory of available programs, the BOP can identify gaps in services and, perhaps, redundancies. This knowledge could enable the BOP to allocate resources more efficiently and thus address unmet treatment areas. The DOJ's Bureau of Justice Assistance has supported the development of a tool to assist prison systems in conducting a gap analysis and determining programming requirements based on the risk and needs of the population (see **box 8**).[86] Obtaining a clear picture of the gaps in service within BOP prisons will enable it to effectively expand programs and treatment in response to the population's criminogenic need areas.

BOX 8

The CJ-TRAK Suite

With funding from the Bureau of Justice Assistance, leading criminologist Faye Taxman developed CJ-TRAK to help correctional agencies determine how closely their services and programs match the criminogenic risk and need areas of the populations they house. The online portal uses population-level data to assess current programming availability, identify system-level gaps, and recommend the program distribution necessary to respond to the population's criminogenic need areas.

Sources: "CJ-TRAK," Center for Advancing Correctional Excellence, 2014, https://www.gmuace.org/tools/assess-capacity; "Risk-Needs-Responsivity (RNR) Simulation Tool," Center for Advancing Correctional Excellence, 2011, https://www.gmuace.org/research_rnr.html.

Data-driven resource allocation

Currently, the BOP's Central Office decides to expand or reduce national programs based on "identified demand" within the population. The BOP reports that mental health, drug abuse, and programs to treat people convicted of sex offenses have all been expanded over the past three to five years. However, BOP program waitlists indicate there is still a shortage of slots to meet population needs. For example, at the end of FY 2014, more than 12,300 people systemwide were awaiting drug abuse treatment.

The BOP should use aggregate risk and needs assessment data to identify how its program offerings should grow. Using findings from the systemwide gap analysis recommended above, the BOP should develop a plan with resource requirements to establish, expand, and reallocate programming as needed to meet the identified needs of its population. Doing so will ensure scarce funds are used effectively and efficiently to improve public safety outcomes.

Educational and occupational program expansion

Lengthy waitlists indicate that BOP needs to immediately expand occupational training and educational programs. Research shows that such programs hold significant promise to reduce recidivism and improve individual outcomes following release, making their expansion all the more urgent. Research suggests that earning a working wage as a component of prison industry participation may enhance such programs' effectiveness in reducing recidivism and improving employment outcomes.[87] To increase the availability of occupational training opportunities, the Task Force also recommends that Congress expand the Federal Prison Industry's (FPI) authority, including increasing reliance on FPI products by federal agencies.

Ensure conditions of confinement are conducive to rehabilitation

The BOP should require all staff interacting with incarcerated people to complete training in effective communication and problem solving as a core component of orientation and in-service training. The Task Force also recommends that the BOP use segregated housing as a punitive measure only in extraordinary circumstances and for no longer than necessary. In addition, the BOP should ensure that all housing and security procedures are responsive to the specific needs of its diverse population. Finally, the BOP should develop appropriate and nonrestrictive protective housing options and security procedures for individuals at risk of harm within the general prison population.

Staff training

As part of their normal duties, correctional staff routinely observe and respond to a range of behaviors inside prison. Research shows that positive relationships with correctional staff may enhance the positive effect of participation in programming aimed at reducing risk.[88] Studies show that one's motivation to change can be enhanced through positive interactions with staff, and that correctional staff can promote behavioral change by rewarding prosocial conduct.[89]

Recognizing this research, correctional agencies in many states have strengthened risk reduction efforts by investing in staff training on effective communication, problem solving, and the appropriate use of incentives.[90] For example, Wisconsin, Oregon, and South Dakota all ensure correctional staff are trained in productive interaction with the incarcerated population. While the BOP has similarly provided some staff training involving evidence-based practice in corrections, it should review and expand its offerings to include curricula that improve staff skills in working and interacting with individuals in their custody. Training should be provided with frontline and supervisory staff, case managers, and all program personnel.

Drawing from lessons garnered through efforts to transform the culture of policing, the BOP should also examine how consistently corrections officers and staff comport themselves in a procedurally just manner.[91] This requires a foundational shift to ensure that the culture within the BOP supports whistle blowers and rewards performance based on reduced use of force.

Segregated housing

As of November 2013, approximately five percent of the federal prison population was held in some form of segregated housing.[xx] The BOP uses segregated housing for various reasons. Segregation may be employed as a punitive measure, in response to individual requests for protection from the general population, for confining those in holdover status, and to house those pending classification or reclassification. The level of interaction with other incarcerated individuals and staff varies across types of segregated housing and facilities (see **box 9**).[92]

Studies have repeatedly found that solitary confinement can cause severe psychiatric harm, producing symptoms that include anxiety, panic, paranoia, and self-harming thinking and behavior.[93] Moreover, those in segregated housing are unable to receive many resources provided to the broader prison population. An independent review of the BOP's segregated housing practices and procedures, conducted by the CNA Institute for Public Research, found that placement restricts individuals from participating in reentry preparedness programming.[94] The BOP does not routinely track individuals' movement in and out of segregated housing, including releases directly from segregation to the community and transfers back to the general population shortly before release. It is thus not possible to discern the exact number of people who reenter society without adequate reentry preparation as a result of segregated housing placement.[95]

[xx] The BOP refers to segregated housing as "restricted housing," which includes special housing units, special management units, and its administrative maximum security facility. The percentage of the overall BOP population housed in segregation is consistent with the proportion of individuals housed in segregation across the state prison population. A 2002 survey by Austin and McGinnis (2004) found that on average, five percent of the state prison population was held in some form of segregation at any given time.

BOX 9

Special Management Units at the BOP

The BOP's special management units house individuals placed in segregated housing for disciplinary reasons. The units require each individual to pass through four levels of segregation, which are differentiated by conditions of confinement and length of stay. Level 1 requires a minimum stay of four months, during which time interaction with other incarcerated individuals is minimal and individuals are placed in either single- or double-bunked cells. Level 2 operates similarly, with most programming, if delivered, provided within the cell. For both levels, each facility warden determines which individuals can participate in group activities. Levels 3 and 4 become less restrictive and allow more open interaction with other individuals. Completion of all special management unit levels is expected to occur within 18 to 24 months, absent further behavioral issues. A review of the BOP's segregated housing policy has found that a large portion of the segregated population is housed in double-occupancy cells. In 2014, 1,376 individuals were held in disciplinary segregation at the BOP.

Source: McGinnis et al. 2014.

Given both the documented harms of some forms of segregated housing and the necessary limitations it places on reentry preparation, the Task Force recommends that the BOP use segregated housing as a disciplinary measure strictly when a person poses a safety risk to others and only in extraordinary circumstances. The Task Force also recommends that the duration of placement be limited to the shortest length of stay necessary to ensure the safety and security of those housed in and working at the facility. Even for those housed in segregation due to disciplinary infractions, strong consideration should be given to rehabilitation and reentry preparation throughout the duration of their stay. In the exceptional cases that require segregated housing, the BOP should ensure individuals are transferred out of segregation in the months just before release, a period critical to reentry preparation. The Task Force recognizes that any successful effort to reduce the use of restrictive housing requires buy-in and support from the union. The union's contract requires their sign-off on any major change in policy; it is therefore critical that the BOP leadership collaborate with the union on any and all changes to housing policies to ensure that safety and security are not compromised.

Needs-based housing options

Special populations within the BOP have a range of needs that should be addressed to maintain humane and rehabilitative conditions of confinement. For example, aging individuals in federal prison frequently have increased medical needs and often require accommodations such as lower bunks and handicap-accessible cells, but current overcrowding in the BOP means that not all people who need such accommodations receive them.[96] In addition, an audit of the BOP's segregated housing units found that a significant number of individuals housed in segregation should instead be housed in a comprehensive mental health program supervised by psychiatric staff able to attend to their treatment needs.[97]

Further, the BOP's housing and security procedures should proactively support the safety of special populations in its custody. For example, LGBTQ individuals, who are at a higher risk of sexual assault

and victimization while incarcerated, should receive housing and services that keep them safe.[98] However, the Prison Rape Elimination Act Commission (PREA) found that many correctional facilities rely primarily on protective custody and even solitary confinement as the default method to protect individuals from harm.[99]

These examples by no means represent all the needs of special populations inside federal prisons. The BOP should ensure that safe, appropriate housing options and adequate accommodations are available for every individual within its facilities, including women; the elderly; the infirmed; those with mental health issues; LGBTQ individuals; persons with medical, mental, or physical impairments; and all others with needs or personal factors impacting the rehabilitation process.

Protective custody

The Task Force acknowledges that protective custody may occasionally be necessary to ensure the safety of individuals housed in federal prison facilities. Occasions include instances when individuals personally request protective custody placement and cases when staff deem that an individual needs protective custody to ensure his or her personal safety. The BOP currently uses segregated housing for individuals under protective custody. An independent audit of the BOP's segregated housing found that individuals housed in protective custody do not have access to the same programs and privileges as individuals in the general population.[100] Given the security concerns of individuals within its population, the BOP should develop nonpunitive housing options and security procedures that enable those held in protective custody to receive all the programs and privileges available to the general population. Further, the Task Force shares the PREA Commission's belief that the use of segregated housing should be a last resort and an interim measure only, and all efforts should be made to keep all individuals safe from harm within the general population.[101] Accomplishing this change is critical to the BOP's goal of promoting public safety by effectively preparing individuals for reentry.

> *The harm of incarceration is not only felt by victims and the re-incarcerated, but by their families, communities, and indeed the entire country.*
>
> *Glenn E. Martin, President and Founder of JustLeadershipUSA, March 11, 2015*

Develop greater opportunities for family engagement

The Task Force calls upon the BOP to house individuals as close to home as possible, establish a visitation and family affairs office to oversee facility-level visitation procedures, expand video conferencing and other visitation programs, and enhance support to families of people in federal prison.

Family visitation is essential to support successful reentry and ensure conditions of confinement are humane. Studies considering the impact of family visitation on postrelease outcomes have found that both general and private family visitation reduced recidivism.[102] Research also indicates that close family relationships may improve a person's ability to find and keep jobs after leaving prison and

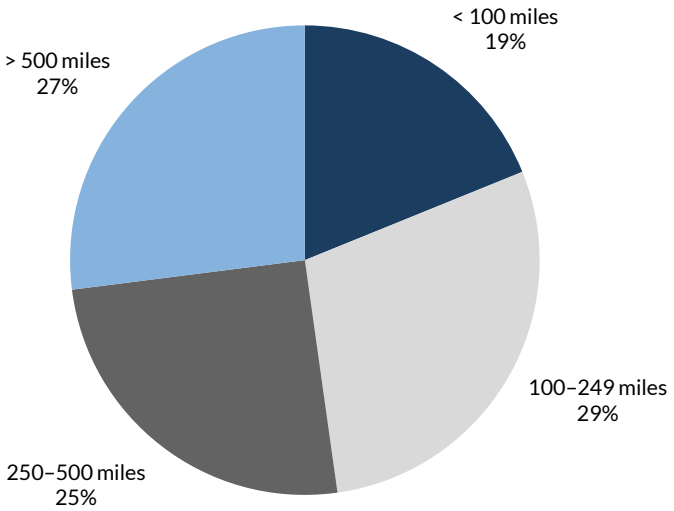
returning home.[103] Further, minimizing barriers to family visitation is one of the few ways federal corrections officials can ease the harm experienced by the families of people in prison.

The size and scale of the federal corrections system means that many family members cannot afford to travel the long distances necessary to visit loved ones in federal prison. Research shows that one of the greatest challenges for those striving to stay connected with an incarcerated relative or spouse is the distance between prison and home.[104] Given the far-flung nature of the federal system, the BOP's challenge in trying to house individuals near their homes is far greater than that faced by the states. The BOP's designation policy is to attempt to assign individuals to facilities within 500 miles of their release locations, a decision that can also be influenced by an individual's programming needs or security risk classification.[105] As shown in **figure 10**, BOP data indicate that many people are incarcerated far from home, with more than 27 percent of the federal prison population confined more than 500 miles away.

To its credit, the BOP has taken steps to expand and enhance family contact and visitation in the past few years. These efforts include exploring alternative visitation methods such as video conferencing and creating pilot programs that enrich family visitation opportunities at certain facilities. But those currently incarcerated in BOP prisons, as well as those who served time there in the past, told the Task Force that maintaining family contact was a consistent challenge during their time in prison. Barriers included visitation hours that were modified or restricted without adequate notice or explanation; visitation guidelines that varied across facilities, and even within facilities over time; and visitation privileges that were perceived to be restricted as a disciplinary measure.

FIGURE 10

About half of the BOP population is housed more than 250 miles from home



Source: Task Force staff analysis of BOP FY 2014 data.
Note: Excludes non-US citizens and individuals whose previous residence was listed as Alaska, Hawaii, or a US territory.

The BOP should develop greater opportunities for family engagement by housing individuals as close to home as possible. One strategy for doing so is to contract with state facilities when no appropriate federal facility is located within reasonable proximity. The BOP should also establish a central family affairs and visitation office to oversee prison visitation procedures in the interests of facilitating family visits while ensuring security is not compromised, expand video conferencing and programs designed to enhance the bonds between incarcerated parents and their children, and increase other forms of support for families of those in prison.

Recommendation 3: Incentivize Participation in Risk-Reduction Programming

Contrary to what many Americans may believe, the vast majority of people in federal prison will ultimately be released to reenter society, either in the United States or in their home countries. Given that reality, it is imperative as a matter of public safety that those confined in correctional facilities participate in programs and treatment that promote rehabilitation. If the incarcerated exist in a state of perpetual idleness, prison can become a reliable incubator for future crime. But if they engage in activities that address the underlying causes of their offending, it improves the odds that they will be law-abiding, productive citizens upon release.

Research makes a strong case for the public safety benefits of meaningful opportunities for rehabilitation and personal growth during incarceration. Studies also demonstrate that effective correctional interventions aimed at behavioral change require strong incentives and positive reinforcement.[106] Moreover, data plainly illustrate the degree to which people "age out of crime," suggesting that some share of incarcerated persons with extremely long sentences may be suitable candidates for sentence reduction.[107]

The Task Force recommends the following actions to incentivize and reward participation in treatment and programs:

- **Improve public safety by incentivizing high- and medium-risk individuals to participate in risk-reduction programming**
- **Establish a Second Look provision to ensure judicious use of incarceration and encourage rehabilitation**

Background

Many studies show that incentives are a powerful tool to enhance individual motivation in completing treatment, meeting case plan goals, and engaging in positive behavioral change.[108] Consistent with this literature on core correctional practices, state penal systems are increasingly using earned-time credits to incentivize program participation, promote good behavior to ensure both correctional officers and those incarcerated are safe, and provide opportunities to review and reduce sentence lengths in light of rehabilitation in prison.[109] Policymakers in more than 38 states have realized cost savings by expanding earned time credits for individuals who participate in programs shown to reduce their risk of committing new crimes upon release.[110]

The federal corrections system lacks such systemwide mechanisms to encourage rehabilitation and prepare people for successful return to the community. Indeed, unlike most state systems, in the federal system the sentence imposed largely determines the length of stay for those subject to a term of incarceration. As explained earlier, there is no parole in the federal system, and few options are available to modify or reduce the prison term of an individual's sentence following its imposition, especially in light

of program participation. Without these options, those who are incarcerated can be left with little hope and scant motivation to engage in self-improvement activities during their term of incarceration.

The BOP offers a number of rigorous, evidence-based programs intended to reduce recidivism, enhance educational attainment, improve employment readiness, and foster positive change that will help individuals return home as law-abiding citizens. Despite the promise of such programs to increase public safety and reduce the social and fiscal costs associated with recidivism, only one—the Residential Drug Abuse Program—provides participants earned time off their prison terms. The history of RDAP vividly demonstrates the value of earned time incentives to encourage program participation.

The BOP's intensive drug treatment program, RDAP was underused until an earned-time incentive was created as part of the 1994 Violent Crime Control and Law Enforcement Act. The Act provided the BOP with authority to reduce time served by up to 12 months for a subset of program completers, making RDAP one of the BOP's most popular programs (with one of the highest completion rates). This legislation has allowed the BOP to send more citizens home better equipped to succeed in the community and, through the earned-time sentence reductions, has freed up scarce prison beds. And, for those fortunate enough to be eligible for such earned time credit, RDAP has offered a degree of much-needed hope.

It is my belief that if incentives were given for completion of programs like is done in the RDAP program, inmates would better respond to job training and educational opportunities and would be more likely to succeed when released to their home communities.

Donald Taylor, Youth Specialist, Missouri Division of Youth Services' Girardot Center for Youth
Formerly incarcerated in the Bureau of Prisons
March 11, 2015

Hope was a prominent thread throughout this Task Force's fact finding as a key factor in successful treatment and rehabilitation. In spoken testimony, written submissions, roundtable sessions, and one-on-one meetings, many stakeholders agreed that hope sustains individuals throughout incarceration and encourages them to pursue opportunities to prepare for release. Both currently and formerly incarcerated individuals reported that the hope of reuniting with the family they left behind drove them to seek treatment in prison and prepare for the challenges of returning home.

Even more striking than reports on the importance of hope were stories of its absence. In September 2015, the Task Force held a series of meetings with individuals currently incarcerated in federal prison. Most of those involved in the discussions were serving lengthy sentences, with many in excess of 15 years and some sentenced to life. They asked that the Task Force seriously consider opportunities to return hope to people serving long sentences without opportunity for early release consideration. Moreover, during the Task Force's visit to the US Penitentiary Atlanta, members observed several fragile, elderly, and infirmed people and others in very poor health. The Task Force

learned of unsuccessful petitions for compassionate release and found that many of the men were serving time for drug sentences based on crimes committed literally decades ago.

Recommendations

Numerous stakeholders, BOP employees, and both currently and formerly incarcerated individuals agree that program participation should be incentivized through the expansion of earned time credits. Such credits have been used to encourage program participation in both state systems and the federal prison population.[111] Recognizing the challenges of encouraging program participation, the BOP has pressed Congress to authorize earned time incentives to individuals who successfully participate in programs that reduce recidivism. The Task Force has two key recommendations that will help achieve these important goals.

Improve public safety by incentivizing high- and medium-risk individuals to participate in risk-reduction programming

The Task Force recommends that Congress authorize individuals not serving life sentences to earn up to 20 percent off time served by complying with an individualized case plan. Credits shall become available upon successful completion of programs specified by the case plan. The Task Force also recommends that the BOP allow all individuals, including those serving life sentences, to be eligible for privileges other than earned time. Finally, the Task Force asks that Congress expand the eligibility for the one-year RDAP credit to include all individuals with a documented substance abuse problem who can fulfill the RDAP program requirements (including the community treatment phase), except those with life sentences.[xxi]

Earned time credit

In addition to holding individuals who commit crimes accountable, the federal prison system should ensure that people returning home from prison are rehabilitated. These two goals of corrections could be better balanced than under the current system. Greater incentives for participating in rehabilitative programming do not undermine accountability and can promote public safety when carried out effectively. Moreover, many evidence-based programs contain core components that involve holding individuals accountable for their actions while addressing their risk factors for future recidivism.

Thus, Congress should create a new earned time credit for program participation, based on the individualized risk and needs assessments and case plans discussed in the prior chapter. High-risk individuals would receive the credits only by completing intensive, evidence-based programs pursuant to their case plans, provided they also exhibit good conduct. Lower-risk individuals would have more latitude to engage in different activities that qualify for the credits, also conditional upon consistent

[xxi] Noncitizens are ineligible to receive the credit because they cannot participate in the community treatment phase of RDAP.

good conduct. All would be eligible to earn up to 20 percent off time served. This reform would be applied prospectively. Those already in prison would be eligible to earn credit moving forward, but would not be able to earn credit for program participation they have already completed.[xxii]

As described in the previous chapter, assessments would identify individuals' criminogenic needs, such as substance abuse or criminal thinking, and help case managers develop individualized case plans to guide rehabilitative programming in prison. People identified as having a heightened risk of recidivism with more extensive criminogenic needs, who follow their case plan by completing intensive, evidence-based programming—such as cognitive behavior therapy, other mental health programming, drug treatment, and intensive educational or vocational classes—could earn up to a 20 percent reduction in time served. All high- or medium-risk individuals not serving life sentences should be eligible for these incentives, regardless of their instant offense or criminal history. It is all the more important for higher-risk individuals to be incentivized to participate in intensive programming, as they are in greatest need and pose the gravest threat to public safety if they are not rehabilitated before release.

In many cases, a person's risk and needs assessment may indicate lower risk and little need for intensive programs during incarceration. This should not preclude a person from engaging in self-improvement activities and refraining from idleness, which can precipitate misconduct. Low-risk individuals should still be eligible for an earned time credit through ongoing engagement in productive activities; they should not be required to spend a greater proportion of their sentence behind bars due to their lower risk for committing crime in the future. Individualized case plans will help outline productive activities. Skill-building, ongoing education, vocational training (including that designed to keep participants current with technological advances on the outside), and faith-based programming can help all individuals use their time behind bars productively and ease the challenges of reentry upon release.

Earned privileges for all individuals

As discussed earlier in this chapter, the use of incentives and rewards to motivate people to change is a key evidence-based principle. In addition to earned time credits, the ability to earn institutional privileges represents another mechanism to incentivize compliance with prison rules, thereby increasing safety for both staff and the incarcerated. For those ineligible or unable to earn time off for program participation, such as those serving life sentences, institutional rewards and privileges provide hope vital to sustaining people throughout their period of incarceration. Such incentives also create a mechanism through which they can better themselves and the quality of their incarceration.

Institutional incentives and rewards can include a range of privileges, such as additional recreation time, increased visitation or telephone time, access to specialty commissary items, greater freedom of movement, service as a peer mentor or co-facilitator for a class, reduction in security classification, transfer to another facility, or even the ability to select a cellmate. In some cases, such benefits can motivate those placed in administrative or punitive segregation because of a violation or misconduct. In

[xxii] It is imperative that these earned time credits be truly earned. These credits are designed primarily to encourage people at a high risk of recidivism and with great criminogenic needs to participate in evidence-based programming. Without systematic mechanisms for capturing individual risk level and programming needs, the earned time credit would not accomplish its intended goal of promoting public safety.

these instances, institutional rewards can encourage individuals to earn their way out of segregation with good behavior.

The BOP already uses incentives for those who comply with their educational requirements, allowing them to become eligible for occupational training programs and FPI. In addition, those who do not violate prison rules and who maintain good conduct can have their security levels reduced. The BOP reported that in FY 2014, 45 percent of those initially classified as high risk had their security levels reduced through this process, while 21 percent of those initially classified as medium risk had their security levels reduced.[112]

The Task Force recommends the expansion of institutional privileges for those who demonstrate good conduct within the facility, especially for those ineligible for good conduct and earned time. Accomplishing this change will likely require the BOP to develop a more extensive list of privileges that can be earned, establish and communicate that information to staff and those incarcerated, and develop a process for documentation.

RDAP expansion

One evidence-based program already in the BOP is the Residential Drug Abuse Program. RDAP is currently the only program at the BOP incentivized through earned time, but Congress and the BOP have restricted those who have committed a violent offense or have histories of violence from benefitting from this incentive. This exclusion ignores the reality that those with the greatest needs should be incentivized to participate, regardless of their criminal histories. All individuals should be strongly incentivized to participate in programming proven to address their individual needs, regardless of the nature of their criminal histories. As such, the Task Force recommends that earned time credits for RDAP and the incentives described above be made available to all people in federal prison who are able to complete the intensive program, regardless of crimes of conviction or criminal histories.

Establish a Second Look provision to ensure judicious use of incarceration and encourage rehabilitation

The Task Force recommends that Congress establish a Second Look provision that would permit anyone who has served more than 15 years to apply for resentencing before a judicial decisionmaker. One judge in each circuit would be designated to hear petitions for review. Judges would review and assess whether a sentence should be modified based on current circumstances and the purposes of sentencing. The USSC would develop guidelines for judges responsible for conducting Second Look reviews and modifying sentences.

Sentences in the federal prison system are generally long and, due to the abolition of parole in 1984, length of stay is often measured in decades. In 2014, federal courts handed down 1,640 sentences of 20 years or longer. As of 2014, 7,394 people had been in prison for more than 15 years and 2,361 people had served more than 20 years.

The abolition of parole removed any mechanism by which these long sentences could be reconsidered. Determinate sentencing is largely inflexible by definition. But the Task Force has

concluded that the long sentences common in the federal system, coupled with limited options for review, have resulted in lengths of stay that are frequently unjustifiable under the current circumstances. Moreover, these inflexibly lengthy sentences diminish hope for the future and remove any incentive for people in prison to transform their lives.

Task Force members have observed that a person can change after 10 or 20 years in prison. Many people in prison take advantage of programming and other resources to address the root causes of their criminal offending. The Task Force heard several compelling stories illustrating such personal transformation, yet many people who underwent this change were required to remain in prison for years or decades longer.

This reality is particularly troubling given research that convincingly shows crime is a young person's endeavor. The "age-crime" curve shows that the likelihood of committing offenses in the future drops sharply beginning at age 40. After spending more than a decade in prison, many aging, even once-violent, individuals represent little threat to public safety. For this group of people, any societal benefit of incarceration has long since been achieved.[113]

In addition to individual change, society can evolve in its collective thinking about sentencing and length of stay for certain offenses. Take crack cocaine crimes, for example. In the 1980s, punitive mandatory minimum penalties and aggressive prosecution of crack cocaine offenses, including possession, reflected a societal belief that tough sentencing was the best solution for curbing this nascent drug problem. However, the public's attitude toward crack cocaine has changed dramatically, and Congress has rolled back or reduced the applicability of many of these laws.

Yet the federal system offers little opportunity to review an individual sentence to assess whether it still meets the core goals of sentencing in light of individual or societal change. While the BOP has the authority to request a reduction in time served for "extraordinary and compelling reasons," this mechanism is rarely used[xxiii] and may not support larger-scale reviews of many individuals' cases. The President has commuted the sentences of 184 people during his presidency, the vast majority of whom had their sentences reduced since the launch of his Administration's clemency initiative in 2014.[114] Dozens of those granted relief through this initiative were aided by pro bono lawyers organized by the Clemency Project 2014, a nongovernmental group created to support the petitions of people who meet the eligibility criteria for the initiative. This is a promising step, but it should not be the only method for reviewing lengthy federal sentences. Many people who are currently federally incarcerated may not qualify for this program, despite having served long terms.[xxiv] And as the clemency initiative exists by the President's discretion, future Administrations could discontinue it. The Task Force recommends that the Administration's clemency initiative remain in place and that the process be examined to identify how cases can be reviewed more expeditiously.

[xxiii] In FY 2015, the BOP Director approved 106 requests for compassionate release, 99 of which led to reductions in sentences and release.

[xxiv] The Administration's initiative prioritizes the applications of people who have served at least 10 years of their sentence, committed nonviolent and low-level offenses, have no significant criminal history and no history of violence, have shown good conduct while in prison, and would have received a lower sentence had they been convicted of the same offense today.

The Task Force believes the federal system needs a mechanism by which exceptionally long sentences can receive a systematic review that is balanced with the principles of determinate sentencing. Inspired by the work of the American Law Institute,[xxv] the Task Force advises Congress to adopt a Second Look mechanism by which people who have been imprisoned at least 15 years may apply to a judicial panel for resentencing. Under this policy, everyone in federal prison who has served this minimum would be eligible to petition for review. After first eligibility, an individual would have the right to apply again at regular intervals of no less than five years. The review process would be adversarial and would include a prosecutor or a government representative and a counsel for the petitioner.

This approach balances flexibility with the core goals of determinate sentencing. A period any shorter than 15 years runs the risk of introducing too much indeterminacy into the federal system, especially in light of other Task Force recommendations to incentivize program participation. The Second Look approach would also ensure that any system of review is not too burdensome on the court system. By definition, this review would be limited to extraordinarily long sentences, which present the most compelling rationale for review.

In light of the decision's gravity, the Task Force recommends that at least one judge in each circuit be designated to hear petitions for review. Following an initial judicial gatekeeper review to ensure the petitioner has followed prison rules and regulations, participated in programming, complied with his or her case plan, and is not an obvious threat to public safety, the case would move on to a full judicial review. The legal standard for Second Look would be a full resentencing. This process would not serve to review the original sentence for error. Instead, its intent would be to assess whether, in light of current circumstances, the purposes of sentencing as outlined in USC 18 § 3553(a) would be better served by modifying the sentence. As part of their review, judges would not be required to adhere to existing mandatory minimum sentences. However, it is expected that they will consult the statutory ranges in determining the seriousness of the original criminal activity, which may well inform the decision to revise the sentence. Factors to consider would also include whether the individual has demonstrated positive change while in prison, whether the release of the individual would pose too great a risk to public safety, and how societal norms concerning the underlying offense have changed with time. In addition, any known victims associated with the offense of conviction should be invited to submit written testimony as part of the decisionmaking process.

The Task Force recommends that the judicial decisionmaker be granted discretion to modify any element of the sentence, except the authority to make it more severe. The panel may choose to terminate the prison term at review, shorten the prison term to an earlier future release date, add a period of community supervision, or attach certain conditions of supervision.

The Task Force believes that a Second Look provision introduces an appropriate amount of flexibility into a determinate system while balancing the goals of the 1984 Sentencing Reform Act. Second Look would be restricted to individuals serving exceptionally long sentences. At the end of FY

[xxv] The American Law Institute (2011) recently adopted changes to the Model Penal Code that would support a Second Look provision as an alternative to parole in determinate sentencing systems. The Task Force studied discussion drafts from the proceedings of the Model Penal Code committee, which comprised an esteemed panel of judges, prosecutors, defenders, and other legal scholars representing a range of experiences. Their deliberations were instructive in helping the Task Force develop its own recommendation for a Second Look review system.

2014, less than 4 percent of the BOP population had served 15 years or more. If Congress adopts the reforms to mandatory minimums recommended by the Task Force, the number of sentences exceeding 15 years would decline dramatically.

The Task Force considered that resentencing might strain the federal court system. Limited application of the Second Look provision, coupled with a gatekeeper function (whereby unworthy cases would be reviewed and filtered from consideration) would reduce the burden. In addition, the Task Force also believes that creating separate judicial positions to handle this task would ensure that any reviews would not overload the caseloads of current federal district court judges.

US Sentencing Commission Guidelines

Following enactment of the Second Look provision, the USSC should develop guidelines for judges responsible for conducting reviews and modifying sentences. The USSC would also be responsible for tracking and reporting use of the new provision.

Recommendation 4: Ensure Successful Reintegration by Using Evidence-Based Practices in Supervision and Support

Preparing people for law-abiding lives after incarceration is an important correctional function. It requires strong coordination across agencies and a commitment to evidence-based practices, in both prison programs and community supervision. Earlier chapters focused on improving reentry planning inside prison by targeting interventions to those at the highest risk of reoffending and providing incentives for participation in risk-reduction programs.

This chapter focuses on ensuring those practices are carried from BOP facilities into the community, during BOP prerelease custody (i.e., the transition to a federal halfway house or home confinement) and during the subsequent period of supervised release. Providing those exiting prison with the tools, resources, and services necessary to succeed following BOP confinement helps stop the cycle of recidivism, thus improving public safety. Reentry support is most critical in the first days, weeks, and months immediately following release,[115] when the risk of recidivism is highest. Studies have found that a continuum of care is crucial to maintaining gains from prison-based treatment.[116]

Toward this end, the Task Force has three recommendations:

- **Conduct a comprehensive assessment of BOP procedures and practices surrounding prerelease custody, particularly Residential Reentry Centers (RRCs)**
- **Improve the transition of individuals transferring from BOP facilities to community agencies to ensure a safe and seamless reintegration**
- **Strengthen supervised release and expand use of early termination for successful individuals**

Background

Preparing people for reentry into society is a daunting task for the federal corrections system; in 2014 alone, the BOP released more than 40,000 American citizens back to communities across the United States (see **box 10**).[xxvi] Most people released from the BOP spend the final portion of their prison terms in "prerelease custody," which may involve a stay in a halfway house (an RRC), home confinement, or a combination of both. By law, prerelease custody cannot exceed one year, with the home confinement portion limited to six months or ten percent of the prison term, whichever is less. This prerelease period can act as a bridge between time in BOP facilities and the term of community supervision that follows. That final phase of supervised release is provided by the US Probation and Pretrial Services (US Probation), a part of the federal judicial branch.

[xxvi] An additional share of those released during FY 2014 had detainers and were turned over to Immigration and Customs Enforcement for deportation.

BOX 10

Transition-Focused Reentry Efforts

Several national initiatives have been launched to address the challenges people face following incarceration and to improve their transition to free society. The National Institute of Corrections' Transition from Prison to Community Initiative, the Prisoner Reentry Initiative, and the Second Chance Act all emphasize the need for continuing transition support following incarceration. These efforts share a common focus:

- Improving institutional assessment, case management, and evidence-based programming to address identified risk and needs
- Developing strong, effective collaborations within correctional facilities (across functional areas of security, programming, and operations) and with outside stakeholders, including service providers and community supervision agencies, to assure a seamless transition
- Ensuring that all people transitioning out of prison are equipped with basic resources necessary to succeed in the community

Sources: James 2015; Jannetta et al. 2012.

There is no unified case management system involving the BOP, the RRCs, and US Probation. Inconsistent data-sharing practices further inhibit the transfer of critical information that can facilitate a successful return to the community. Complicating matters, RRCs are operated by contractors and not by the BOP itself. More than 200 RRCs operate nationwide. Moreover, there are 122 federal prisons and 94 judicial districts, which manage federal probation and often differ in their approach to reentry preparation. People leaving a BOP facility in one state or judicial district may be transferred to an RRC in another state or judicial district, and ultimately return home in yet a third location.

While these challenges loom large in the federal system, steps can be taken to strengthen reentry planning and community supervision. Fortunately, the federal government can follow the experience of the states and an extensive body of reentry research to understand how to improve coordination and outcomes. Among other findings, the research shows that increasing the use of evidence-based practices in supervision will improve public safety, reduce costly returns to prison, and lead to a host of other improved outcomes.[117]

Perhaps most important, states have been reforming their community supervision systems for years and offer lessons on how to approach such an undertaking. While the task is complicated, state experience shows that focusing on recidivism reduction can lead to powerful results.[118] While the federal system differs from the states, best practices in supervision work in both settings. Best practices include concentrating on those at the highest risk to reoffend, targeting criminogenic needs, tailoring conditions of supervision, balancing surveillance with treatment, and incorporating rewards and incentives.[119]

Recommendations

The federal corrections system has recently made great strides toward adopting these best practices. But additional improvements can be made to better prepare people in prison for a smooth transition home, hold them accountable on supervision, and provide them with the tools and services they need to succeed. The recommendations below highlight three areas for additional improvement: focusing RRC resources on those at the highest risk to reoffend, improving the handoff from BOP custody to RRCs and US Probation, and strengthening supervision by US Probation for those on supervised release.

Conduct a comprehensive assessment of BOP procedures and practices surrounding prerelease custody, particularly RRCs

Research has shown that halfway houses can ease the transition from prison and reduce the likelihood of recidivism for high-risk individuals. When grounded in evidence-based practice, this reentry intervention can improve public safety while also reducing corrections spending. But under certain circumstances, stays at halfway houses can be ineffective or even harmful to a person's prospects for successful reentry. Indeed, studies suggest that halfway houses can have a negative effect on recidivism for low-risk individuals.[120]

Given that evidence, it is critical that placement in halfway houses is based on the results of a validated risk and needs assessment and that this scarce, costly resource is focused on high-risk individuals. Low-risk individuals are better suited for home confinement or other community-based interventions. To maximize their effectiveness, halfway houses should also tailor conditions of supervision to individual needs and balance surveillance with treatment and services. These principles are not common in the operation of all federal halfway houses today.

> *All too often, the organizations operating RRCs and similar programs are seen as vendors, not as partners in the provision of treatment services designed to turn lives around as well as increase public safety.*
>
> *Phil Nunes, President of the International Community Corrections Association and Chief Programs Officer of Alvis, Inc., March 11, 2015*

RRCs play a central role in the federal corrections system's prison transition strategy; the vast majority of individuals not deported upon release will be sent to one. For the 12 months ending in March 2015, 78 percent of US citizens leaving BOP facilities were transferred to an RRC or home confinement. Of those who had completed their sentences, the average time on prerelease custody (RRC and/or home confinement) was about 4.5 months.[xxvii] Almost eight percent of those transferred

[xxvii] Thirty-one percent of individuals spent fewer than 90 days; 54 percent spent between 91 and 180 days, and 15 percent spent more than 181 days.

went directly into home confinement.[121] People in these private facilities or in home confinement remain under custody of the BOP but are usually supervised by contract providers. Individuals on home confinement through a RRC may be monitored through electronic monitoring devices or subject to daily phone contacts and periodic personal contact requirements. Under a memorandum of understanding between the BOP and US Probation, probation officers supervise some people on home confinement, an arrangement allowing individuals to bypass a RRC altogether or stay only briefly before home confinement. Supervision under this federal location-monitoring program is more cost effective than supervision by a RRC.

The Task Force has heard from many sources, including the BOP, that the RRCs have inadequate capacity. Limited capacity has been particularly acute in recent months, as the BOP increased transfers in preparation for the November 2015 early release of more than 6,000 people under the retroactive application of Drugs Minus Two. If the Task Force recommendations are adopted, the need for RRC placements will grow as the BOP population declines, intensifying the capacity shortage.

Given the growing demand, it is imperative that RRCs house people most likely to benefit from the setting and that the centers employ strategies proven to reduce recidivism. Unfortunately, that is not the case today, and the Task Force heard criticism about the current value of RRC placements from various sources. Federal judges, probation officers, and former residents of RRCs all cited problems with ineffective services and variable quality. The Task Force also heard that incentives are not always effectively aligned between the interests of halfway house residents and RRC operators. For example, because RRCs receive a portion of residents' wages, they sometimes pressure individuals to accept any job rather than find one with better long-term prospects, making a resident's pathway to independence more challenging.

While such shortcomings cannot be verified or resolved without an empirical risk and needs assessment and recidivism analysis, these reports highlight RRCs' weakness at targeting criminogenic needs and using other evidence-based practices. Without a risk and needs assessment to determine RRC placement and to tailor conditions, the BOP cannot ensure the appropriate people are being placed in RRCs, nor can it determine whether contractors are providing adequate services. Moreover, because RRC contracts are generally compliance-based, not performance-based, RRCs are not evaluated according to reentry outcomes for the individuals they house.

To make BOP policy consistent with evidence-based practice, the BOP's Performance, Accountability, and Oversight Board (see next chapter) should assess procedures and practices for the use of RRCs and other prerelease custody options. The review should provide findings and recommendations regarding:

- Use of RRC bed space for medium- and high-risk and needs clients
- Implementation of performance-based contracts for RRCs, to emphasize programming, treatment, and recidivism reduction
- Appropriate number and location of RRC beds to meet the needs of those who could benefit from an RRC

- Alternatives to RRC placement for low-risk individuals, including home confinement and day reporting centers
- Implications of payment requirements for persons housed in RRCs and those subject to home confinement

Improve the transition of individuals transferring from BOP facilities to community agencies to ensure a safe and seamless reintegration

For reentry to be successful, agencies should coordinate and collaborate in supporting and supervising individuals returning to communities following incarceration. At a minimum, a seamless transition requires sharing critical information across agencies, including assessment and evaluation information, details about program participation and performance, proof of program and vocational completion, medical and mental health status, and aftercare information. Victim considerations should be addressed as well, including notifying victims when an individual changes location upon release and communicating plans to secure court-ordered restitution.

As previously noted, no unified, cross-agency assessment or case management system at the federal level follows an individual from the pretrial phase, through incarceration, to an RRC, and eventually onto supervised release. Also lacking is any consistent practice governing information sharing among agencies. RRC operators noted, for example, that BOP case managers do not always provide timely and accurate information. Moreover, they do not follow a consistent protocol for writing up case plans, sometimes creating difficulties for RRC staff in interpreting the information provided. All relevant information should be shared promptly and reliably for each returning citizen. Fortunately, efforts are under way to improve data sharing between the BOP and US Probation. US Probation has recently gained access to the BOP's information system, SENTRY, and is working to understand the system and link it to Probation's internal data system.

But greater collaboration, communication, and coordination among federal criminal justice agencies should follow that action. The Transition from Prison to Community (TPC) initiative provides one potential model. Developed by the National Institute of Corrections under the auspices of the BOP, the TPC model calls for the development of a transition accountability plan that is initiated at prison admission, follows the individual throughout the institutional stay, undergoes modification to reflect progress and changes, and is provided to community supervision agencies to ensure a seamless, integrated continuum of transition and reentry.[122] The Task Force recommends that the federal government adopt the TPC approach or similar standardized assessment and case management protocols and practices across agencies and contractors. As the BOP develops its risk and needs assessment and expands its individualized case planning, it should consult with US Probation and its largest RRC contractors and develop comparable data, indicators, and measures.

Strengthen supervised release and expand use of early termination for successful individuals

Research has consistently shown that incentives for meeting case-specific goals enhance individual motivation and improve supervision outcomes.[123] Since nearly every federal prison sentence includes supervised release, providing people with an opportunity to reduce their terms of supervision can be a powerful tool for behavior change. Further, the length of supervision term should be determined by the risk of reoffending. Evidence suggests that there may be diminishing returns from longer supervision terms and that too much supervision may increase the likelihood of recidivism.[124]

One primary role of US Probation is to manage those on postconviction supervision, including probation and supervised release. At the end of FY 2014, a total of 132,858 people were under postconviction supervision.[125] Task Force testimony and fact finding suggest that US Probation has made a concerted effort to adopt evidence-based supervision practices. Examples of best practices include the Post Conviction Risk Assessment (PCRA) tool to determine risk and supervision levels and the Staff Training Aimed at Reducing Rearrest (STARR) program to equip supervision staff with the skills for successfully managing their cases. US Probation has also developed guidelines for responding to violations and uses incentives that include early termination for those who comply with the conditions of their supervision. US Probation leaders should be commended for these efforts, and the Task Force encourages them to continue on this path.

But given its placement in the federal Judiciary, US Probation is not subject to the scrutiny or oversight directed at the BOP and other executive branch agencies, which can be evaluated by the US Government Accountability Office or an Inspector General. A thorough review of US Probation's adherence to evidence-based practice was beyond the scope of the Task Force's work. However, it is highly recommended that the Joint Working Group (described in the following chapter) conduct such a review. Specifically, that review should examine whether federal caseloads are assigned appropriately in accordance with risk levels, whether such caseloads are of a size consistent with best practice, and whether conditions of supervision (including any assessed supervision fees) support rather than thwart successful reintegration.

One concern raised before the Task Force is that US Probation may be unable to continue supervising its growing caseloads without additional resources. Many recommendations contained within this report will result in a shift of individuals from the BOP to the supervision of US Probation. Without additional funding and staffing, that shift will drive up caseloads and possibly erode best practices. These concerns are explored further in the reinvestment recommendations in the last chapter of this report.

Another way to address an expanding supervision population is to increase the use of early termination of supervision. Federal judges currently have the authority to terminate a supervised release term once an individual has served at least one year of the term. The Judicial Conference has approved a presumption[126] in favor of early termination for individuals with limited criminal history ("noncareer") who have been convicted of nonviolent crimes and have been under supervision for at least 18 months. Probation officers are responsible for bringing these cases to the court's attention and notifying the US Attorney's office when a recommendation is submitted.

In FY 2014, US probation closed 43,302 supervised release cases, 68 percent without revocation. Nineteen percent of closed supervised release cases had technical violations, 3 percent had minor violations, and 10 percent had major violations. Approximately 19 percent of people terminated from supervised release without a revocation were granted early termination.[127] Further, roundtable participants stated that the use of early terminations varies significantly across districts, ranging from an estimated 6 percent of supervised release terms in one district to 48 percent of supervised release terms in another. This may reflect differences in judicial and prosecutorial practices across districts. In 2014, US Probation reported savings of nearly $32.5 million, or $4,363 per person associated with early releases from those under postconviction supervision.[128]

In light of the potential for significant increases in individuals coming onto supervision, the Task Force recommends that US Probation greatly expand the use of early termination for people who have successfully complied with their terms of supervision for a year or more. Prospectively, all cases should be reviewed for early termination if one year of supervision has been completed with full compliance of supervision requirements. For those currently on supervision, reviews should be ongoing and should initially target people who have been on supervision for a long time, have a history of compliance with supervision conditions, and are identified as lower risk by US Probation's PCRA.

Recommendation 5: Enhance System Performance and Accountability through Better Coordination across Agencies and Increased Transparency

Taken together, the Task Force recommendations reimagine the federal criminal justice system as an integrated network, with agencies and actors working collaboratively to further the interests of justice and public safety. To achieve lasting success and maximum benefits from this new approach, measurement of performance and reporting of results should be ongoing.

Toward that end, the Task Force recommends the following actions:

- **Establish a joint Department of Justice/Judiciary working group (Joint Working Group) on sentencing and corrections to oversee implementation of recommended reforms**
- **Expand and disseminate public information and knowledge about federal corrections and supervision**
- **Establish a BOP Office of Victim Services as a point of contact for victims seeking information or support**
- **Expand the role and capacity of the USSC to include more diverse perspectives and greater responsibility for cross-agency collaboration**
- **Establish a permanent BOP Performance, Accountability, and Oversight Board to ensure the BOP carries out the recommended reforms while maintaining high standards of correctional practice**
- **Review federal collateral consequence laws, regulations, and practices that, without a public safety basis, bar civic participation and access to programs, and develop recommendations, starting with allowing Pell grants for incarcerated persons and eliminating criminal history disclosure on employment applications for federal employees and contractors**

Background

As described throughout this report, the Task Force envisions holistic change that spans the federal criminal justice system. If its recommendations are adopted, prosecutors would be more selective in the cases they pursue and would file charges that match the seriousness of the underlying offense and the individual. With mandatory minimum penalties lifted for many drug crimes, judges would be equipped with broader options, enabling them to set prison sentences suitable for each offense and use probation and other alternatives to incarceration when appropriate. The BOP, meanwhile, would increase the use of earned time and other incentives, expand evidence-based programs proven to reduce recidivism, match program assignments to the risks and needs of individuals, and improve conditions of confinement. On the back end of the system, community supervision would be anchored in validated risk and needs assessments and evidence-based practices, graduated sanctions would be employed in

response to supervision violations, and terms of supervision would be reduced upon successful compliance with supervision conditions over time.

As the Task Force sees it, each successive stage in the criminal justice process should be shaped by the experience of the previous stages and should benefit from a common and regularly updated understanding of the risks, needs, assets, and accomplishments of the individuals passing through. Moreover, each part of the system needs sufficient funding and staff expertise to deliver evidence-based supervision and programming customized for each individual.

Creating this new and fully integrated system will require coordinating across multiple agencies, increasing transparency of agency policies and practices, and holding agencies and the whole system accountable for results. The recommendations in this section, based on Task Force findings as well as research and state system experiences, will promote and sustain the successful adoption of these changes throughout the federal system.

Recommendations

Establish a joint Department of Justice/Judiciary working group on sentencing and corrections to oversee implementation of recommended reforms

To ensure successful reform, recommended changes in prosecution, sentencing, and corrections policies must be carried out carefully and closely monitored to assess their impact. Effective implementation will require systematic communication and coordination among US Attorneys, the BOP, the Judiciary, US Probation, and the USSC.

This will not be easy, and the Task Force has learned that despite these agencies' overlapping or complementary responsibilities, they have not always worked in concert, at both the policy and operational levels. This lack of coordination has frustrated efforts to provide seamless treatment and reentry planning, and has led to a lack of consistent performance measures critical to gauging the impact of policies and practices. Further, coordination is complicated by the agencies operating in two different branches of government.

Therefore, the Task Force recommends creating an interagency, interbranch group to ensure reforms are carried out successfully. The Joint Working Group would be chaired by the Deputy Attorney General and the Chair of the Criminal Law Committee of the Judicial Conference of the United States. This oversight entity would not only promote transparency and accountability across the system, but also would recommend improvements and additional reforms as needed. Justice Reinvestment Initiative states have relied increasingly on such oversight bodies to coordinate implementation efforts, monitor progress, and measure outcomes.[129] The Task Force believes the federal system would benefit from such a body as well.

This oversight entity would foster coordination and planning, monitor activities, and measure changes in policy and practice. It would include representatives of the key federal agencies with direct

responsibility for sentencing and corrections, including US Attorneys, Main Justice (Deputy Attorney General, Criminal Division), the BOP, US Courts, US Probation, Federal Defenders, and the US Sentencing Commission. Also included would be a victims' representative and representatives from policy entities familiar with best practices, including the Office of Justice Programs, the National Institute of Corrections, and the Federal Interagency Reentry Council.

The Joint Working Group would meet at least quarterly to review the key agencies' progress and discuss pertinent issues as they arise. In conjunction with the BOP Performance, Accountability, and Oversight Board and the USSC, the oversight group would submit an annual report to Congress (i.e., to the House and Senate Judiciary and Appropriations Committees) on progress and on key performance metrics. The working group would be staffed by the DOJ and the Administrative Office of the US Courts.

While the Joint Working Group would initially focus on the new reforms, it would also assume an ongoing role overseeing sentencing and corrections policy. Specifically, the Task Force asks that the Joint Working Group ensure federal probation is anchored in evidence-based practice. That means caseloads should be assigned in accordance with risk levels and of a size consistent with best practice, and that conditions of supervision—including any potential supervision fees—support rather than undermine reentry.

As described in the recommendations below, the Task Force also proposes that the Joint Working Group take the lead in expanding public information about the federal system's performance and developing reinvestment recommendations.

Expand and disseminate public information and knowledge about federal corrections and supervision

The Task Force believes that expanded awareness of the federal system's policies and practices and their outcomes will foster transparency and increase accountability. In particular, the Task Force recommends improvements in caseload reporting, performance measurement, and communication with victims.

Caseload reporting

The DOJ, the Administrative Office of the US Courts, and the USSC all release information about people convicted, sentenced, incarcerated, and under supervision in the federal system.[130] Most prepare annual reports and special studies and some post information on their websites. These data are helpful in understanding caseload composition and trends. In addition, the Bureau of Justice Statistics (BJS) publishes data on the federal system and has an online tool with selected variables for most stages of the criminal justice process.[131]

Key aspects of agency operations and caseloads, however, are not made public or reported routinely. For example, neither the BOP nor US Probation routinely releases information about the risk levels of the populations they serve or the services those populations receive. The BOP does not publish data about prerelease custody violations. US Probation does not publish detailed information about the

outcomes of those on supervision by risk level. The BJS online tool does not include supervision cases or district-level information.

As a result, The Task Force recommends that these key federal criminal justice agencies augment their reporting of caseload data on the corrections and supervision populations to include information about risk and needs levels, program participation, services, and outcomes. The Task Force suggests that the Joint Working Group coordinate a review of annual caseload reporting and recommend changes as needed. Based on its fact finding, the Task Force proposes the following improvements:

- The BOP should expand the information reported on its website and prepare an annual report with statistics on its incoming, standing, and exiting populations. Tables and data should be provided about individuals in prerelease custody, including statistics on any violations in the community.
- US Probation should expand its annual reporting to include risk and needs levels of those on probation and supervised release, overall and by offense of conviction, as well as outcomes of supervision by risk and offense categories. US Probation should also report on the outcomes of all problem-solving courts (pretrial diversion and reentry) and archive agency datasets at the National Archive of Criminal Justice Data.
- The Executive Office for US Attorneys, which reports on all cases prosecuted by US Attorneys' offices, should expand the information it provides about cases diverted pretrial, as well as information about diversion and reentry court programs used across the districts.
- The BJS should expand its interactive data to include information from US Probation, and expand the current set of data available from other agencies. The BJS should also review the datasets they receive from participating agencies to identify opportunities for expansion.

Performance metrics

Monitoring the progress of reform and developing performance measures to assess whether policy changes produce their intended effects will be essential. Such monitoring should include reviewing case processing trends, such as the number and mix of cases prosecuted, the number and types of cases diverted, the types of sentences imposed and prison lengths, the changes in the BOP population, and the changes in the US Probation caseload. It will also be important to establish meaningful measures that describe outcomes for individuals who have passed through the system and reentered the community.

To fortify monitoring and increase accountability, the Task Force recommends that the Joint Working Group review agency performance measures, develop metrics to fill any gaps, and coordinate annual reporting to Congress. The Joint Working Group should adopt a consistent set of recidivism measures for the federal system. The Task Force further recommends that the USSC compile and release recidivism data annually, using multiple measures and definitions developed in consultation with the Joint Working Group. Finally, the BOP Performance, Accountability, and Oversight Board (described below), which will examine the BOP's performance metrics, should coordinate its efforts with the USSC and the Joint Working Group.

One early priority for the Joint Working Group should be to collect data and metrics key agencies currently use to report their performance and outcomes for budget and other purposes. For example, the BOP uses several indicators to measure its performance, including safety, recidivism, and crowding.

The BOP gauges safety, for example, based on rates of escapes, disturbances, and serious assaults. The BOP has also reported several different measures of recidivism rates for individuals released from BOP custody.

The Joint Working Group should consult experts to determine the sufficiency of current BOP performance metrics and identify any that are missing. Agency staff can work with the Joint Working Group to explore the feasibility of collecting additional data. The Joint Working Group should compile and release the metrics in an annual report. In addition to recidivism measures, other reentry outcomes, including employment and substance abuse, should be routinely collected and disseminated.

One key responsibility of the working group will be to help devise a consistent and meaningful set of recidivism measures. The BOP and US Probation periodically report federal recidivism rates,[132] and at least two agencies are currently conducting federal recidivism studies (see **box 11** for an example). But no consensus on recidivism measures or routine reporting requirements has emerged. Given the importance of recidivism as both a measure of public safety and an indicator of system effectiveness, this problem demands serious attention.

BOX 11

USSC Recidivism Study

The USSC's multiyear recidivism study is examining those who served time in federal prisons and were released to the community in 2005, using an eight-year follow-up period. Upcoming analyses will examine any rearrest within eight years, as well as any reconviction and any reincarceration, the time to first charge, and the number and severity of recidivism events. The USSC also intends to examine characteristics associated with recidivism outcomes, including demographics, prior criminal history, type of sentence and time served, and length of postrelease supervision. The study includes US citizens for whom a pre-sentence report is available and valid FBI numbers could be found.

Source: Hunt 2015.

The Task Force recommends that Joint Working Group members agree upon a set of recidivism data that uses multiple measures (rearrest, reconviction, and any reincarceration for a new crime or return to prison), distinguishes the reason for return to incarceration (new crime versus supervision violation), tracks individuals for at least three years, and measures time to failure. In addition, agencies should consider including severity of the crime and developing measures of desistance from criminal offending. The methodology being used by the USSC may be the appropriate model for the future. The USSC will be responsible for annually compiling and releasing the standard set of recidivism data. The Joint Working Group should also discuss how to report violations and arrests that occur while individuals are in BOP prerelease custody.

In a related recommendation, the Task Force asks that the Joint Working Group add to its future agenda a review of budget metrics used by agencies to assess how well they align with desired performance outcomes. Throughout the system, funding formulas are not always aligned with the

current agency priorities or key public safety outcomes. For example, allocation decisions for probation reward caseload size rather than recidivism reduction, creating perverse incentives for agencies and individuals to keep people under supervision.

Establish a BOP Office of Victim Services as a point of contact for victims seeking information or support

In adopting the reforms recommended in this report, attendance to victims' issues and needs is critical. Federal officials should provide consistent, appropriate services at all points in the criminal justice system. Currently, the Victim Notification System is the primary source of communication to victims of federal crime, providing automated alerts to victims through notices triggered by milestones in case processing. While such data are critical to victims, both victims and their advocates reported that greater and more direct communication from the criminal justice system is needed to help victims heal and ensure they are treated with dignity and respect.

The corrections system can take several productive steps to improve experiences for victims of federal crime by increasing both resources and communication. The most important action would be to create a central victims' service office at the BOP. The office would serve as a point of contact for victims seeking support or information about individuals during their time in federal custody. The office should also develop and implement strategies for sharing information with victims about the recidivism-reduction programming incarcerated individuals receive.

However, only a small proportion of federal crimes have identifiable victims, given the large share of persons convicted of drug offenses. These include financial crimes, white collar crimes, Indian Country cases, and child pornography. Other cases, such as those involving large-scale drug trafficking, clearly inflict significant harm on communities and individuals, but by their nature generate little evidence allowing law enforcement to identify individual victims.

Expand the role and capacity of the USSC to include more diverse perspectives and greater responsibility for cross-agency collaboration

Given its current mandate and role (see **box 12**), the USSC is well positioned to coordinate the sentencing reforms recommended by the Task Force and take an active role in tracking, assessing, and ensuring the changes are sustainable.

In addition to the USSC being responsible for amending the Guidelines and serving as the expert body on sentencing policy, it is congressionally mandated "to minimize the likelihood that the Federal Prison population will exceed the capacity of the Federal prisons."[133] In recent years, the USSC has adopted changes aimed at addressing the BOP capacity crisis.

BOX 12

US Sentencing Commission

The USSC's principal purposes are to:

1. Establish sentencing policies and practices for the federal courts
2. Advise and assist Congress and the executive branch in the development of effective and efficient crime policy
3. Collect, analyze, research, and distribute information on federal crime and sentencing issues

Among the USSC's mandates is to create guidelines to prevent overcapacity in the federal prison system. In pursuit of that goal, in 2014 the USSC reexamined drug offense penalties, which led to the retroactive application of certain sentence reductions. In addition, the USSC is continuing its scrutiny of mandatory minimum penalties, which have had a significant impact on population levels and costs. The USSC is also examining the structure of the Sentencing Guidelines post-*Booker*. On that front, its work includes considering ways to simplify the Sentencing Guidelines, encouraging the use of alternatives to incarceration, and conducting a multiyear recidivism study.

Source: US Sentencing Commission 2011a.

In light of the USSC's critical responsibilities for developing sentencing policy and its key role in ensuring the success of the proposed reforms, the Task Force believes the USSC should reflect a broader range of perspectives. The USSC currently includes seven voting members and two ex-officio members representing the DOJ and the Parole Commission. Members are appointed by the President and confirmed by the Senate and serve six-year terms. At least three commissioners must be federal judges and no more than four may belong to the same political party. Currently, other stakeholder perspectives are elicited primarily through advisory groups, such as those for defense attorneys, probation officers, victims, and tribal organizations, as well as through public comment on specific issues before the USSC.

To ensure better representation of these stakeholders, the Task Force recommends prescribing that those most affected by sentencing policies, particularly victims and formerly incarcerated individuals, as well defense attorneys and correctional experts, are represented on the USSC by full voting members. The Task Force also recommends that the DOJ representative be elevated to a full voting member.

In addition to amending the Guidelines to conform to the recommended statutory changes, the Task Force recommends that the USSC:

1. Monitor and report on the impact of changes in sentencing such as eliminating drug mandatory minimum penalties based on drug quantity, allowing judges to sentence below the mandatory minimum for certain weapon offenses, and employing the new Second Look provision
2. Revise its 2011 *Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System*, submit the report to Congress in January 2018, and revise it biennially thereafter, including updated recommendations

3. Annually compile and release recidivism data, using common definitions developed in consultation with the Joint Working Group, particularly the BOP, US Probation, and the BJS

Establish a permanent BOP Performance, Accountability, and Oversight Board

The Task Force recommends the establishment of a Performance, Accountability, and Oversight Board (Board) to ensure the BOP carries out the recommended reforms while maintaining high standards of correctional practice. This high-level entity would operate akin to a corporate board,[xxviii] overseeing changes in policy and practice, guiding and monitoring performance measurement and strategic planning activities, reviewing and helping shape the delivery of risk-reduction programming and transition planning, and monitoring conditions of confinement to ensure they are secure and humane. This Board would be different from the existing DOJ Inspector General, the Government Accountability Office, and other congressional oversight roles, playing a constructive function in guiding the organization toward best practices and adherence to high standards.

The Attorney General should appoint Board members, who should be a distinguished group of individuals representing diverse backgrounds. Examples of suitable members include former high-level members of the Executive, Legislative, and Judicial branches of government; leaders in criminal justice from the prosecution and defense bar, a formerly incarcerated individual, as well as a victim advocate; a top criminal justice researcher; an esteemed current or former director of state corrections; a member of the faith community; and a business leader. Such a group could provide the knowledge and expertise needed to help the BOP navigate the challenges ahead, and could also advocate for programming and staffing allocations to support the BOP's public safety mandate.

The BOP Director and the head of the federal correctional employees union should serve as ex officio members of the Board, which would be supported by BOP staff. Specifically, the Board would be charged with:

1. Working with the BOP to develop and promulgate performance metrics (at both organizational and staff levels) that emphasize risk and needs assessment and risk-reduction activities, reentry preparation, and postrelease outcomes
2. Monitoring development of the new risk and needs assessment and implementation of the new earned time credits
3. Reviewing and disseminating BOP data on performance, safety, and security metrics to support routine system assessment and to identify needed improvements (for example, statistics on use of segregation, use of discipline, level of assaults, misconduct)
4. Reviewing the oversight functions of the DOJ Inspector General, the Government Accountability Office, and Congress, along with existing auditing and compliance mechanisms such as Affordable Care Act accreditation and Prison Rape Elimination Act compliance, to ensure sufficient checks and balances are in place to support the BOP's system transformation

[xxviii] Unlike a corporate board, members of the Performance, Accountability, and Oversight Board would not be compensated and would not have any fiduciary responsibilities.

5. Overseeing development of a comprehensive ten-year plan to restructure the federal prison system in light of significant reductions in the prison population
6. Conducting special studies, for example, a review of prerelease custody practices and procedures, focused on RRCs

Review federal collateral consequence laws, regulations, and practices, and develop specific recommendations to Congress

The collateral consequences of a prison sentence or a conviction extend well beyond an individual's term of imprisonment or supervision. Many organizations, academic experts, and policymakers have spotlighted the extent of these invisible punishments and have proposed ways to ease the harm they inflict after incarceration. With funding from the federal government, for example, the American Bar Association created the National Inventory of Collateral Consequences, which catalogs more than 45,000 state and federal laws and regulations that can restrict an individual's successful reentry into society.[134] The National Association of Criminal Defense Lawyers' Restoration of Rights Project compiles information about laws and practices in each jurisdiction that can help individuals overcome or mitigate the effects of collateral consequences.[135]

> *Reentry is a formidable challenge for individuals leaving prison. Not only must they adjust to freedom and an ever-changing society after years or decades on the inside, they must also contend with numerous legal barriers to rebuilding their lives.*
>
> *Jesselyn McCurdy, Senior Legislative Counsel, American Civil Liberties Union, March 11, 2015*

The Obama Administration, through its Federal Interagency Reentry Council, has also been examining federally imposed collateral consequences, including those that impede employment and educational opportunities, to see which could be eliminated or reduced without compromising public safety.[136] The Task Force supports the institutionalization of this council as well as the continued review of federal collateral consequence laws that, without a public safety basis or relationship to the original crime, bar civic participation and access to programs, services, and housing. The Task Force recommends that the Joint Working Group consult with the Federal Interagency Reentry Council to develop recommendations to Congress that will prevent or remove these barriers to successful reintegration. As a starting point, the Task Force urges Congress to remove the prohibitions on Pell grants for incarcerated persons. The Task Force also recommends that the President eliminate executive branch requirements mandating the disclosure of criminal history on employment applications for federal contractors, parallel to action already taken by the President for federal employees. The Task Force urges Congress to codify these changes for both federal contractors and employees. Removing the disclosure requirement would not pose a risk to national security, as it does not prevent hiring agencies from conducting background checks on candidates for employment; it simply evens the playing field at the very beginning of the application process.

Recommendation 6: Reinvest Savings to Support the Expansion of Necessary Programs, Supervision, and Treatment

The Task Force has developed a package of reforms designed to remedy decades of unbridled prison population growth and to reduce recidivism. If carried out according to the Task Force recommendations, the reforms will improve public safety while producing meaningful and sustainable reductions in the number of people behind bars. To ensure these reforms have the intended impact, significant resources must be invested upfront to improve risk-reduction programming in prison, strengthen and expand supervision, and increase coordination among federal justice agencies. And as the BOP population declines, funding that otherwise would have paid for incarcerating a growing prison population should be reinvested to accomplish these program goals. Without such reinvestment, the federal correctional system is unlikely to deliver the projected benefits of reform.

The Task Force recommends that Congress authorize and appropriate resources to support the recommended reforms. This recommendation is based on the firm belief that these investments in rightsizing and strengthening our federal corrections system are imperative to protect public safety, hold individuals accountable for their crimes, provide the necessary support to change lives, and control federal expenditures. Specifically, the Task Force recommends:

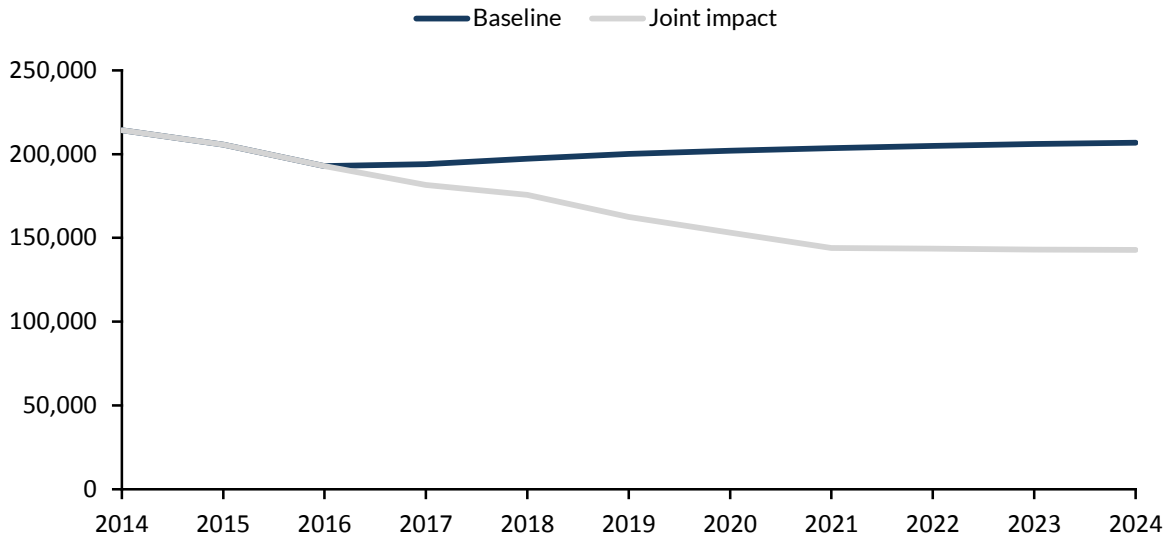
- **Congress should provide funds immediately to the DOJ and the Judiciary for:**
  - **The BOP to adopt a validated risk and needs assessment tool, to catalog current program offerings and capacity, and to expand necessary programs and treatment**
  - **US Probation to increase staffing, programs, and services**
  - **US Courts to establish the Second Look function**
  - **The USSC to expand capacity and training**
  - **The DOJ Office of Justice Programs to incentivize front-end diversion programs, problem-solving courts, and other alternatives to incarceration, through grant programs to courts and prosecutors' offices**
- **The Joint Working Group, led by the DOJ and the Judiciary, should develop recommendations for reinvesting savings from the reduced BOP population, including continuation of funding for efforts specified above and support for other Task Force recommended reforms as they come online**

Population and Cost Projections

The Task Force estimates that its recommendations, if implemented jointly, would reduce the federal prison population and related spending by considerable amounts. Taken as a whole, the recommendations are estimated to reduce the BOP population by more than 60,000 by FY 2024, compared to current population forecasts (**figure 11**). This reduction would translate to a savings of over $5 billion by FY 2024. These population declines would be driven largely by the recommended shortening of most drug-related prison sentences.[xxix] As noted above, the Task Force advises that retroactive changes to drug sentences be phased in slowly to ensure adequate preparation for release, beginning 24 months after recommended changes.

FIGURE 11

Projected impact of recommendations on the BOP population



Source: Task Force staff analysis of BOP and USSC FY 1994–2014 data.

[xxix] See **appendix D** for estimates of the impact of each recommendation that has quantifiable population impacts. Note that population and cost impact estimates are not calculated for recommendations related to changes to prosecutorial practice, increased use of alternatives to incarceration (outside of drug sentencing), and changes in recidivism rates. If the Task Force recommendations are adopted, the BOP should be able to operate within its current rated capacity. The FY 2016 congressional appropriation for the BOP (buildings and facilities) includes $444 million for new prison construction. We do not assume any future expenditures for prison construction, even without Task Force recommendation implementation.

Task Force projections show that the BOP population will continue to drop by about 10,000 people each year for the coming five years, falling to within rated capacity by the end of FY 2021. Although this population reduction is significant, its budgetary impact will not be fully realized in the first few years following reform. Because BOP facilities are understaffed and overcrowded, even significant reductions in population will not prompt immediate facility closures or personnel reductions, the two budget items that can yield the greatest savings.[xxx] Rather, much of the money saved through adoption of the Task Force recommendations would enable the BOP to essentially catch up and remedy the impacts of years of rapid growth.

Given the delayed accrual of savings associated with reforms, it is imperative that Congress appropriate funds in advance of reform implementation to help the BOP and other agencies comply with Task Force recommendations. US Probation, in particular, will need additional resources to expand and strengthen community supervision. These critical up-front investments will be far outweighed by the savings accrued over time from prison population reductions, as well as from the public safety benefits associated with enhanced reentry preparation and reintegration support.

Reinvestment Plan

The recommended changes in federal sentencing and corrections policies will cause ripple effects across the criminal justice system. The Task Force projects that the BOP population will continue to drop. As a result, caseloads for probation and supervised release will increase by thousands as releases from prison to supervision accelerate and the use of probation and other incarceration alternatives grows. At the end of FY 2014, 132,858[137] people were on probation or supervised release, but thousands have likely been added since then as a result of recent sentencing changes.[138] Correctional agencies will need additional resources to ensure that individuals—wherever they are in the system—receive appropriate supervision and programming tailored to their risk and needs. Funding will also be required to support several other Task Force recommendations. Resource needs must be addressed for the immediate future, as well as for the long term.

[xxx] These projections assume that the BOP will not close any of the facilities it operates by FY 2024. The BOP may need to repurpose facilities designed for those in lower security levels to house individuals at a higher risk of institutional misconduct, so the rated capacity of BOP facilities may change in years to come. A marginal cost of $10,994 per person per year is used to calculate savings for all except private facilities, for which the average cost is $22,159 per person per year. If the BOP does, indeed, close or consolidate facilities as a result of these recommendations, these projected savings will substantially understate the fiscal impact.

Unless workload increases for probation are better coordinated and resourced, the efficacy of the federal criminal justice system, and ultimately public safety, could be compromised.

The Honorable Irene M. Keeley, Chair of the Criminal Law Committee for the Judicial Conference of the US, January 27, 2015

Under the justice reinvestment model, the savings accrued from reducing the federal prison population are spent, or "reinvested," in other programs and initiatives that can improve accountability, reduce recidivism and increase public safety. State policymakers who have engaged in justice reinvestment have learned that up-front investment is essential to ensure that changes in policy and practice can be launched as soon as they are enacted.[139] Some call this up-front investment "jump-starting" reform to ensure a smooth and successful beginning that increases the odds of dividends down the road.

Even if the Task Force recommendations are adopted in full, the federal prison population will remain above facilities' rated capacity for several years to come. During that time, the BOP will continue to admit and release tens of thousands of people annually. Unless the BOP receives an up-front investment, the Task Force believes the projected benefits of improved rehabilitation, supervision, and public safety are unlikely to materialize. The Task Force has identified several federal agencies that will require an immediate infusion of money in the first year, before any Task Force recommendations are brought fully to scale (see **figure 12**).

FIGURE 12

Up-front reinvestment

Agency	Description	Justification
BOP	New risk and needs assessment tool, gap assessment	Programming capacity should be matched to the risk and needs of the population to reduce recidivism
BOP	Expanded programming	Waitlists, understaffing, and lack of appropriate programming persist in the BOP
BOP, US Courts	Victims' communications and input	Victims should be made aware of the impact of reforms on incarcerated individuals' program participation, release date, and supervision status, and should be solicited for input in the Second Look process
US Courts	Additional probation officers and expanded programming	Probation and supervised release caseloads will increase as individuals are diverted from prison or released from custody
US Courts	Additional judges for Second Look	Congress should create new judgeships and the Courts should provide judicial training for sentence review
US Courts	Enhanced role for defenders	The Courts should include defenders as part of Second Look process, and ensure federal defender involvement in alternative sentencing mechanisms
DOJ Office of Justice Programs	Alternatives to incarceration	The Office of Justice Programs should create a grant program that would incentivize prosecutors and the courts to develop and expand problem-solving courts and alternatives to incarceration
USSC	Expanded capacity and training	The USSC should train prosecutors, judges, probation officers, and federal defenders about the changes in sentencing policy, and address concerns about reintroducing increased disparity

Investment priorities

During its fact-finding phase, the Task Force learned that BOP staffing levels at both the case-management and unit management levels are thin. This has created persistent waitlists and program shortages, especially in vocational training (including FPI) and general education. These programs are key components of reentry preparation and should be provided additional resources immediately, even before a gap analysis.

Creating sufficient capacity for case managers is critical as well, particularly given the Task Force recommendations regarding risk and needs assessments and intensive case management. Case managers direct in-prison rehabilitation efforts and also coordinate reentry. If staff is stretched thin, the success of such efforts will inevitably be jeopardized. Substantial increases are necessary to reduce caseloads and ensure risk and needs assessments and case plans are developed properly.

The Task Force strongly recommends greater use of community supervision, both on the front end and following an accelerated release. US Probation, however, is already straining under its current

caseload; it cannot shoulder more cases and still ensure public safety without additional resources. If the Task Force recommendations are adopted, projections indicate that US Probation caseloads could rise by thousands of people in the first year alone—even before retroactive application of changes to drug sentencing. Congress will need to appropriate additional funds to the Judiciary to cover an increased caseload.[xxxi]

In addition to these larger expenditures, outlays are required to lay the groundwork for many Task Force recommendations. For example, the Task Force calls for twelve new judgeships to handle the Second Look function, and those should be accompanied by supporting clerkships and administrative resources. The President's clemency initiative has also shown the importance of providing defense attorneys with access to old court documents and resources to review old cases. In addition, the USSC will need additional resources to support training prosecutors, judges, probation officers, and federal defenders about the changes in sentencing policy, as well as to address concerns about reintroducing increased disparity. Defenders should receive funding for their role in the Second Look and additional alternative sentencing mechanisms.

Finally, this Task Force calls for additional funding for a grant program that will incentivize courts and prosecutors to develop alternatives to incarceration, such as pretrial diversion and problem-solving courts.

Most long-term savings should be reinvested in promoting public safety

Except for development of the risk and needs assessment, each budget priority mentioned above will require ongoing investment. After the first year of reform, particularly as information becomes available about the precise effects of the Task Force's recommendations, these increased expenditures should be built into the budgets for each agency. Much of the savings generated through reductions in the BOP population will be immediately captured by the BOP as it expands programming to reduce recidivism. The gap assessment of BOP programs may find that substantial additional resources are necessary to expand certain programming above and beyond the expansions discussed above.

As noted above, prosecutors and the courts will need additional expenditures to support alternatives to incarceration, and US Probation will need to hire more officers to handle elevated caseloads. Many of those testifying before the Task Force expressed concern that if the federal system embraced reform "on the cheap," without sufficient funding or effective community supervision strategies, poor outcomes would follow, undermining public safety. That result, above all, is one the Task Force urges Congress to avoid.

[xxxi] Importantly, federal probation rests in a different branch of the federal government than BOP. Moreover, appropriations for these agencies are done separately. Appropriators should work together to ensure that a share of the DOJ's projected savings can be dedicated to expanding the federal probation capacity.

Appendix A. Recommendations by Authority

Recommendation 1: Reserve Prison for Those Convicted of the Most Serious Federal Crimes

	Recommendation	Congress	Executive Branch	Judiciary
1.1	**Mandatory minimums for drug offenses**	✓		✓
1.1.a	Repeal drug mandatory minimum penalties, except for drug kingpins; apply Fair Sentencing Act retroactively	Congress		
1.1.b	Revise Sentencing Guidelines to reflect role and culpability; prescribe alternatives to prison for lower-level drug trafficking offenses			USSC
1.2	**Mandatory minimums for weapon possession**	✓		✓
1.2.a	Enable judges to sentence below the mandatory minimum weapon enhancement for possession associated with nonviolent offense	Congress		
1.2.b	Monitor impact of change and consider similar departure mechanisms for other mandatory minimums	Congress		USSC
1.3	**Mandatory minimum research and sunset provisions**	✓	✓	✓
1.3.a	Update report on mandatory minimum penalties re: unwarranted disparities or disproportionately severe sentences			USSC
1.3.b	Apply sunset provision to any future mandatory minimum penalties	Congress		
1.3.c	Prepare prison, fiscal, and racial impact assessments for proposed legislative and Sentencing Guidelines changes		DOJ, other agencies	US Courts, USSC
1.4	**Alternatives to incarceration**	✓	✓	✓
1.4.a	Prescribe probation for lower-level drug trafficking offenses and consider doing so for other offense types			USSC
1.4.b	Promulgate information regarding alternatives to incarceration			USSC
1.4.c	Increase use of alternatives to incarceration including front-end diversion courts, problem-solving courts, and evidence-based probation		US Attorneys	Judges
1.4.d	Authorize and fund front-end diversion programs and problem-solving courts, evaluating alternatives	Congress		OJP
1.5	**Federal prosecution**		✓	
1.5.a	Review case selection and charging practices regarding federal interest and jurisdiction		US Attorneys	
1.5.b	Analyze data from all US Attorneys' offices to determine application of Smart on Crime		US Attorneys	

Recommendation 2: Promote a Culture of Safety and Rehabilitation in Federal Facilities

	Recommendation	Congress	Executive Branch	Judiciary
2.1	**Safety and security in BOP**	✓	✓	
2.1.a	Assess and reallocate staffing to ensure appropriate inmate-to-staff ratios		BOP	
2.1.b	Ensure individuals are housed in accordance with rated cell capacity		BOP	
2.1.c	Enable individuals to earn up to 15 percent off sentence to incentivize good conduct	Congress		
2.2	**Risk and needs**		✓	
2.2.a	Develop and implement an actuarial risk and needs assessment tool		BOP	
2.2.b	Develop case plans and deliver programming based on individual risk and needs		BOP	
2.3	**Programming**		✓	
2.3.a	Develop aggregate criminogenic risk and needs profile of its population		BOP	
2.3.b	Conduct a systemwide assessment of facility-specific programming needs		BOP	
2.3.c	Allocate programs and treatment offerings in accordance with facility risk and need		BOP	
2.3.d	Expand educational and occupational opportunities in accordance with facility need		BOP	
2.4	**Conditions of confinement and rehabilitative culture**		✓	
2.4.a	Train all staff on communication, problem solving, and procedurally just resolution practices		BOP	
2.4.b	Use segregated housing as punitive measure only in extraordinary circumstances		BOP	
2.4.c	Ensure housing and security procedures respond to specific needs of diverse population		BOP	
2.4.d	Develop appropriate and nonrestrictive housing options for those in need of protective custody		BOP	
2.5	**Family engagement**		✓	
2.5.a	House people close to home communities		BOP	
2.5.b	Establish visitation and family affairs office to oversee and ease visitation procedures		BOP	
2.5.c	Expand video conferencing and other visitation programs		BOP	
2.5.d	Enhance support for families of people in prison		BOP	

Recommendation 3: Incentivize Participation in Risk-Reduction Programming

	Recommendation	Congress	Executive Branch	Judiciary
3.1	**Risk-reduction programming**	✓	✓	
3.1.a	Enable individuals not serving life sentences to earn up to 20 percent off time served by complying with individualized case plans	Congress		
3.1.b	Enable individuals, including those serving life sentences, to earn facility-based privileges		BOP	
3.1.c	Enable all Residential Drug Abuse Program participants not serving life sentences to earn up to one year off time served	Congress	BOP	
3.2	**Second Look provision**	✓		✓
3.2.a	Enable resentencing for anyone who has served more than 15 years of their sentence	Congress		
3.2.b	Develop guidelines for Second Look reviews and sentence modifications			USSC

Recommendation 4: Ensure Successful Reintegration by Using Evidence-Based Practices in Supervision and Support

	Recommendation	Congress	Executive Branch	Judiciary
4.1	**Prerelease custody and Residential Reentry Centers (RRCs)**		✓	
4.1.a	Make recommendations regarding allocation of RRC beds, alternatives to RRC placement, and performance-based RRC contracts		BOP Performance, Accountability, and Oversight Board (Board)	
4.2	**Safe and seamless reintegration**		✓	✓
4.2.a	Improve coordination by establishing a shared information system		BOP	Probation
4.2.b	Share information on risk and needs assessment, program participation, medical and mental health status, and aftercare information		BOP	Probation
4.3	**Supervised release and early termination**			✓ **Probation Judges**

Recommendation 5: Enhance System Performance and Accountability through Better Coordination across Agencies and Increased Transparency

	Recommendation	Congress	Executive Branch	Judiciary
5.1	**Establish joint Department of Justice/ Judiciary working group (Joint Working Group) to oversee reforms**		✓	✓
5.1.a	Monitor implementation of recommended legislative and policy changes		Joint Working Group	Joint Working Group
5.1.b	Submit an annual report on reform progress and performance metrics		Joint Working Group	Joint Working Group
5.2	**Caseload reporting and performance metrics**		✓	✓
5.2.a	Review and expand annual reporting of caseload data for the corrections and supervision population		Joint Working Group	Joint Working Group
5.2.b	Develop metrics and an ongoing review for performance measurement; disseminate recidivism data annually		Joint Working Group	Joint Working Group USSC
5.3	**Establish BOP Office of Victim Services**		✓	
5.4	**Membership, role, and capacity of the USSC**	✓		✓
5.4.a	Expand voting membership of USSC to include representation of victims, formerly incarcerated individuals, defense attorneys, and experts in sentencing and corrections	Congress		USSC
5.4.b	Routinely monitor and report on the impact of sentencing changes			USSC
5.4.c	Revise 2011 mandatory minimum report			USSC
5.5	**Permanent BOP Performance, Accountability, and Oversight Board (Board)**		✓	
5.5.a	Work with BOP to develop and promulgate performance metrics		BOP Board	
5.5.b	Monitor development of new risk and needs assessment and implementation of new earned time credits		Board	
5.5.c	Review BOP data on internal performance, safety, and security metrics for external consumption		Board	
5.5.d	Oversee development and implementation of comprehensive 10-year plan to restructure federal prison system		Board	
5.5.e	Review BOP oversight, accreditation, auditing, and compliance mechanisms		Board	
5.5.f	Conduct special studies such as review of prerelease custody practices and procedures, focused on RRCs		Board	
5.6	**Collateral consequences and barriers to reintegration**	✓	✓	✓
5.6.a	Review federal collateral consequence laws		Joint Working Group	Joint Working Group
5.6.b	Allow Pell grants for incarcerated persons	Congress		

	Recommendation	Congress	Executive Branch	Judiciary
5.6.c	Eliminate executive branch criminal history disclosure on employment applications for federal contractors		President	
5.6.d	Codify criminal history disclosure changes for federal employees and contractors	Congress		

Recommendation 6: Reinvest Savings to Support the Expansion of Necessary Programs, Supervision, and Treatment

	Recommendation	Congress	Executive Branch	Judiciary
6.1	**Resources for reform**	✓	✓	✓
6.1.a	Fund BOP to implement validated risk and needs assessment tool, catalog current program offerings and capacity, and expand necessary programs and treatment	Congress	BOP	
6.1.b	Fund US Probation to increase staffing, programs, and services	Congress		Probation
6.1.c	Fund Courts to establish the Second Look function	Congress		US Courts
6.1.d	Fund USSC to expand capacity and training	Congress		USSC
6.1.e	Fund DOJ Office of Justice Programs (OJP) to incentivize front-end diversion programs, problem-solving courts, and other alternatives to incarceration	Congress	OJP	
6.2	**Develop recommendations for reinvesting savings from the reduced BOP population**	**Congress**	**Joint Working Group**	**Joint Working Group**

Note: For the following recommendations, congressional action, funding, or approval may be required before they can be fully implemented by the identified agencies: 1.1.b, 1.4.a, 2.1.a, 2.1.b, 2.3.d, 3.2.b, 6.1, and 6.2.

Appendix B. Task Force Member Biographies

J.C. Watts, Jr., Chair
Mr. Watts is the Chairman of J.C. Watts Companies. He was a Member of the US House of Representatives from 1995 to 2003 (R-OK) and was elected as chairman of the Republican Conference in 1998. During his tenure in Congress he served on the House Armed Services Committee and authored the legislation that created the House Select Committee on Homeland Security. Mr. Watts was the author of President Bush's faith-based initiative, the Community Solutions Act of 2001, and developed legislation with Congressman John Lewis to establish a Smithsonian Museum of African American History.

Alan B. Mollohan, Vice Chair
Mr. Mollohan is a former Member of the US House of Representatives, where he served from 1983 to 2011 (D-WV). During his tenure in Congress Mr. Mollohan was a member of the House Committee on Appropriations and chaired the Commerce, Justice, Science and Related Agencies Subcommittee. He also served on the House Committee on Ethics as its Ranking Member and as a member of the Committee on the Budget.

Craig DeRoche *(began serving November 2015)*
Mr. DeRoche is Prison Fellowship's Senior Vice President of Policy and Advocacy. He was elected speaker of the House in Michigan in 2004. After giving a 2011 speech at a national forum on addiction, DeRoche was introduced to Justice Fellowship, the public policy affiliate of Prison Fellowship that advocates for criminal justice reform based on the principles of restorative justice found in the Bible.

David C. Iglesias
Mr. Iglesias is the Director of the Wheaton Center for Faith, Politics and Economics at Wheaton College. Previously, he served as a state, federal, and military prosecutor with a focus on national security and terrorism cases. Mr. Iglesias was the US Attorney for the District of New Mexico from 2001 to 2007. After an extensive military career, Mr. Iglesias retired from the Navy as a Captain in 2014.

Jim Liske *(served until November 2015)*
Mr. Liske served as the President and CEO of Prison Fellowship Ministries from 2011 to 2015. In a previous role as the Senior Pastor of Ridge Point Community Church in Holland, MI, he helped his congregation start 70 x 7, an organization that helps men and women recently released from prison deal with addiction recovery challenges, find employment, and transition back into the community.

Jay Neal
Mr. Neal is the Criminal Justice Liaison at the Georgia Criminal Justice Coordinating Council. He was a representative (R-Lafayette) in the Georgia General Assembly from 2003 to 2013, where he served as the chair of the House Committee on State Institutions and Property and vice chair of the House Public Safety Committee. In 2011, Mr. Neal authored HB 265 establishing the Special Council on Criminal Justice Reform for Georgians. Mr. Neal also previously served as the Executive Director of the Georgia Governor's Office of Transition, Support and Reentry.

Laurie O. Robinson

Ms. Robinson is the Clarence J. Robinson Professor of Criminology, Law and Society at George Mason University. She recently served as co-chair of the President's Task Force on 21st Century Policing. She has twice served as the Assistant Attorney General for the US Department of Justice Office of Justice Programs, (1993 to 2000; 2009 to 2012). Between her two terms at the Department of Justice, Ms. Robinson was affiliated with the University of Pennsylvania in the Department of Criminology. Prior to joining the Department of Justice, Ms. Robinson was the director of the American Bar Association's Criminal Justice Section.

Cynthia W. Roseberry

Ms. Roseberry is Project Manager of Clemency Project 2014. She was the former Executive Director of Federal Defenders of the Middle District of Georgia, as well as the President of the Georgia Association of Criminal Defense Lawyers. Ms. Roseberry was a founding board member of the Georgia Innocence Project and has taught at the DePaul University College of Law.

Ricardo M. Urbina

Judge Urbina retired from the federal judge bench in 2012 and is an arbitrator and mediator at JAMS (Judges Arbitration and Mediation Services). President Clinton appointed him to serve as US District Court Judge for the District of Columbia (1994 to 2012) and earlier President Reagan appointed him to serve as District of Columbia Superior Court Judge (1981 to 1994). From 1974 to 1981 Judge Urbina served on the Howard University Law School faculty.

John E. Wetzel

Mr. Wetzel is the Secretary of the Pennsylvania Department of Corrections. He has had more than two decades of experience in the corrections field, including corrections officer, treatment counselor, warden, and training academy director. Mr. Wetzel is the vice chair of the Council of State Governments' Justice Center's Executive Board and is also a member of Harvard's Executive Session on Community Corrections.

Appendix C. List of Invited Speakers, Roundtable Participants, and Other Contributing Organizations and Stakeholders

The following list contains the names of individuals and organizations that provided input to the Task Force through public hearings, stakeholder roundtables, and interviews.[xxxii] The list also contains the names of members of the public who provided testimony during an open call for input at the Task Force's second meeting, along with individuals who submitted written testimony. Individuals are listed with their title and affiliation at the time they provided input to the Task Force. Individuals who testified or provided input in their personal capacity are not listed with their professional affiliation.

Invited Speakers at Task Force Public Meetings

January 27, 2015: Key Federal Criminal Justice Leaders

Kenneth P. Cohen, Staff Director, US Sentencing Commission (delivering a statement on behalf of Judge Patti B. Saris, Chair, US Sentencing Commission)
Richard S. Hartunian, US Attorney for the Northern District of New York
Hon. Irene M. Keeley, US District Court Judge, Northern District of West Virginia and Chair, Criminal Law Committee of the Judicial Conference of the United States
Charles E. Samuels, Jr., Director, Federal Bureau of Prisons

March 11, 2015: Voices from Stakeholders Most Impacted by the Challenges Facing BOP

Susan Howley, Director of Public Policy, National Center for Victims of Crime
Glenn E. Martin, Founder, JustLeadershipUSA
Donald Taylor, Youth Specialist, Missouri Division of Youth Services' Girardot Center for Youth
Eric O. Young, President, American Federation of Government Employees' Council of Prison Locals

May 13, 2015: Defense Perspectives on Federal Justice Reform and Innovative Practices in the Federal Justice System

Patricia Butterfield, Senior Deputy Assistant Director for Reentry Services Division, BOP
George S. Cardona, Chief Assistant US Attorney, Central District of California

[xxxii] Individuals who participated in a roundtable for formerly incarcerated people and their relatives, and individuals currently incarcerated at USP Atlanta who participated in discussions with Task Force members and staff, were not included because of project confidentiality requirements.

Michael J. Elbert, Chief US Probation Officer, Southern District of Iowa
David Patton, Executive Director and Attorney-in-Chief, Federal Defenders of New York
Norman L. Reimer, Executive Director, National Association of Criminal Defense Lawyers
Leigh M. Skipper, Chief Federal Defender, Federal Community Defender Office for the Eastern District of Pennsylvania

September 9, 2015: Applying Lessons Learned from Georgia's Justice Reinvestment Initiative to Federal Reform Efforts

Hon. Michael P. Boggs, Judge, Georgia Court of Appeals and Co-Chair, Georgia Council on Criminal Justice Reform
Jay Sanders, Deputy Director, Georgia Governor's Office of Transition, Support, and Reentry
Thomas Worthy, Director of Governmental Affairs, State Bar of Georgia and Co-Chair, Georgia Council on Criminal Justice Reform

Speakers at March 11, 2015, Public Hearing

Nicole Austin-Hillery, Director and Counsel, Washington, DC Office, Brennan Center for Justice at New York University School of Law
Allen Beck
Hon. Arthur L. Burnett, Sr., Chairperson, Organization on Procedural Justice and Racial, Ethnic, Religious Profiling and National Executive Director, National African American Drug Policy Coalition, Inc.
Robert Dellelo, Advisor, National Religious Campaign Against Torture and Program Assistant, Criminal Justice Program, American Friends Service Committee
Jack Donson, Member, Corrections Committee of the ABA and NACDL, Director of Programs, FedCURE, and Executive Director of Out4Good
Jean Erbst, family member of individual housed in BOP facility
Joseph Fierros, National Policy Liaison, Prisology
Raffi Freedman-Gurspan, Policy Advisor, Racial and Economic Justice Initiative, National Center for Transgender Equality
Diana Goodwin, family member of individual housed in BOP facility
Paul Larkin, Senior Legal Research Fellow, Center for Legal and Judicial Studies, The Heritage Foundation
Tara Libert, Co-Founder and Executive Director, Free Minds Book Club & Writing Workshop
Vicki Lopez
Marc Mauer, Executive Director, The Sentencing Project
Jesselyn McCurdy, Senior Legislative Counsel, Washington Legislative Office, American Civil Liberties Union (ACLU)
Paul Molloy, CEO, Oxford House, Inc.
Patrick J. Nolan, on behalf of Right on Crime, Director of Criminal Justice Reform Project, American Conservative Union Foundation
Phil Nunes, President, International Community Corrections Association and Chief Programs Officer, Alvis House
Thomas W. Petersik, Labor Economist, International Citizens United for Rehabilitation of Errants (CURE)

Jamie Argento Rodriguez, Chief, Community Defender Division, Public Defender Service for the District of Columbia
Louis Sawyer, Jr., Co-Chair, DC Reentry Task Force
Dennis Schrantz, Executive Director, Michigan Council on Crime and Delinquency
Julie Stewart, President and Founder, FAMM (Families Against Mandatory Minimums)
Courtney Stewart, Chairman, The Reentry Network for Returning Citizens, Inc. and the Mayor's Commission on Reentry and Returning Citizens Affairs
Jesse Wiese
Lih Young

Roundtable Participants[xxxiii]

Heather Andrews, Director of Residential Reentry Programs, Alston Wilkes Society
Belinda Ashley, Chief US Probation Officer, Western District of Pennsylvania
Eustaquio (Bobby) Babilonia, Chief US Probation Officer, District of Puerto Rico
Hon. Mark W. Bennett, US District Court Judge, Northern District of Iowa
Marlys Big Eagle, Victim Advocate, US Attorney's Office, Victim Services, District of South Dakota
Doug Burris, Chief US Probation Officer, Eastern District of Missouri
Russell Butler, Executive Director, Maryland Crime Victims' Resource Center
David Christensen, Chief US Probation Officer, District of Utah
Steven H. Cook, President, National Association of Assistant US Attorneys (NAAUSA)
Ron DeCastro, Chief US Probation Officer, Eastern District of Pennsylvania
Rosemary DeMenno, Program Manager, International Association of Chiefs of Police (IACP)
Sam Dennis, Private Practitioner, Georgia
Jeff Dion, Deputy Executive Director, National Center for Victims of Crime
Kevin J. Downey, CEO, Crosspoint, Inc.
Michael J. Elbert, Chief US Probation Officer, Southern District of Iowa
Jeff Fly, CEO, Turning Point of Central California, Inc.
Matthew Fogg, Law Enforcement Against Prohibition (LEAP), and former Chief Deputy US Marshal
Wendell France, Member, National Organization of Black Law Enforcement Executives and Deputy Secretary, Operations, Maryland Department of Public Safety and Correctional Services
Hon. John Gleeson, US District Court Judge, Eastern District of New York
Loren A. Grayer, Divisional Vice President, Community-Based Services, GEO Group
Benjamin Greenberg, First Assistant US Attorney, Southern District of Florida
Mark Groves, Rehabilitative and Veterans Services Director, Volunteers of America
Pamela Henley Johnson, President, New Beginnings Treatment Center
Jonathan E. Hurtig, Chief US Probation Officer, District of New Hampshire
Laura Ivkovich, Policy Analyst, Office for Victims of Crime, Office of Justice Programs, US Department of Justice
Kathryn Jarvis, Chief US Probation Officer, Western District of Kentucky
Betsy C. Jividen, First Assistant US Attorney, Northern District of West Virginia
Robert Kasabian, Executive Director, American Jail Association (AJA)
Kandy Key, Director of Operations, TJ Mahoney and Associates
John Larivee, President and CEO, Community Resources for Justice
James Lawrence, President and CEO, Oriana House
Lawrence J. Leiser, Vice President for Operations and Membership, NAAUSA

[xxxiii] Task Force staff attended a meeting of the US Probation and Pretrial Services' Chiefs Advisory Group.

Mitch Lucas, President, AJA, and Chief Deputy, Charleston County Sheriff's Office
Andrea D. Lyon, Dean and Professor of Law, Valparaiso University Law School
Burton E. Maroney, Chief US Pretrial Services and Probation Officer, Northern District of Ohio
Philip Miller, Chief US Probation Officer, Eastern District of Michigan
Mario Moreno, Chief US Probation Officer, District of Arizona
Bruce Moyer, Counsel and Washington Representative, NAAUSA
Blake Norton, Vice-President and CEO, Police Foundation
Phil Nunes, President, International Community Corrections Association and Chief Programs Officer, Alvis House
Ifetayo Ojelade, Executive Director, A Healing Paradigm
Shana-Tara O'Toole, Director, White Collar Crime Policy, National Association of Criminal Defense Lawyers
Timothy Richardson, Senior Legislative Liaison, Fraternal Order of Police (FOP)
Denise M. Robinson, President and CEO, Alvis House
Antony San Giacomo, Chief US Probation Officer, Western District of New York
John G. Selvaggi, Chief US Probation Officer, District of Delaware
Dennis Slocumb, Legislative Director, International Union of Police Associations (IUPA)
Connie Smith, Chief US Probation and Pretrial Services Officer, Western District of Washington
Darrel Stephens, Executive Director, Major Cities Chiefs Police Association (MCCA)
Calvin Thomas, Supervising US Pretrial Services Officer, Central District of California
Sarah Lynne Vasquez, Program Manager, Office for Victims of Crime, Federal Bureau of Investigation
Hon. Martha Vázquez, US District Court Judge, District of New Mexico
Anne Walker, Executive Director, Alston Wilkes Society
Hon. Reggie B. Walton, US District Court Judge, US District Court for the District of Columbia
Steven B. Wasserman, Secretary/Treasurer, NAAUSA
Lisa Wayne, Private Practitioner, Colorado
Raymond J. Weis, President and CEO, Dismas Charities
Hon. Frederick H. Weisberg, Associate Judge, Superior Court of the District of Columbia
David G. Westrate, Member, Board of Directors and Regional Vice-President, Association of Former Federal Narcotics Agents (AFFNA)
Steve Woolworth, Vice President, Adult and Juvenile Reentry, Pioneer Human Services

Individuals and Organizations Providing Written Testimony

American Friends Service Committee
Amnesty International
Arthur Liman Public Interest Program at Yale Law School
Bob Baskin, President, Peace Alliance
Galen Baughman, Board Member, Center for Sexual Justice
Bradley W. Brockman, Executive Director, Center for Prisoner Health and Human Rights
Jean Casella, Co-Director and Editor, Solitary Watch
Gail Colletta, President and CEO, CAUTIONclick National Campaign for Reform
Kevin J. Downey, CEO, Crosspoint, Inc.
Nancy Fenton, Executive Director, Episcopal Community Services of Maryland/Jericho Reentry Program
Melissa Hamilton, Visiting Criminal Law Scholar, University of Houston Law Center

Bruce Hamlin, Member, CAUTIONclick National Campaign for Reform & California Reform Sex Offender Laws
Damon T. Hininger, President and Chief Executive Officer, Corrections Corporation of America
George Keiser, Keiser and Associates, LLC
Bernard B. Kerik, Retired Commissioner, New York City Police Department
Andrea King, The Kingley Group, LLC
Jerry Lee, President, Jerry Lee Foundation
Evelyn Litwok
A. Charles Lytle, family member of individual housed in BOP facility
Susan L. Lytle, family member of individual housed in BOP facility
Meghan Maury, Policy Counsel, National LGBTQ Task Force
Megan McLemore, Senior Researcher, Health and Human Rights Division, Human Rights Watch
Alan Mills, Executive Director, Uptown People's Law Center
Peter Moote
National Association of Women Judges
Brian Nelson, Prisoners' Rights Coordinator, Uptown People's Law Center
Manasa Reddy, Office Resource Manager, Center for Prisoner Health and Human Rights
Josiah D. Rich, Professor of Medicine and Epidemiology, Brown University
James Ridgeway, Co-Director and Editor, Solitary Watch
Stewart Rowles
Charles Sullivan, President, International CURE
Merle Temple
Joseph B. Tulman, Professor of Law, University of the District of Columbia David A. Clarke School of Law
United Methodist Church, General Board of Church and Society
Why We Can't Wait
Cathy Zuniga, family member of individual housed in BOP facility

BOP Employees Interviewed by Task Force Staff[xxxiv]

Kim Ask-Carlson, Warden, Metropolitan Detention Center (MDC) Brooklyn
Kenny Atkinson, Complex Warden, Federal Correctional Complex (FCC) Butner
Peter Brustman, Assistant Administrator, Residential Reentry Management Branch
Michael Carvajal, Complex Warden, FCC Pollock
Darlene Drew, Warden, US Penitentiary (USP) Atlanta
Dave Dwyer, Western Sector Administrator, Residential Reentry Management Branch
John Fox, Warden, Federal Transfer Center (FTC) Oklahoma City
Jack Fox, Complex Warden, FCC Lompoc
Tammy Jarvis, Warden, FCC Coleman - USP 1
Mark Kirby, Warden, Federal Correctional Institution (FCI) Fairton
Jeff Krueger, Warden, FCI Pekin
Alison Leukefeld, Chief of Mental Health
Cherryl Litsey, Chief of Community Treatment Services
Myra Lowery, Regional Reentry Affairs Coordinator, Southeast Regional Office
Terry Mills, Assistant Eastern Sector Administrator, Residential Reentry Management Branch

[xxxiv] The Task Force received information and data from BOP's Central Office. BOP staff also shared their expertise throughout the course of the Task Force's work.

Amberly Newman, Supervisory Community Treatment Coordinator, Mid-Atlantic Regional Office
John Oliver, Complex Warden, FCC Florence
Mike Pearce, Warden, Federal Detention Center Houston
Beth Pottios, Executive Assistant, North Central Regional Office
Herman Quay, Warden, FCI Danbury
Monica Recktenwald, Warden, FCI McKean
Barbara Rickard, Warden, Federal Prison Camp (FPC) Alderson
Linda Sanders, Warden, US Medical Center for Federal Prisoners Springfield
Linda Serrano, Reentry Administrator, South Central Regional Office
David Shinn, Warden, MDC Los Angeles
Dennis Stamper, Warden, FPC Montgomery
Chris Zych, Warden, USP Lee

Appendix D. Projected Impact of Selected Task Force Recommendations

	Difference in population, FY 2024	Estimated bed-years saved through FY 2024	Estimated cost savings through FY 2024 ($)
Maintain drug mandatory minimum penalties for only the most serious offenses	-37,300	198,900	2.188 billion
Allow judges to sentence below the mandatory minimum for certain weapon possession offenses associated with nonviolent crimes	-1,400	5,300	58 million
Clarify good conduct time calculation to enable sentence reduction of up to 15 percent	-5,200	30,000	330 million
Allow individuals to receive 20 percent off time served for successful compliance with the requirements of an individualized case plan	-17,700	63,900	703 million
Expand the eligibility for the one-year Residential Drug Abuse Program credit to include all individuals who can fulfill the program requirements	-4,500	25,700	283 million
Establish a Second Look provision to ensure judicious use of incarceration and encourage rehabilitation	-1,300	7,800	86 million
Joint impact	-64,000	316,900	5.274 billion

Notes: Bed-years saved are rounded to the nearest hundred years, and dollars saved are rounded to the nearest million. The recommendation to maintain drug mandatory minimum penalties for only the most serious offenses includes the retroactive application of the Fair Sentencing Act. For more information about how these population and cost estimates were developed, see **appendix E.** As noted in the methodology, there is considerable uncertainty about how various government agencies and individual actors will implement these recommendations. Assumptions regarding impact or eligibility generally err on the conservative side, resulting in relatively modest projections of prison population reductions and commensurate savings.

Cost and population impact estimates are built around a prison population projection model prepared by Task Force staff and rely on a series of assumptions about how government agencies and individual actors will choose to implement Task Force recommendations. The model estimates that if no further policy changes are made, the prison population would rise to 207,000 by the end of FY 2024.

Appendix E. Data Sources and Methods

The findings, recommendations, and projections included in this report are based on 12 months of fact finding, data analysis, and deliberation. Retrospective information comes from publicly available data, reports, and testimony; data furnished to the Task Force by the US Sentencing Commission (USSC) and the Bureau of Prisons (BOP); and communications with staff at several federal agencies. Cost and population impact estimates are built around a prison population projection model prepared by Task Force staff, and rely on numerous assumptions about how government agencies and individual actors will choose to implement Task Force recommendations. Assumptions regarding impact or eligibility generally err on the conservative side, resulting in relatively modest projections of prison population reductions and commensurate savings.

Data Sources

In addition to the stakeholder outreach described in the report, staff reviewed publicly available data, reports, and testimony from the Government Accountability Office, DOJ Office of the Inspector General, Congressional Research Service, Executive Office for US Attorneys, Administrative Office of the US Courts (AOUSC), USSC, BOP, and the Bureau of Justice Statistics. US Probation and the BOP responded to Task Force requests with specific data and general information.

Facilitated by the Department of Justice, the USSC and BOP provided comprehensive individual level administrative data to the Task Force, covering FY 1994–2014. Both agencies' data included demographic information. Data from the USSC consisted of sentencing and guideline calculation information for each person, including criminal history, offense details, and sentence imposed. The BOP data included information about every person admitted to or released from federal prison in each of those years, as well as the standing population at the end of each fiscal year. The data included the most serious offense of conviction, facility location, institutional conduct, security level, program participation, and any updated sentencing information. All told, Task Force staff analyzed millions of records.

Using a validated methodology,[140] Task Force staff[xxxv] linked peoples' prison information to their sentencing records. Prison records were successfully linked to sentencing records in 97 percent of cases, and missing data were not imputed for people without links or whose data were otherwise invalid. Linking these data sources allowed for analyses that showed how sentencing factors (such as the imposition of mandatory minimum sentences) directly affect the prison population.

[xxxv] The Task Force is particularly appreciative of Jessica Kelly, a senior programmer at the Urban Institute, for carefully linking these datasets.

Unless otherwise noted, the source of all statistics presented in this report is Task Force staff analysis of data provided by the BOP and USSC, FY 1994–FY 2014. Offense information is based on the most serious offense as determined by the BOP. Findings presented in the report are based on analyses of the federally sentenced prison population.

Baseline Population Projections

Given the uncertainty of current trends in the federal prison population, the BOP has not recently conducted a long-term forecast of their population.[141] As a result, Task Force staff created a projection model for the Task Force that provides a general indication of future trends and the potential impact of various policy options.

Task Force staff used a micro-simulation prison population projection model to estimate how the federal prison population might increase or decrease in the coming years. The model predicts, based on analysis of individual-level FY 2014 data and recent trends, that if there are no additional policy changes, the prison population may rise again in the coming years. Projections are included through the end of FY 2024, and cost and bed year estimates of policy proposals are cumulative.

Estimates of the size of the prison population at a given date in the future are determined both by the number of people currently in federal prison and the number of people who will be admitted between now and then (all taking into account expected time served). Information about who is currently in prison is already known; this model projects each individual who will be admitted to federal prison in future years and how long their time served will be. Task Force staff, using established methods regarding baseline projections,[142] assumed that future admissions cohorts will not be substantially different from the most recent admissions cohort.

Task Force staff made several adjustments to improve the accuracy of the baseline projection model by accounting for observed drops that have occurred since the end of FY 2014 (the most recent data available to Task Force staff) and recent policy changes. These include changes to prosecutorial practices and sentencing policy. To account for the lingering effects of budget cuts on prosecutors' caseloads, we assumed that the number of admissions to federal prison would remain low (as seen in FY 2015), but then slowly build back to FY 2014 levels, except where noted below.

- The USSC prospectively and retroactively reduced the guidelines used to calculate sentences for drug trafficking, reducing most sentences going forward, and accelerating release for thousands in federal prison. Sentences for people sentenced under these guidelines (in both the standing population and future admissions cohorts) were reduced in the model pursuant to the change; these reductions accounted for floors imposed by mandatory minimums.
- In the last two years, the number of immigration cases has dropped rapidly. Future admissions cohorts were adjusted to reflect this drop, but no further decreases are assumed. Changes in immigration laws or enforcement policies, however, could substantially impact the federal prison population if they resulted in increased enforcement or mandatory minimum sentences.

- The Attorney General's Smart on Crime policy already has had a substantial impact on the number of drug cases being brought that carry a mandatory minimum penalty, and the number of drug cases being brought has fallen altogether.[143] Based on conversations with US Attorneys and DOJ officials, we assumed that without additional policy changes the number of prosecutions for drug offenses in coming years may rebound, but not all the way to FY 2014 levels.

Policy Option Population Impacts

Task Force recommendations range from the clarification of the calculation for good conduct incentives (from 13 percent to 15 percent) to the creation of entirely new mechanisms and metrics to determine the sentence imposed and time served.

For each recommendation, Task Force staff consulted recent trends in the data, other estimates of similar proposals, and stakeholder input. Each estimate was modeled by modifying sentencing and time served information for each individual in the baseline model. For each option, but particularly for recommendations that create new mechanisms and factors that affect time served, staff needed to make assumptions given the uncertainty about how government agencies and individual actors would implement Task Force recommendations in practice.

For example, the Task Force recommends that the BOP develop a risk and needs assessment to guide case planning. Individuals who make progress in or complete their case plan may be eligible for earned time credits. While these assessments and plans do not yet exist (the Task Force assumed it would take about two years for their development), Task Force staff developed proxies to estimate the number of people who would be eligible for the credits and the extent of each individual's credit based on available information about security level and program participation rates. The Task Force assumed that the credits would begin to accrue following the development of such an assessment, for this purpose assumed to be two years.

In general, we made best-guess assumptions based on retrospective data analysis and stakeholder input. Where possible, we erred on the conservative side, resulting in relatively modest projections of prison population reductions and commensurate savings. As noted in the text of the report, we did not project the population impact of several of the recommendations.[xxxvi]

[xxxvi] Population and cost impact estimates are not calculated for recommendations related to: changes to prosecutorial practice, increased use of alternatives to incarceration (outside of drug sentencing), and changes in recidivism rates.

Policy Option Cost Impacts

We do not anticipate further future prison construction or activation. No averted prison construction is included in the cost-savings estimates.[xxxvii]

We use the average marginal cost[xxxviii] of reducing the prison population ($10,994/person/year) to generate these cost estimates, as opposed to the average cost ($30,620). The average marginal cost only includes items that vary at the person level, such as medical care and food. The average cost also includes the general costs of running the BOP, such as staffing facilities. Given the overcrowding and understaffing in many BOP facilities, the average marginal cost is the most appropriate metric.

We do not anticipate that any single policy option on its own will reduce the federal prison population to below its rated capacity. We do project that the joint impact of the Task Force's recommendations will take the population below its rated capacity by the end of FY 2024. Based on conversations with BOP executive staff, we anticipate that rather than closing BOP facilities, the BOP will first transfer individuals out of privately operated facilities. The average annual cost of incarcerating someone in a private facility is $22,159, so substantial cost savings can be achieved through these reductions. Our projections (using conservative methodology and assumptions), however, do not predict that the joint impact of the Task Force's recommendations will lead to BOP-operated facility closures.

While staffing changes or facility repurposing may be necessary as a result of reduced overcrowding and Task Force recommendation implementation, our estimates do not account for the costs or savings associated with these changes. Thus, the formula for projecting cost savings is fairly straightforward. If, for example, in a given year a policy is projected to reduce the population housed in BOP facilities by 25,000 people and the population in private facilities by 10,000 people, the projected cost savings for that year would be:

(25,000 people) × ($10,994/person) + (10,000 people) × ($22,159/person) = $496 million

The dollar estimates of future savings are not adjusted to reflect inflation or real cost increases.

Complete methodology and assumptions are available from Task Force staff upon request.

[xxxvii] The FY 2016 congressional appropriation for the BOP (buildings and facilities) includes $444 million for new prison construction. We do not assume any future expenditure for prison construction.

[xxxviii] The BOP describes this as the "budget formulation marginal rate estimate."

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