

Beyond First Steps: Reforming the Federal Bureau of Prisons



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notes

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

² See *Mission*, Federal Bureau of Prisons, https://www.bop.gov/about/agency/agency_pillars.jsp (last visited Aug. 14, 2018).

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

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

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

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

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

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

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

¹⁰ H.R. 5682 § 3632(d), 115th Cong. (2018).

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

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

¹³ H.R. 5682 §3632(d)(4)(D).

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

¹⁵ See *id.*

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

¹⁷ See *Substance Abuse Treatment*, Federal Bureau of Prisons (last visited Aug. 20, 2018), https://www.bop.gov/inmates/custody_and_care/substance_abuse_treatment.jsp.

¹⁸ 18 U.S.C. § 3621(e)(2)(B).

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

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

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

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

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

²⁴ *Id.* at 131.

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

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