

**Statement of**  
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**before the**  
**Committee on Judiciary**  
**United States Senate**

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

**Wednesday, November 6, 2013**

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

Good afternoon, Mr. Chairman, members of the Committee. It is an honor to appear before you to testify about the challenges and opportunities associated with the federal corrections system. I am the director of the Justice Policy Center at the Urban Institute. We represent over three dozen researchers studying a wide array of crime and justice issues. For 20 years we have managed the Federal Justice Statistics Resource Center on behalf of the federal government, cleaning, coding, and analyzing data from a wide array of federal criminal justice agencies including the Bureau of Prisons (BOP), the Administrative Office of the Courts, and the United States Sentencing Commission (USSC). Our portfolio of research includes evaluations of promising programs, reviews of the literature of “what works” in reducing recidivism, and expertise in cost-benefit analysis. We are also the assessment partner on the Justice Reinvestment Initiative, a federally funded program that reduces costs associated with state prison systems while enhancing public safety. This expertise has made us uniquely situated to study the drivers of the federal corrections population, identify policies that can avert future growth, and project the impact of those policies in terms of population reductions and cost savings.

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

## Problem Statement

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

A wide array of actors, including members of this Committee, other Members of Congress, the Attorney General, other administration officials, bipartisan policy advocates, and researchers,

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<sup>1</sup> Samuels, La Vigne, and Taxy (2013).

<sup>2</sup> BOP (2013b).

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

have concluded that this growth and its associated costs are unsustainable. The basis for this conclusion varies:

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

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

BOP facilities are currently operating at between 35 and 40 percent above their rated capacity, with 51 percent crowding at high-security facilities and 47 percent at medium-security facilities in FY 2012.<sup>5</sup> The capacity of BOP facilities in 2012 was 128,359, but BOP-operated facilities housed 177,556 inmates in 2012.<sup>6</sup> Since FY 2000, the inmate-to-staff ratio has increased from about four-to-one to a projected five-to-one in FY 2014.

Barring any meaningful changes in policy and practice, this untenable status quo will be the norm for the coming decade: the BOP projects that, through 2020, federal prisons will be overcrowded by at least 33 percent, with the population exceeding system capacity by at least 50,000 people each year.<sup>7</sup> The BOP anticipates adding over 25,000 beds by 2020, but most of these projects have not yet been approved and would not substantially reduce overcrowding (see figure 1).<sup>8</sup> As illustrated in figure 1, the federal prison population would need to decline by over 50,000 inmates to be operating prisons within their rated capacity.

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

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

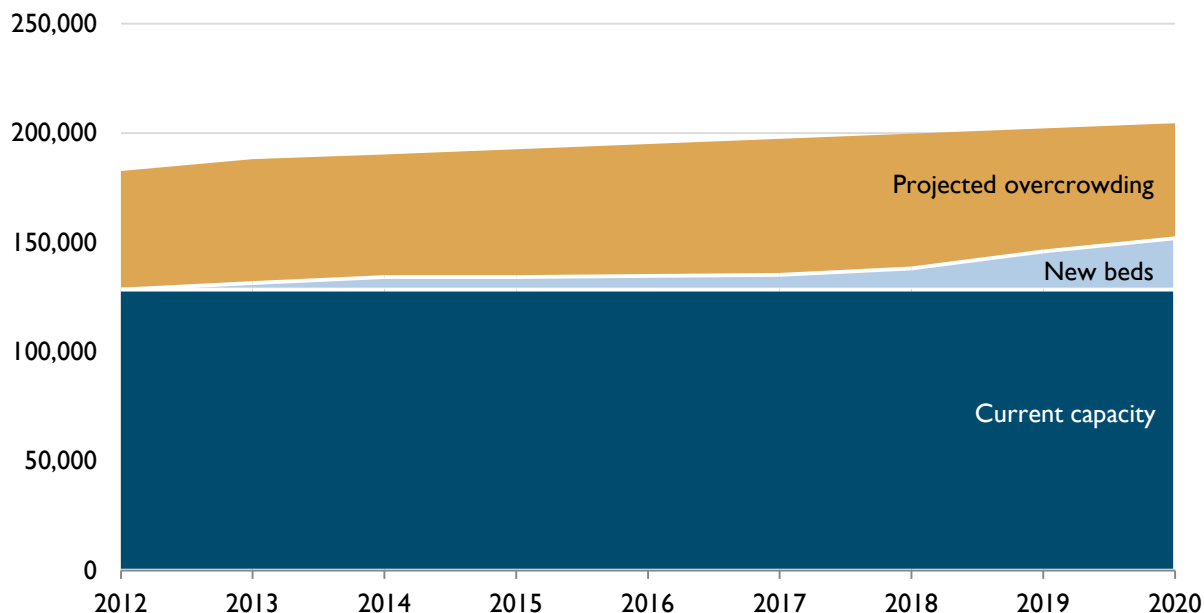
<http://docs.house.gov/meetings/JU/JU08/20130919/101318/HHRG-113-JU08-Wstate-SamuelsC-20130919.pdf>.

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

<sup>7</sup> GAO (2012).

<sup>8</sup> See GAO (2012) table 7, based on BOP's 2020 Capacity Plan, January 2012. These projections assume that 17,500 new beds will be constructed and staffed starting in FY 2016—these new facilities will require increases in appropriations to the BOP that have not yet received congressional approval.

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



Source: GAO (2012).

Beyond the fiscal problems associated with maintaining such a large federal prison population, overcrowding threatens the safety of inmates and prison staff and undermines the ability to provide effective programming.<sup>9</sup>

- Overcrowding is most concentrated in high-security facilities, where over 90 percent of inmates have a history of violence. Overcrowding is currently above 50 percent in high-security facilities.<sup>10</sup>
- The BOP has found that high inmate-to-corrections officer ratios are correlated with increases in the incidence of serious assault.<sup>11</sup> In February 2013, a BOP officer was killed for the first time in five years, while working alone in a unit housing 130 inmates.<sup>12</sup>
- Provision of programming and treatment designed to reduce recidivism is restricted due to lack of space, inadequate staff, and long waiting lists for educational, treatment, vocational, and other reentry programming.<sup>13</sup>
- Health and safety hazards increase from over-used equipment, such as toilets, showers, and food service equipment.<sup>14</sup>

<sup>9</sup> GAO (2012).

<sup>10</sup> US DOJ (2013).

<sup>11</sup> BOP (2005).

<sup>12</sup> Kalinowski and Halpin (2013).

<sup>13</sup> GAO (2012).

<sup>14</sup> GAO (2012).

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

### **What Works in Preventing Recidivism**

A large and growing body of evidence indicates that programs to prepare inmates for employment, address substance addiction, and maintain and enhance family relationships are critical to reducing the likelihood of recidivism following their release. Much of this evidence is embodied in the What Works in Reentry Clearinghouse,<sup>15</sup> developed by the Urban Institute in partnership with the Council of State Governments' Justice Center as part of the Second Chance Act's National Reentry Resource Center.<sup>16</sup> For example, the Clearinghouse found positive effects for many substance abuse treatment programs, including the BOP's Residential Drug Abuse Program,<sup>17</sup> Connecticut's substance abuse treatment tier programs,<sup>18</sup> and Minnesota's chemical dependency treatment program.<sup>19</sup> Several prison industries programs were found to be effective, including the federal prison system's UNICOR program,<sup>20</sup> as were work release programs in Florida<sup>21</sup> and Washington<sup>22</sup> and a number of educational and vocational programs, particularly postsecondary and adult basic education.

Importantly, studies of in-prison visitation found that inmates who receive visits from family members while incarcerated have reduced rates of recidivism compared to those who do not, even when statistically controlling for other differences between these groups.<sup>23</sup> This finding is consistent with the Urban Institute's reentry studies, which have found that families are an important positive influence in the reentry process, with higher levels of family support linked to higher employment rates and reduced recidivism following release<sup>24</sup> and that in-prison contact with family members is predictive of the strength of family relationships following release.<sup>25</sup>

It is important to note that many of the prison programs found to be effective in reducing reoffending and substance abuse are also cost-effective. Welsh's review of cost-benefit analyses of reentry programs<sup>26</sup> found that 12 of 14 evaluations of reentry programs resulted in positive benefit-cost ratios, and a comprehensive review conducted by Aos yielded similar findings.<sup>27</sup> In an Urban Institute evaluation of the Maryland Reentry Partnership Initiative,<sup>28</sup> we found that the effort returned three dollars in benefits for every dollar in new costs. Another Urban study<sup>29</sup>

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<sup>15</sup> <http://whatworks.csgjusticecenter.org>.

<sup>16</sup> <http://csgjusticecenter.org/nrrc>.

<sup>17</sup> Pelissier et al. (2002).

<sup>18</sup> Daley et al. (2004).

<sup>19</sup> Duwe (2010).

<sup>20</sup> Saylor and Gaes (1992).

<sup>21</sup> Berk (2007).

<sup>22</sup> Drake (2007).

<sup>23</sup> Bales and Mears (2008); Derkzen, Gobeil, and Gileno (2009).

<sup>24</sup> La Vigne, Visher, and Castro (2004); La Vigne, Shollenberger, and Debus (2009).

<sup>25</sup> Naser and La Vigne (2006).

<sup>26</sup> Welsh (2004).

<sup>27</sup> Aos (2006).

<sup>28</sup> Roman et al. (2007).

<sup>29</sup> Roman and Chalfin (2006).

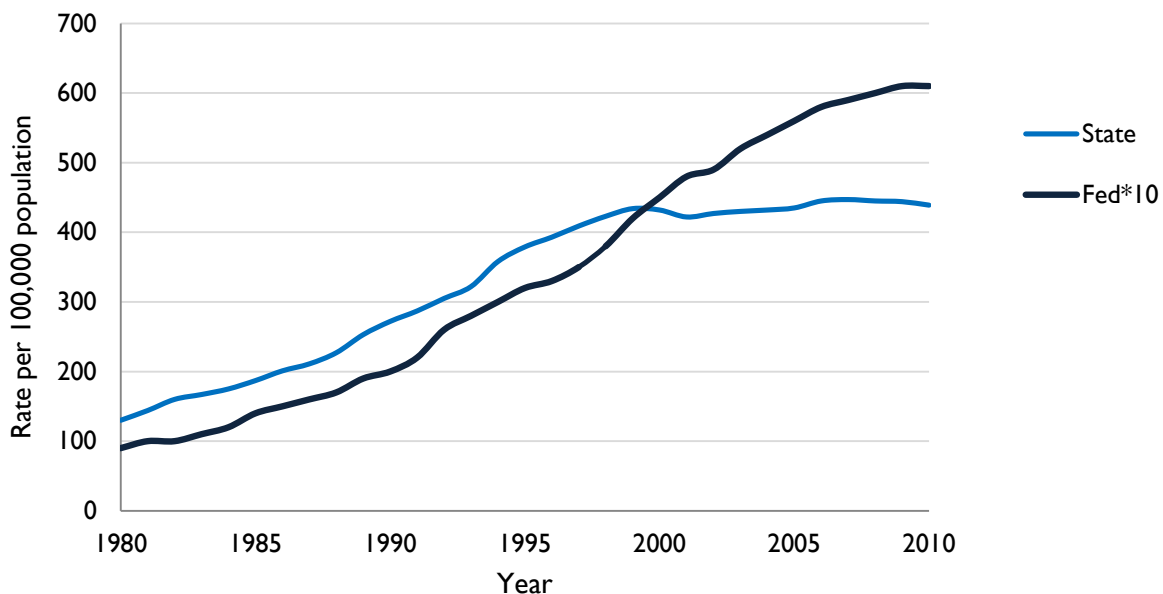
found that jail reentry programming is cost-beneficial if the programming results in at least a 2 percent reduction in recidivism.

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

### Lessons from the States

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

**Figure 2: Trends in State and Federal Incarceration Rates**



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

While state prison systems differ significantly from the federal system, many drivers of prison population growth remain the same. For example, some of the growth in state systems was driven by increases in truth-in-sentencing requirements, often requiring an 85 percent threshold for violent offenders and some lower threshold for nonviolent offenders. The Violent Offender Incarceration and Truth-in-Sentencing Incentive (VOI/TIS) Grant Program, authorized by the

Violent Crime Control and Law Enforcement Act of 1994, further incentivized states to adopt truth in sentencing with funding to build or expand prisons and jails.<sup>30</sup> Faced with high prison populations and shrinking budgets, however, many states recently revised their truth-in-sentencing provisions to allow for earlier release. Mississippi, for example, passed a law significantly reducing the TIS threshold from 85 percent to 25 percent for many offenders; this policy both reduced the prison population and saved the state money, without compromising public safety.<sup>31</sup> These states have recognized that certainty, as a crucial attribute in the sentencing process (especially for victims and victims' advocates,)<sup>32</sup> is not compromised by lowering time served thresholds as long as the change is well publicized. Given that with very few exceptions federal inmates must serve over 87 percent of their sentence, these policy changes are quite instructive.

Similarly, legislators in states across the country have expanded early release programs for offenders who comply with prison regulations and programming requirements. At least 31 states offer inmates the opportunity to earn sentence-reduction credits through participation in education, vocational training, substance abuse treatment and rehabilitation, and work programs; education and work programs are the most common.<sup>33</sup> These programs vary by programmatic requirements, extent of the credit, and eligibility. Many states factor inmates' compliance with prison rules and regulations into earned time credit calculations.<sup>34</sup>

Studies show that early release resulting from earned and/or good time credits can be a cost-effective method for reducing prison populations at minimal risk to public safety. A review of early release programs and public safety measures found no significant differences between the recidivism rates of inmates released early and those who served their full sentences.<sup>35</sup> These programs have also been found to produce significant cost savings.<sup>36</sup> States' experiences can guide efforts to expand and strengthen BOP's early release programs.

### **Drivers of Federal Population Growth**

The federal system has its own unique drivers of growth that need to be addressed as well. More than 90 percent of BOP inmates are sentenced offenders, mostly for federal crimes.<sup>37</sup> The number and composition of offenders committed to federal prison result from the investigations pursued by law enforcement, cases accepted and charged by prosecutors, the dispositions of those cases, the proportion of convicted offenders that receive a term of imprisonment, and the imposed sentence.

The BOP does not play a role in these decisions: the combination of the volume of admissions and sentence length drives the inmate population. The length of stay is largely determined by the

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<sup>30</sup> Sabol et al. (2002); Ditton and Wilson (1999).

<sup>31</sup> Justice Policy Institute (2011); Gray (2011).

<sup>32</sup> Stith and Koh (1993).

<sup>33</sup> Lawrence (2009). Some states also offer additional opportunities for earning earned time credits, such as participation in "special programs," disaster relief or conservation efforts, or by conducting extraordinary meritorious service in prison.

<sup>34</sup> Lawrence (2009).

<sup>35</sup> Guzman, Krisberg, and Tsukida (2008).

<sup>36</sup> Drake, Barnoski, and Aos (2009).

<sup>37</sup> BOP also houses sentenced DC felony offenders (since 1997) and some pretrial or pre-sentencing offenders for the US Marshals Service and for Immigration and Customs Enforcement. See BOP (2013a).

sentence imposed (informed by the relevant statutory penalties and federal sentencing guidelines)<sup>38</sup> and any subsequent sentence reductions that release inmates early. Currently few options for early release exist, and most federal offenders sentenced to prison serve at least 87.5 percent of their terms of imprisonment.<sup>39</sup>

The length of sentences—particularly for drug offenders, many of whom are subject to mandatory minimum sentences—is an important determinant of the size of the prison population and driver of population growth. Our 2012 study of the growth in the BOP population from 1998 to 2010 confirmed that time served in prison for drug offenses was the largest determinant of population growth.<sup>40</sup> Changes in sentencing laws (particularly mandatory minimums) and practices, prison release policies, or both could directly decrease the time served and thereby moderate prison population growth.

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

### Overview of *Stemming the Tide*

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

When making assumptions regarding program eligibility or impact, we err on the conservative side. For example, our cost estimates for dollars saved are based on the average marginal cost of imprisoning one inmate for one year—these do not take into account the savings that could accrue from averted prison construction or prison closures, including wholesale staffing changes or other structural changes to the BOP cost structure. We also assume that barring any new prison construction or policy changes, overcrowding will continue to rise to 55 percent in BOP facilities within 10 years.

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<sup>38</sup> Recent legislative and policy changes to this domain may have the combined effect of reducing sentence length: for example, the shift from mandatory to advisory sentencing guidelines and enactment of the Fair Sentencing Act could moderate sentence lengths.

<sup>39</sup> There are limited opportunities for some offenders to have their sentences reduced below 87.5 percent, based on prison participation in residential drug treatment programming and, in rare cases, compassionate release.

<sup>40</sup> Mallik-Kane, Parthasarathy, and Adams (2012).



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

Because the biggest driver of federal prison growth has been the number of drug offenders getting lengthy sentences, our projections conclude that the most direct way to reduce the prison population is to address drug offenses. Before the Sentencing Reform Act of 1984 and mandatory minimums for drugs, a quarter of all federal drug offenders were fined or sentenced to probation, not prison. Today 95 percent are sentenced to a term of incarceration.<sup>41</sup> The average time served before 1984 was 38.5 months, almost half of what it is now.<sup>42</sup>

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

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

A final option in The Smarter Sentencing Act that would alleviate prison overcrowding immediately, for which over 3,000 inmates would be eligible for immediate release, applies to the Fair Sentencing Act of 2010, which increased the quantity of crack cocaine needed to trigger a mandatory minimum sentence. But these statutory changes have only applied to cases going forward. Making these changes retroactive for inmates who judges confirm pose little risk to public safety would reduce sentences for many crack cocaine offenders; a previous retroactive sentence change for crack offenders in BOP custody was shown in a methodologically rigorous study to have no adverse effects on public safety.<sup>43</sup>

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<sup>41</sup> USSC 2012 Sourcebook.

<sup>42</sup> Bureau of Justice Statistics (1987).

<sup>43</sup> Hunt (2011).

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

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

Federal inmates can reduce their required length of stay for good conduct (except those with life sentences or with less than a year to serve) and participation in specific programming. Expanding such opportunities can free up bed space through the early release of those who participate in intensive programs proven to cut down on recidivism. Research indicates that in the states, the early release of inmates has no significant impact on recidivism rates.<sup>44</sup> Based on our understanding of S. 1231 RS Second Chance Reauthorization Act of 2011, earned time for intensive, evidence-based program participation could save \$45 million. Another option that would provide similar quantities of credits for both intensive, validated programming and less intensive programming or programming that has not been validated would save \$224 million.

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

Our report also provides cost and population estimates for other policy changes at both the front and back ends. A policy that has been particularly effective at the state level is reducing the required truth-in-sentencing threshold of required time served before the inmate is eligible for release. Under TIS laws, inmates must serve their entire sentence, except what is subtracted for good conduct. Lowering the minimum amount of time served to 80, 75, or 70 percent could go a long way toward easing overcrowding without compromising the “certainty and severity of punishment” TIS laws were designed to guarantee. Reducing the required minimum of time

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<sup>44</sup> Guzman et al. (2008).

served from 87.5 to 75 percent for those inmates that exhibit exemplary behavior while in BOP custody would save over \$1 billion in 10 years; reducing the minimum to 70 percent would save over \$1.5 billion and prevent any growth in overcrowding over the next 10 years.

Policy changes reducing the number of drug offenders sentenced to terms of incarceration would have an immediate impact on both population and cost. This can be done by only accepting certain types of drug cases, diverting cases to states, and reducing drug prosecutions. Another approach is reducing drug sentences either by instructing prosecutors to modify charging practices to reduce mandatory minimum sentences (as the Attorney General has recently done<sup>45</sup>) or by amending statutory penalties. Cutting the number of drug offenders entering BOP by just 10 percent would save \$644 million over 10 years.

Other policies target inmates already in BOP custody. Two additional earned time policies include expanding upon those already in place. Federal inmates can get up to 12 months off their sentences for successfully completing the Residential Drug Abuse Program, but most receive much less than that. Giving graduates the full 12 months of credit would save money and encourage inmates to participate in a program proven to decrease post-release drug use and rearrest rates.<sup>46</sup>

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

Federal prisons already have early release programs for terminally ill inmates and the elderly, but few eligible inmates are offered this option. These inmates are good candidates for early release because they are less likely to reoffend<sup>48</sup> and their medical care is costly.<sup>49</sup> BOP could greatly expand the eligibility criteria for elderly inmates who have served a vast majority of their sentences; changing their discharge status could actually save the BOP money. The BOP is already expanding and reforming compassionate release for sick and elderly inmates; doubling the number of inmates released early through this program would yield even more savings.

Finally, the federal prison system could increase the number of transfers of foreign national inmates to their home countries. About a quarter of the federal prison population is not US citizens, but less than 1 percent of foreign nationals are transferred through the International Prisoner Transfer Program.<sup>50</sup> Together, expanding elderly and compassionate release and doubling international transfers could save almost \$15 million.

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<sup>45</sup> Holder (2013a, 2013b).

<sup>46</sup> Pelissier et al. (2000).

<sup>47</sup> US DOJ (2013).

<sup>48</sup> See, for example, USSC (2004) and Chiu (2010).

<sup>49</sup> Chiu (2010).

<sup>50</sup> OIG (2011).

## Conclusions

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

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

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

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

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

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

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

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