

**U.S. House of Representatives**  
**Committee on the Judiciary**

Washington, DC 20515-6216  
One Hundred Sixteenth Congress

April 8, 2019

The Honorable William Barr  
United States Attorney General  
Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

Mr. Hugh J. Hurwitz  
Acting Director  
Federal Bureau of Prisons  
320 First Street, N.W.  
Washington, DC 20534

Dear Attorney General Barr and Acting Director Hurwitz:

As you know, the First Step Act was signed into law on December 21, 2018, after overwhelming bipartisan support in both the House of Representatives and the Senate. We look forward to partnering with you in the swift and effective implementation of the First Step Act's reforms.

We appreciate the Administration's statements in support of this new law. Specifically, the President praised the First Step Act because it "will promote prisoner participation in vocational training, educational coursework, or faith-based programs, and in turn help them successfully reenter society." In Attorney General Barr's January 15, 2019 testimony before the Senate Judiciary Committee, he stated: "The recently passed First Step Act, which I intend to diligently implement if confirmed, recognizes the progress we have made over the past three decades." Attorney General Barr again stated that he is "committed to implementing the First Step Act" in a speech before the National Association of Attorneys General on March 4, 2019.

We are grateful for your commitment to implementation of the First Step Act. However, we are concerned that at least one of the law's deadlines has lapsed without compliance, and we have not seen significant steps taken toward implementation. As we initiate oversight of the implementation of this law, we ask that you provide answers to the following questions.

**Good Conduct Time**

1. Since 1988, BOP has awarded only a 47-days-per-year reduction of the sentence imposed, instead of the 54 days per year mandated by the good conduct time statute, 18 U.S.C. § 3624(b) (also known as "good time credit"). The First Step Act clarifies Congress' original intent in drafting section 3624(b) - that prisoners receive 54 days of good conduct time per year, not 47 days.

We are aware of arguments that under language in the First Step Act, BOP cannot be compelled to immediately implement these provisions until after creation of the risk and needs assessment system. We disagree with this position because it is well within BOP's

discretion to revise BOP's calculation policy immediately, particularly given your commitment to "diligently" implement the First Step Act. BOP is free under the law to, and should, immediately begin to recalculate good conduct time credit at 54 days per year in compliance with Congressional intent, as was made clear in the Congressional record during consideration of the First Step Act:

- Sen. Cornyn on December 17, 2018: "All this does is clarifies Congress's original intent that 54 days of good time credit be available rather than the 47 days that the Bureau of Prisons had interpreted under previous law that was more ambiguous. So that is not a change to what Congress intended but merely a clarification of preexisting congressional intent."
- Sen. Cardin on December 5, 2018: "The bill makes a good time credit fix and revises the good-time credit law to accurately reflect congressional intent by allowing prisoners to earn 54 days of credit per year, rather than 47 days."
- Rep. Scott on May 22, 2018: "Turning to the bill we are debating today, I recognize that the FIRST STEP Act includes a fix to the calculation of good time credit, which I have sought for many years. Calculating good time credit as Congress had originally intended is a serious improvement made by this bill."
- Rep. Goodlatte on May 22, 2018: "...Democrats asked for a fix to the way the Bureau of Prisons calculates good time credit. We made changes to clarify congressional intent on that section."
- Rep. Richmond on May 22, 2018: "We also fix the "good time" problem that has happened. For every 7 days that you increase good time, you save \$50 million a year. Not only did we fix it this year, but we fixed the problem BOP interpreted in the law, contrary to congressional intent, in the first place."

- a. **Has BOP begun to recalculate good conduct time for each prisoner after the law's enactment in December of last year? If so, please describe how many inmates have had their sentences recalculated, and how many inmates have been released, to date. If not, please provide the date by which BOP will begin to recalculate prisoner release dates, and the date by which BOP will begin to release prisoners with recalculated sentences.**
- b. **If BOP will not begin to recalculate good conduct time for each prisoner immediately, BOP may still begin the process of recalculation to ensure that when the risk and needs system is complete, BOP is able to move eligible individuals expeditiously. Has BOP developed a plan to begin calculating new release dates for eligible individuals? Please describe this plan and when you expect that BOP will begin its implementation.**

*Risk and Needs Assessment System*

2. The First Step Act requires that the Independent Review Committee (IRC) be established not later than 30 days after enactment, or by January 20, 2019, and requires the National Institute of Justice (NIJ) to first select a nonpartisan and nonprofit organization with expertise in the study and development of risk and needs assessment tools to host and appoint the IRC. NIJ has not yet selected the organization charged with appointing the IRC.
  - a. **What steps has NIJ taken toward selection of a nonprofit organization that will create the IRC?**
  - b. **What nonprofit organizations has NIJ considered to create the IRC? How will you make this decision?**
  - c. **By what date will this nonprofit organization be selected by NIJ?**
  - d. Under the First Step Act, the organization selected by NIJ must appoint not fewer than 6 members to the IRC. The IRC is intended to be, by design, “independent” from DOJ. **Will you commit to allow the task of appointing the members of the IRC to be executed only by this selected nonprofit organization, not by the Department of Justice (DOJ) or NIJ?**
3. The First Step Act requires the Attorney General, in consultation with the IRC, to conduct a review of the existing risk assessment systems in effect on the date of enactment of the bill, and to develop recommendations regarding evidence-based recidivism reduction programs and productive activities in accordance with the bill.
  - a. **Understanding that any review and recommendation is not to be undertaken separately from the IRC, has BOP begun to prepare for these reviews and recommendations?**
  - b. **If so, does BOP have current views on which existing recidivism reduction programs and productive activities need to be revised or changed, and what types of programs are currently lacking?**
  - c. **Does BOP have a current view on how to ensure recommended programs are those that have been shown by empirical evidence to reduce recidivism and are designed to help prisoners succeed in their communities upon release from prison?**
  - d. **What process does BOP intend to follow in order to follow this mandate?**
4. The First Step Act requires the Attorney General, not later than 210 days after the date of enactment, and in consultation with the IRC, to develop and release publicly on the Department of Justice website a risk and needs assessment system.
  - a. **What steps will you take in order to ensure the risk and needs assessment system is developed and released timely in compliance with the law?**

- b. **Will you commit to ensure, as required, that the risk and needs assessment system bases the assessment of each prisoner's risk of recidivism on indicators of progress and of regression that are dynamic and that can reasonably be expected to change while in prison? How will you ensure this?**
  - c. **Will BOP commit to not use any currently existing tools (whether characterized as "risk and needs assessment tools" or not), because they (1) have not been developed in consultation with the IRC; (2) do not use objective and statistically validated methods to determine which recidivism reduction programs will best minimize the risk that the prisoner will recidivate upon release from prison; and (3) do not base the assessment of each prisoner's risk of recidivism on indicators of progress and of regression that are dynamic and that can reasonably be expected to change while in prison, as required by the First Step Act?**
5. After completion and release of the risk and needs assessment system, the First Step Act requires the Attorney General to implement and complete the initial intake risk and needs assessment for each prisoner and begin to implement programs and activities as required under the bill not later than 180 days after release. Within 2 years after the initial risk assessment of each prisoner, such evidence-based recidivism reduction programs and productive activities must be provided for all prisoners.
- a. **Will you commit to ensuring that the risk and needs assessments are conducted timely, and that programs and activities are provided for all prisoners? What steps will you take in order to do so?**
6. The First Step Act requires the Attorney General to annually (1) conduct audits of the Bureau of Prisons (BOP) regarding the use of the risk and needs assessment system; (2) review, validate, and release the System publicly on the Department of Justice website; and (3) make any revisions or updates to the System. It also requires certain data be collected.
- a. **What policies will you implement to ensure such annual requirements are completed?**
  - b. **What agencies, employees, and/or divisions comply with these annual requirements?**
  - c. **What factors will you focus on to determine what revisions and updates may be needed annually to the risk and needs assessment system? Will you evaluate and consider any disparate racial impact?**
  - d. **Will such audits, reviews and revisions be focused on ensuring that the risk and needs assessment system bases the assessment of each prisoner's risk of recidivism on indicators of progress and of regression that are dynamic and that can reasonably be expected to change while in prison?**
  - e. **Will you commit to ensure that such requirements are completed timely each year?**

7. Section 3632(g), created by the First Step Act requires “annual audits of the Bureau of Prisons regarding the use of the System.”
  - a. **Will you commit to ensure that these audits analyze any racial disparities that may result from the use of the risk and needs assessment system?**
  - b. **Will you commit to ensure that these audits ensure that the System bases the assessment of each prisoner’s risk of recidivism on indicators of progress and of regression that are dynamic and that can reasonably be expected to change while in prison?**
  - c. **Please provide the standards, criteria and guidelines you will utilize for these annual BOP audits.**
8. Under the First Step Act, beginning 2 years after the date of enactment, and annually thereafter for a period of 5 years, the Attorney General is required to submit a report to Congress on specified data on implementation.
  - a. **Will you commit to ensure that such reports to Congress are completed and submitted timely each year?**
  - b. **What steps will you take to ensure the reports rely on evidence-based practices in the collection of, and reporting of, data?**
9. The First Step Act requires that the Attorney General, in consultation with the Office of Probation and Pretrial Services, implement policies regarding BOP’s determination to release eligible prisoners into home confinement, residential reentry centers or to supervised release, as well as policies related to consequences for violation of conditions of release.
  - a. **Has the Attorney General consulted with Probation and Pretrial Services yet as to the development of these policies? If not, when will such consultation occur?**
  - b. **What guidance will you consider in the creation of such policies?**
  - c. **Will you commit to ensuring the least restrictive type of release for each eligible prisoner based on eligibility under the law?**
10. The First Step Act requires the Director of BOP to ensure there is sufficient prerelease custody capacity to accommodate all eligible prisoners.
  - a. **Will you commit to ensuring sufficient prerelease custody capacity to accommodate all eligible prisoners?**
  - b. **If additional funding is required in order to ensure such capacity, will you commit to request sufficient funding in Department of Justice Budget requests?**

**c. Will you commit to maximizing the use of release into supervised release where authorized under the law?**

11. The First Step Act requires the Attorney General to carry out certain duties in consultation with BOP; the Administrative Office of the United States Courts; the Office of Probation and Pretrial Services; the National Institute of Justice; the National Institute of Corrections; and the IRC established under the Act. **How do you intend to facilitate information-sharing and collaboration between these agencies and committees?**
12. The First Step Act mandates that BOP institute initial and continual training for employees on implementation of the risk and needs assessment system, and that such officers and employees demonstrate competence in administering the System, including interrater reliability, on a biannual basis. **What methods or sources will be used to establish this training? How frequently will continuing training be required?**
13. The First Step Act renders prisoners ineligible to receive earned time credits if they are serving a sentence for a conviction under specified provisions of law (“exclusions list”). The Act requires the IRC to review this exclusions list, to issue a report within 2 years on the effects of this exclusions list, and to make recommendations regarding modifications of the list.
  - a. **Do you agree that if, after application of the exclusions list, a significant percentage of the prison population is excluded from receiving earned time credits, the exclusions list must be modified?**
  - b. **Do you agree that if the criminal histories of persons excluded from earned time credits are determined to be lower-level or non-violent, the exclusions list must be modified?**
  - c. **Do you agree that if these exclusions result in racially disparate outcomes, the exclusions list must be modified?**
  - d. **Do you agree that if the exclusions list results in a significant percentage of the prison population not participating in recidivism reduction programming or productive activities, the exclusions list must be modified?**

**Prisoner Reentry Initiative and Compassionate Release**

14. The First Step Act reauthorized and expanded the Prisoner Reentry Initiative under the Second Chance Act.
  - a. **Has BOP revised its program statement on this initiative to comport with changes mandated in the First Step Act?**
  - b. **What is the status of reinstating this program?**
  - c. **Please provide data on applications received and pending, and applications granted or denied under this program, to date.**

15. The First Step Act increases the use and transparency of compassionate release under 18 U.S.C. § 3582.
- a. **Has BOP's program statement on compassionate release been revised to include new requirements mandated under the First Step Act? When will these requirements begin to be implemented?**
  - b. In a letter dated January 16, 2018, the BOP revealed that the agency has granted only 306 petitions, while denying more than 2,400 over the past four years - approving just over 12% of applicants. **Do you agree that this approval percentage should increase?**
  - c. The First Step Act requires BOP to issue a report on compassionate release requests received, denied, and granted within one year of enactment. **Will you commit to detailed and thorough responses regarding this data? Will you seek to increase the use of compassionate release such that this report reflects an increase in granted petitions?**
  - d. Prisoners have previously waited an average of 4.7 to 6.5 months for a response to a petition for compassionate release, and since 2014, 81 prisoners died while waiting for review. **Has BOP begun to implement the First Step Act's expedited process for reviewing inmate compassionate release requests? Has BOP drafted an implementation policy to ensure compliance with these provisions? If not, when will such policy begin to be implemented?**
16. The reauthorizing and expansion of the Prisoner Reentry Initiative and the reform of the compassionate release process will require BOP staff for implementation.
- a. **How many BOP employees are assigned to assist with each of both the Prisoner Reentry Initiative and the reformed compassionate release process?**
  - b. **Does BOP intend to create full time positions to implement and staff these programs?**
  - c. **How many full time employees will be assigned these tasks, and when will their assignments begin?**

*Appropriations and Staffing*

17. The First Step Act authorizes \$75,000,000 for each of fiscal years 2019 through 2023 to carry out the Act's provisions.
- a. **In the FY19 Consolidated Appropriations Act, the Federal Prison System received a significant funding increase. Has or will BOP use any of this funding increase to implement policies authorized in the First Step Act?**
  - b. **Will you agree to seek full funding of the First Step Act, at minimum at the amount of \$75 million per year?**

- c. **If additional funding beyond the \$75,000,000 authorized in the First Step Act is required, will you commit to evaluate the full cost required to implement all provisions under the Act effectively, and to request sufficient funding in DOJ Budget requests?**
  - d. **Will you commit to hire sufficient staff to ensure the effective implementation of the Act, such that waitlists for work programs, drug treatment programs, and other recidivism reduction programs are eliminated?**
  - e. **Will you commit to ensure the safety of all correctional employees and inmates by ending the use of augmentation?**
18. BOP has reportedly been understaffed for years, and has relied on “augmentation” to fill correctional officer positions. First Step Act implementation may require increased BOP staffing, including to ensure the monitoring of increased phone and visitation privileges, and to provide notice and assistance for compassionate release petitions, among many other tasks. **Please describe BOP’s plan to ensure sufficient staff and correctional officer capacity at BOP facilities in order to comply with all First Step Act mandates.**

**Other Prison Policy Reforms**

19. Many provisions within the First Step Act require changes to BOP policy. These include (1) restrictions on use of restraints on prisoners during the period of pregnancy, labor and postpartum recovery; (2) free access to tampons and sanitary napkins for inmates; (3) placement of prisoners close to home; (4) placement of inmates in home confinement for the maximum amount of time permitted under current law; (5) increased phone and visitation privileges; (6) provision of identification for returning inmates; (7) provision of de-escalation training for correctional officers and employees; and (8) the establishment of pilot programs for youth mentorship and service to animals.
- a. **Which of these prison reforms have already been implemented by BOP? Which have not, and why not? Will you direct BOP to implement these policies immediately?**
  - b. **The new law requires notice to pregnant prisoners on the newly updated restrictions on the use of restraints during pregnancy, labor and postpartum. Has this notice to pregnant prisoners been issued? If so, please share a copy of the notice with the House Judiciary Committee.**
  - c. **Are there any BOP facilities where placement of prisoners close to home in compliance with the First Step Act is not feasible? If so, please provide information on which facilities, the reasons compliance is not feasible, and how many inmates are affected.**
  - d. **Will BOP ensure that assistance with obtaining identification is provided for all inmates upon release, including non-citizens?**



**Medication-Assisted Treatment**

20. The First Step Act requires BOP to submit a report to Congress within 90 days on expanding medication-assisted treatment within federal prisons, as well as taking steps to implement that plan. Given the current overdose crisis, this expansion must be a priority.
- a. **What has BOP done to prepare this report?**
  - b. **When will BOP implement medication-assisted treatment in all its facilities?**
  - c. **What is BOP doing to make sure all forms of medication-assisted treatment are available to those who need it?**

**Faith-Based Programming**

21. The First Step Act permits nonprofit and other private organizations, including faith-based organizations, to deliver recidivism reduction programming. It also requires the Director of BOP to ensure that non-faith-based programs that qualify for earned time credit are offered at each BOP facility in addition to any such faith-based programs.
- a. **Has BOP complied with this mandate? Please provide the data concerning the current availability of faith-based and non-faith-based programs at each BOP facility.**

**Juvenile Solitary Confinement**

22. The First Step Act significantly limits the use of juvenile solitary confinement.
- a. **How many covered juveniles or juveniles in covered facilities, on average, are placed in solitary confinement annually?**
  - b. **Has the Department of Justice notified and trained its contractors about the new policy regarding solitary confinement of juveniles and offered resources and responses to discipline to end the use of solitary confinement?**
  - c. **How will DOJ monitor contract facilities' compliance with prohibitions against juvenile solitary confinement, both prior to any disposition and after?**

**Dyslexia/Learning Disabilities**

23. The First Step Act requires screening for dyslexia at intake and during each periodic risk and needs assessment, the appropriate use of audio technology for program course materials, and a review of statistics on the prevalence of, and programs intended to mitigate the effects of dyslexia, and the incorporation of findings into program development at BOP.

- a. **Has BOP begun the required review of statistics regarding dyslexia? When will BOP begin to comply with these requirements? How will BOP ensure such screening, review and implementation is evidence-based?**

24. The First Step Act also permits the Attorney General to incorporate programs designed to treat other learning disabilities.

- a. **Has BOP incorporated any screening or treatment programs for learning disabilities other than dyslexia? If so, please describe such programs. If not, please describe whether BOP intends to introduce such programs, what learning disabilities they would seek to address, and when they would be introduced.**

### **BOP IHP Hearings**

25. The First Step Act permits certain noncitizen inmates who seek to apply time credits the option of utilizing expedited removal proceedings under BOP's Institutional Hearing Program (IHP). Through the IHP, DOJ's Executive Office for Immigration Review (EOIR) provides in-person and video teleconference immigration proceedings to determine whether such inmates are removable from the United States and, if removable, whether they are statutorily eligible for any form of protection or relief from removal.

- a. **How many BOP facilities currently participate in the IHP? Are there plans to expand the number of facilities that participate in IHP and, if so, by how many? What number of IHP-participating facilities does BOP estimate are necessary to sufficiently address BOP needs as required under the First Step Act?**
- b. **Are there inmate waitlists for participation in IHP? If so, how many inmates are currently waiting for their matter to be heard through IHP?**
- c. **How are IHP dates scheduled for inmates who may ultimately be amenable to removal? For example, are matters for an inmate with the "earliest release date" given priority?**

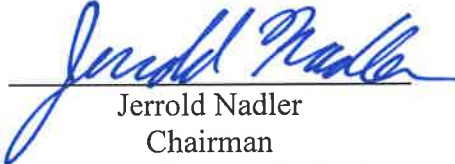
26. We have heard concerns that the IHP program does not afford sufficient due process rights. For example, experts report that it is difficult to consult with an immigration attorney while in BOP custody. Please provide the following data on the IHP program:

- a. **How many BOP inmates have been processed through the IHP since its creation? Please break this number down by calendar or fiscal year.**
- b. **What percentage of IHP proceedings are conducted in person and what percentage are conducted through video teleconference (VTC)? For hearings conducted through VTC, in what percentage of cases are there reports or complaints about the VTC equipment not working or being unreliable?**
- c. **On average, how quickly is a removal matter processed through the IHP? What are the primary factors that affect processing times?**

- d. **What percentage (and how many) of the BOP inmates processed through the IHP had attorney representation in removal proceedings and what percentage (and how many) did not have an attorney?**
- e. **Of those who were represented, what percentage (and how many) were successful in claiming protection or relief from removal, and what percentage (and how many) were unsuccessful?**
- f. **Of those who were unrepresented, what percentage (and how many) were successful in claiming protection or relief from removal, and what percentage (and how many) were unsuccessful?**


Although we understand that DOJ has offered to brief our staff concerning these and related issues, we still request a written and comprehensive response to these questions no later than April 22, 2019.


Sincerely,

  
Jerrold Nadler  
Chairman  
House Committee on the Judiciary

  
Hakeem Jeffries  
Chairman  
House Democratic Caucus

  
Karen Bass  
Chairwoman  
Subcommittee on Crime, Terrorism, and  
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