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# Department of Justice Report on Efforts to Fully Implement the Provisions and Intent of the First Step Act



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## I. Introduction

The Department of Justice (Department) considers it a priority to fully implement the provisions and intent of the First Step Act (FSA)—a bipartisan effort to improve criminal justice outcomes and reduce the federal prison population while maintaining public safety. This report responds to Section 17(a) of Executive Order 14074, which calls on the Department, in consultation with the Office of Management and Budget, and after reviewing and updating Department regulations, policies, and guidance, to issue a report summarizing the Department’s efforts pursuant to the FSA.

Consistent with the Executive Order, this report summarizes:

- (i) the rehabilitative purpose for each First Step Act expenditure and proposal for the prior and current fiscal years, detailing the number of available and proposed dedicated programming staff and resources, the use of augmentation among Federal Bureau of Prisons (BOP) staff, and BOP staffing levels at each facility;
- (ii) any additional funding necessary to fully implement the rehabilitative purpose of the First Step Act, ensure dedicated programming staff for all incarcerated persons, and address staffing shortages in all BOP facilities; and
- (iii) the following information on the BOP’s risk assessment tool, Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN):
  - A. the number of individuals released early due to Earned Time Credits who were subsequently convicted and sentenced, as defined by United States Sentencing Guideline § 4A1.1(a), in the year following their release, disaggregated by their PATTERN risk level category of “Minimum,” “Low,” “Medium,” or “High” at time of release;
  - B. an assessment of any disparate impact of PATTERN, including the weighting of static and dynamic risk factors and of the statutorily enumerated offenses and prior convictions that render individuals ineligible to earn time credits; and
  - C. a strategic plan and timeline to improve PATTERN, including by addressing any disparities and developing a needs-based assessment system.

As detailed below, and consistent with the Executive Order, the Department has taken significant steps to implement both the provisions and the intent of the FSA. Individuals in BOP custody now receive detailed information about the process for obtaining earned time credits, an increasing number of individuals are enrolled in Evidence-Based Recidivism Reduction (EBRR) programs and Productive Activities (PA), and people who are eligible are being released into home confinement earlier and for longer periods of time. As part of this process, individuals in custody are educated about the requirements and benefits of filling out a risk and needs assessment. Further, the BOP has increased recidivism reduction partnerships, and the

Department has engaged with a diverse group of external stakeholders with an interest in FSA implementation. But the Department and the BOP recognize there is more to be done. The BOP is committed to prioritizing FSA requirements and its general recruitment, hiring, retention, facilities, and programmatic needs, and to continuing to study and further improve PATTERN.

In addition to those efforts, the Department recently published its *2022 Review and Revalidation of the First Step Act Risk Assessment Tool*, a report authored by the National Institute of Justice (NIJ), that provides a detailed assessment of PATTERN.<sup>1</sup> The Department provided further detailed information about implementation of the FSA in its *2023 First Step Act Annual Report*.<sup>2</sup>

## II. Overview of the Department's FSA Implementation Efforts

The Department and the BOP are committed to fully implementing the FSA and are prioritizing implementation efforts. As part of its efforts, the BOP maintains an FSA website that contains an overview of the FSA, the Department reports issued pursuant to the FSA, information about PATTERN and the BOP's needs assessment and programs, relevant FSA-related policies, and a list of frequently asked questions.<sup>3</sup> In addition, the BOP FSA website includes updated data about fair sentencing and retroactive sentence reductions, compassionate release sentence reductions, Medication Assisted Treatment (MAT) participation, FSA releases, recidivism reduction partnerships, and elderly home confinement approvals.

Consistent with the FSA, the Department has developed a risk and needs assessment system for the BOP to assess the recidivism risk and needs of all individuals in BOP custody and to place people in recidivism reducing programs and productive activities to address those needs and reduce recidivism risk. In the past year, the Department has also taken significant steps toward implementation, including, among others:

- (i) finalizing BOP Program Statement 5410.01 CN-2 which maximizes the availability of time credits to eligible adults in custody pursuant to 18 U.S.C. § 3632(d)(4) and 18 U.S.C. § 3624(g);
- (ii) assessing and updating PATTERN;
- (iii) increasing capacity for EBRR programs;
- (iv) providing MAT and well-being programming;
- (v) evaluating the efficacy of BOP's rehabilitation and reentry programs; and
- (vi) seeking and incorporating external stakeholder feedback.

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<sup>1</sup> See National Institute of Justice (NIJ), *2022 Review and Revalidation of the First Step Act Risk Assessment Tool* (the "PATTERN Report") (Mar. 2023), [National Institute of Justice 2022 Review and Revalidation of the First Step Act Risk Assessment Tool \(ojp.gov\)](https://www.ojp.gov/first-step-act-annual-report-april-2022). Because the PATTERN Report provides a detailed assessment PATTERN's impact and steps the Department intends to take moving forward, this Report incorporates the PATTERN Report by reference, in particular with respect to Sections 17(a)(iii)(B) and (a)(iii)(C)

<sup>2</sup> See <https://www.ojp.gov/first-step-act-annual-report-april-2023>. The Department's April 2022 First Step Act Annual Report is available here: <https://www.ojp.gov/first-step-act-annual-report-april-2022>. The Department's initial Annual Report, published in December 2020, is available here: <https://www.ojp.gov/Attorney-Generals-First-Step-Act-Section-3634-Annual-Report-December-2020>.

<sup>3</sup> See *First Step Act*, <https://www.bop.gov/inmates/fsa/>.

**Maximizing Time Credit Availability.** Consistent with the FSA’s directives, BOP finalized policies that inform those in custody about the process for earning, documenting, applying, forfeiting, and restoring after forfeiture time credits in accordance with the FSA. Additionally, the BOP informs its population about the circumstances under which an individual is precluded from earning or applying time credits and will identify the process for applying time credits in combination with the Residential Drug Abuse Treatment Program early release benefit pursuant to 18 U.S.C. § 3621(e). Consistent with those efforts, the BOP launched the FSA time credit auto-calculation application in August 2022, which allows individuals to track credits earlier in the process and promotes more consistent and accurate calculations. As of April 29, 2023, 78.19% of the BOP population eligible to earn time credits were taking part in an FSA activity.

**Assessing and Updating PATTERN.** The Department has taken substantial efforts to update the PATTERN risk assessment system. Consultants from the NIJ, with support from the BOP’s Office of Research and Evaluation, conducted an annual revalidation of PATTERN, and on May 7, 2022, the BOP implemented the revised PATTERN version 1.3. At the direction of the Attorney General, the Department also adopted new “cut points,” or score ranges for making recidivism risk level assignments, in an effort to mitigate against any racial and ethnic disparities associated with prior risk level categories. These new cut points enhance opportunities for eligible individuals to earn time credits that accrue toward prerelease custody and supervised release, consistent with the directives and intent of the FSA.

**Increasing Capacity for Evidence Based Recidivism Reduction Programs.** BOP’s philosophy is that reentry preparation begins on the first day of an individual’s incarceration, and it takes seriously the need to constantly evaluate the effectiveness of EBRRs and Productive Activities, or “PAs”. Within the last year, BOP has added 12 new EBRRs and advanced many existing initiatives and efforts to expand the quality and quantity of services and program opportunities for the BOP population. In addition, the BOP has contracted with social science researchers to evaluate the outcomes of its existing reentry and treatment programs related to offender adjustment, recidivism reduction, and psychological symptoms and distress, and has steadily expanded participation in EBRR programs and PAs by more than 20,000 individuals during the last year.

**Providing MAT and Well-Being Programming.** The mental and physical well-being of those in BOP custody is a priority. Consistent with the FSA, the BOP continues to expand treatment opportunities for individuals with mental health and substance abuse disorders, including MAT for opioid use disorders, life skills laboratories, and Bureau of Rehabilitation and Values Enhancement (BRAVE) programs for younger individuals with long sentences.

**Evaluating BOP Programs.** BOP has taken meaningful steps to monitor programming availability and participation across BOP institutions. In the Department’s last annual FSA Report, the Department announced BOP’s establishment of a partnership with the Advanced Data Analysis and Mining Lab (ADAM) of the Department’s Civil Division, to develop dashboards to present data about the assessment needs and the availability, capacity, and utilization of EBRRs and PAs at BOP institutions in real time. The BOP expects that this public dashboard will provide real time data to inform decisions about FSA program offerings and

resource allocation, track participation, and identify potential shortfalls in assessments and programming. This real time information will be critical to BOP's ability to continue acceleration of FSA implementation across BOP facilities, and BOP expects the initial prototype to be completed by July 2023.

**Seeking and Incorporating Stakeholder Feedback.** The Department's implementation efforts have also been informed by the perspectives of external stakeholders. Since the FSA was enacted, the Department has engaged with outside stakeholders—including formerly incarcerated individuals—to gain a diversity of perspectives and to assist in maximizing implementation of the FSA by delivering effective recidivism-reduction and rehabilitation programming. These efforts have included forging a variety of partnerships with individual volunteers, volunteer-based organizations that provide mentoring and other services, and contractors that assist with programs and activities in BOP facilities.

### **III. BOP FSA Expenditures, Augmentation, and Staffing**

#### *A. Rehabilitative Purpose of FSA Expenditures.*

BOP, in annual appropriations bills, receives dedicated funding for the implementation of the FSA's requirements. BOP FSA funding for the past three years has supported a variety of rehabilitative purposes, including:

- (i) Evaluating Programs;
- (ii) Inmate-Focused Information Technology;
- (iii) MAT;
- (iv) Reentry Program Expansion;
- (v) Residential Reentry Centers (RRC) and Home Confinement;
- (vi) Salary & Training; and
- (vii) Buildings and Facilities (Programming Space).

1. *Evaluating Programs.* The BOP has made substantial investments to study the myriad programs offered to adults in custody to ensure quality, validate impact, and comply with FSA requirements. In collaboration with external, credentialed social science researchers, the Reentry Services Division regularly evaluates the outcomes of some of its largest reentry programs. BOP's programs prioritize successful reentry into the community upon release, but certain programs also have additional priorities, such as symptom reduction and behavior modification.

The following programs are currently undergoing evaluation:

- (i) Drug Treatment Programs, including the Drug Education, Non-Residential Drug Treatment, Residential Drug Treatment, and MAT programs;

- (ii) Anger Management Program, which is a study of the program's effects on mental health crisis contacts, disciplinary infractions, and recidivism;
- (iii) Bureau Rehabilitation and Values Engagement, an intensive cognitive-behavioral program for younger individuals; and
- (iv) Resolve Program, which is BOP's cognitive-behavioral program designed to address the trauma-related mental health needs of individuals in custody.

Seven additional BOP programs are being evaluated by the NIJ. After a competitive solicitation process, BOP entered into a contract with NIJ to study symptom reduction, institutional adjustment, and recidivism outcomes for the following BOP programs:

- (i) Steps Toward Awareness, Growth, and Personal Strength, a cognitive-behavioral residential treatment program for offenders with significant mental health and self-harm histories;
- (ii) Skills Program, a residential treatment program designed to improve the institutional adjustment for individuals with intellectual and social impairments;
- (iii) Non-Residential Sex Offender Treatment Program, a moderate-intensity cognitive-behavioral treatment program designed for sex offenders determined to be low to moderate risk of recidivism;
- (iv) Female Integrated Treatment Program, a residential program designed to meet the vocational, mental health, trauma, and substance abuse treatment needs of women in BOP custody;
- (v) Foundation Program, a strengths-based program designed to help women in BOP custody identify their treatment and reentry needs;
- (vi) Threshold Program, a non-residential spiritual and values-based program facilitated by BOP's Religious Services staff with assistance from community volunteers designed to support individuals in their spiritual development and formation; and
- (vii) Life Connections Program, a faith-based residential program designed to assist participants in developing their personal and spiritual transformation and in learning practical life skills for their successful transition back to the community.

As an additional step in its evaluation efforts, BOP intends to contract with criminal justice consultants experienced in correctional program delivery to conduct a review of the available research to compare the strength of the evidentiary bases of BOP's programs with non-BOP programs with a research-supported evidentiary basis.

2. *Inmate-Focused Information Technology.* BOP is working to build a technology infrastructure to support FSA program delivery and tracking. For example, the BOP is partnering with the Civil Division's ADAM Lab to develop dashboards to analyze and present data to help the BOP assess participation in EBRRs and PAs across BOP facilities. Because the BOP offers programs across all sites and because local facilities use needs

assessment results to determine which programs to offer, it is important that BOP be fully equipped with adequate technology to monitor program participation by location.

3. *MAT.* The FSA requires the BOP to expand access to MAT. The MAT program is a vital tool for providing treatment to individuals with opioid use disorder. As part of the MAT program, the BOP provides all three FDA-approved medications<sup>4</sup> in conjunction with individualized psychological interventions for individuals with opioid use disorder. Participants engage in psychological treatment and services to address individual treatment needs, including referrals to other programs such as vocational training and trauma treatment. Over the past year, BOP has implemented a hub-and-spoke model to create MAT capacity at all of its facilities. This has required BOP's collaboration with the Drug Enforcement Administration and the Substance Abuse and Mental Health Services Administration. Through these collaborations, BOP has rapidly developed this capacity and is currently working to increase it. BOP's community-based treatment service providers ensure continuity of care as individuals transfer from BOP facilities to RRCs. BOP ensures that MAT services initiated or identified as needed in its facilities continue or begin upon transfer to an RRC. Individuals who did not start the MAT screening process while in BOP custody may choose to be evaluated for MAT by contracted treatment providers in their community.
4. *Reentry Program Expansion.* BOP is committed to expanding reentry program options and availability and has taken substantial steps toward that goal. The BOP monitors program participation and has recorded a marked increase in participation over the course of Fiscal Year (FY) 2022. The BOP has also partnered with the Department of Labor's Employment and Training Administration to develop and implement the Partners for Reentry Opportunities in Workforce Development (PROWD) grant program, which currently provides job preparation reentry services to individuals in minimum and low security prisons and will expand services in FY23 to individuals in medium security federal prisons. The services within the PROWD initiative follow individuals as they release from prison to RRCs and into the community upon the completion of their sentences; however, FSA funds are not used to pay for services provided following the service of a federal sentence.
5. *RRCs and Home Confinement.* BOP is committed to placing individuals in the community in a manner commensurate with their needs. Following guidance from the Attorney General, the BOP Director has exercised discretion under the CARES Act to place thousands of individuals in home confinement during the COVID-19 pandemic emergency. The Department also issued a rule reflecting the BOP Director's authority to allow individuals placed on home confinement under the CARES Act to remain in home confinement after the conclusion of the covered emergency period, in the Director's discretion.<sup>5</sup> BOP has also expanded the application of its home confinement program due to the application of earned time credits, resulting in individuals transferring to home confinement sooner and for longer periods of time.

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<sup>4</sup> FDA approved medications include methadone, buprenorphine, and naltrexone.

<sup>5</sup> See *Final Rule Regarding Home Confinement under the CARES ACT*, <https://www.justice.gov/opa/pr/final-rule-issued-home-confinement-under-coronavirus-aid-relief-and-economic-security-cares#:~:text=The%20Department%20of%20Justice%20has,of%20the%20covered%20emergency%20period.>

6. *Salary & Training.* BOP is committed to fully staffing BOP institutions. Appropriate staffing, combined with training and funding, is key to full implementation of the FSA. During the last three years, the BOP has made significant efforts to hire for correctional services positions and for positions designed to prioritize FSA program delivery, including professionals in education, physical and mental health, and religious services. These efforts have included national recruitment campaigns, use of recruitment and retention incentives, the addition of internships and post-doctoral fellowships, and increasing wellness initiatives for BOP employees. BOP's efforts to fill positions that support FSA implementation continue. As of April 23, 2023, BOP had filled 308 of the 440 (70%) authorized FSA-funded positions.<sup>6</sup> BOP's efforts to increase FSA hiring are explained in more detail in Section III.C of this report. BOP continues to train its employees in accordance with the FSA. For example, BOP employees and officers receive specialized and comprehensive de-escalation training in accordance with Section 606 of the FSA. That training includes mental health awareness training regarding individuals with psychiatric disorders. To date, more than 31,000 BOP employees have received the updated training.
  
7. *Buildings and Facilities (Programming Space).* Improvements of current BOP facilities are essential to the BOP's ability to fully implement the FSA. Many BOP facilities were built decades ago, before a body of evidence developed showing the rehabilitative value of programming. As a result, space issues often lead to low capacity because facilities are unable to offer multiple programs at a time. BOP continues to prioritize improving its buildings and facilities to increase program capacity and service delivery opportunities.

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<sup>6</sup> In the BOP's FY 2023 Spend Plan, the BOP proposes to add 590 FSA positions, for a total of 1,030 FSA-funded authorized positions through the end of FY 2023.



The below chart provides FSA expenditures by category for Fiscal Years 2021-2022:

| <u>FSA Expenditures</u> <sup>7</sup>                     | <u>FY 2021</u> | <u>FY 2022</u> |
|--|----------------|----------------|
| Evaluating Programs                                      | \$22,026       | \$6,939        |
| Inmate Focused IT  | \$91,409       | \$74,701       |
| MAT  | \$58,760       | \$14,019       |
| Reentry Program Expansion                                | \$143,371      | \$202,280      |
| RRCs & Home Confinement                                  | \$70,532       | \$75,491       |
| Salary & Training Funding                                | \$7,331        | \$24,916       |
| B&F Transfer (Programming Space)                         | \$12,700       | \$0            |
| Carryover for future FSA spending - Contract Confinement | \$3,354        | \$11,698       |
| Total  | \$409,483      | \$410,044      |

B. The Use of Augmentation Among BOP Staff.

BOP staff is its greatest resource in delivering programs. Augmentation, or the reassignment of non-correctional staff to work correctional posts, is used to ensure that correctional posts are filled. While filling correctional posts is essential to the safety and security of everyone in BOP facilities and the public, the Department and the BOP understand the challenges associated with using staff who would otherwise be implementing programming for custodial duties. The Department and BOP are dedicated to identifying hiring and staffing strategies to reduce reliance on augmentation.

1. *Staffing Assessment.* Since June 2021, an independent, external organization has been contracted to assist the BOP in identifying quantifiable risks associated with current staffing levels, including overtime use and staff schedule augmentation. This assessment will provide the BOP with additional tools to help identify staffing risks and make informed staffing decisions.
2. *Psychologist Hiring.* Recruitment of BOP staff is often a challenge, but the recruitment and hiring of professional staff (e.g., clinical psychologists, teachers, and chaplains) is even more difficult because of competing industries and employers. For example, the role of a psychologist in the BOP requires not only the interest to work in a challenging prison environment, but also requires stringent age, background, and educational requirements. Research indicates that only 34% of active psychologists are eligible for BOP employment due to age. Because of the highly specialized nature of the work performed by psychologists,

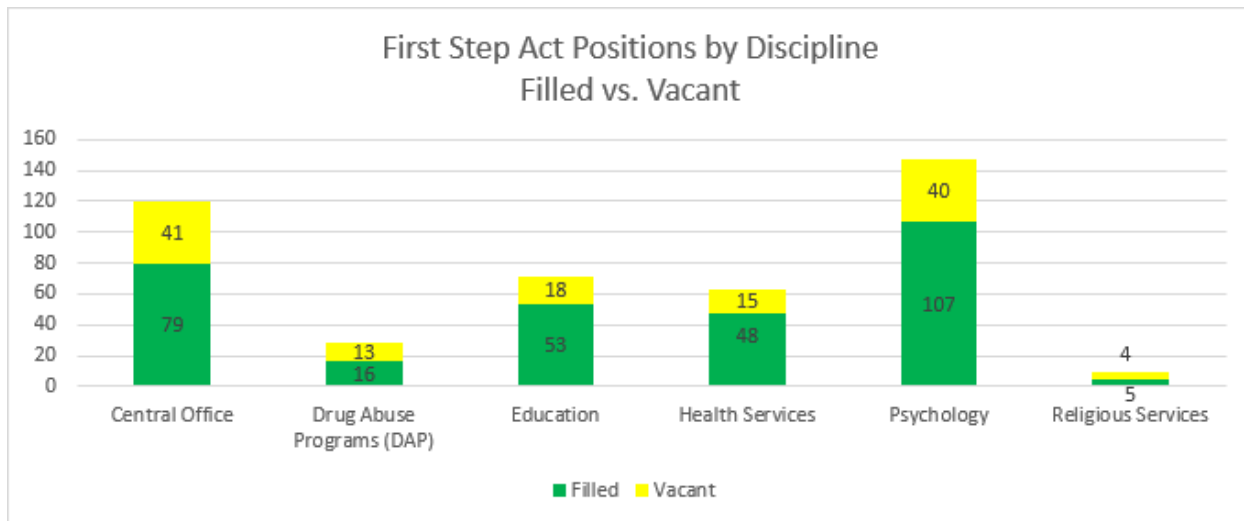
<sup>7</sup> Reflects BOP's obligations, unless otherwise specified. Dollars are in thousands. To categorize spending more appropriately and remain consistent with FY 2022 methodology, the BOP has recategorized approximately \$5.5M in FY 2021 expenditures from the Inmate Focused IT category to the RRCs & Home Confinement category.

the BOP is utilizing the services of Accenture, a consulting firm, to improve hiring strategies for treatment specialists, psychology doctoral interns, and psychologists. Accenture is assisting with streamlining information including increased social media and web-based presence, rebranding ad campaigns, enhancing user experience of BOP webpages, and marketing to targeted audiences through increased presence in academic and professional communities. Additionally, through consultation, analytics, research, and focus groups, Accenture is working in tandem with the Psychology Services Branch to understand and then reduce barriers and increase the efficiency of hiring processes. The initial marketing campaign began in April of 2022 with continued improvements across media, creative, and strategy released since launch.

3. *Targeted Hiring Campaigns.* The BOP has also engaged Accenture to conduct innovative and targeted marketing and recruitment campaigns to attract new staff in all positions. These general recruitment campaigns involve the extensive and expansive use of social media, job fairs (both in-person and virtual), and industry associations. In FY 2021 and 2022, these campaigns have included focused efforts to hire into a variety of positions, including corrections officers, nurses, teachers, clinical psychologists, drug abuse program coordinators, social workers, vocational training instructors, and others. In FY 2023, the BOP will continue to work with Accenture to recruit for BOP positions, including those dedicated to FSA implementation, correctional officers, and hard-to-fill positions, as well as all positions in hard-to-fill locations.
4. *Incentives.* The BOP has found success in using recruitment incentives to hire strong candidates, and retention incentives to encourage experienced staff to remain with the agency. For example, the BOP has offered a 10 percent recruitment incentive at thirty-two locations which are under 85 percent staffing in Correctional Services. By hiring and retaining correctional services staff, the BOP relies less upon augmentation by program staff.

### C. BOP Staffing Levels.

The Department and the BOP are committed to fully staffing BOP institutions. The BOP has made significant efforts in hiring for correctional services positions and positions designed to prioritize FSA program delivery, including in education, physical and mental health, and religious services. BOP continues to fill positions that support FSA implementation. BOP is currently authorized 440 FSA-funded positions, including more than 100 positions designed to expand FSA program capacity. As of April 23, 2023, BOP has filled 70% (or 308 of 440) dedicated FSA positions. The graph below shows the current status of BOP hiring of positions that directly support FSA implementation.



<sup>1</sup>Total Authorized FY 2022 FSA positions are 440, however, the chart depicts 439 positions due to a final decision pending on the proper classification of the Family Support Administrator Position.

BOP continues to take steps to fill vacant FSA positions. As of April 23, 2023, the BOP had made tentative offers or given entry-on-duty dates to an additional 37 individuals, representing 28% of the vacant FSA-funded positions. As of the same date, interviews were being conducted or background checks were in progress for another 41 individuals, or 31% of the vacant FSA-funded positions. Another 53 vacancy announcements remain posted, in part because some vacancies require a second posting due to a lack of qualified applicants after the first announcement. The BOP will continue to make a sustained and focused effort to fill all vacant FSA positions.

#### IV. Ongoing FSA Implementation Resource Needs

BOP has used FSA funds to increase program capacity by adding staff positions, purchasing program-related supplies, developing new programs in gap areas, modifying existing space, and bolstering agency infrastructure. Additional resources are recommended to continue to meet the needs of the population in BOP custody. This section of the report includes BOP's estimation of the required funding and staffing to ensure dedicated programming staff for all people in BOP custody, and to address staffing shortages in all BOP facilities. The figures provided are based on current BOP population and needs assessment data. Because the population is fluid, and because unforeseen circumstances may arise (*i.e.*, storm damage to a facility where programs take place), it is possible additional requests may be made regarding FSA implementation. Note that additional funding requests will be addressed through the President's Budget process.

##### A. Staffing.

The Reentry Services Division has updated staffing guidelines to increase program capacity consistent with the FSA. The addition of staffing for the purposes of program delivery has resulted in expanded access to services across need areas. Yet, to fully meet population demands and ensure each individual has quick access to programming in all need areas, additional Full

Time Equivalent (FTE) positions will be required to hire new staff. The funding attached to these positions should also contemplate resources for relocation and incentives to recruit and retain staff in remote, often hard-to-fill locations.

The following charts identify needed staff to realize full FSA implementation. Notably, the addition of the required staffing will take 10 years to achieve, as it will require the addition of positions, the construction of program space, the development of recruitment streams, and the creation of professional education and development strategies. Some positions can be added on top of the referenced staffing guidelines where intensive programming can be added at certain locations. For example, every facility should have one special populations coordinator under the guidelines, but intensive residential programs can be added when needs dictate their presence beyond this single position. Therefore, a facility with a high number of veterans, for example, could benefit from a second position to lead a residential veterans program. Similarly, BOP plans to expand its vocational counselor program to include a new position would be needed at every location. As a result, the below numbers include both current needs and future approximations for more intensive programs. BOP would need to develop incremental, multiyear hiring plans with additional funding spread over several years to achieve these position increases.

#### **Estimated Additional Program Delivery Positions, Institutions**

| <b>Location</b> | <b>Community Reentry Affairs</b> | <b>Chaplaincy</b> | <b>Education</b> | <b>Psychology</b> | <b>Women and Special Populations</b> |
|-----------------|----------------------------------|-------------------|------------------|-------------------|--------------------------------------|
| Mid-Atlantic    | 4                                | 36                | 187              | 87                | 12                                   |
| North Central   | 2                                | 41                | 187              | 75                | 11                                   |
| Northeast       | 1                                | 28                | 134              | 75                | 13                                   |
| South Central   | 3                                | 23                | 249              | 75                | 12                                   |
| Southwest       | 2                                | 23                | 185              | 76                | 13                                   |
| Western         | 2                                | 35                | 173              | 78                | 10                                   |
| <b>Total</b>    | <b>14</b>                        | <b>186</b>        | <b>1,115</b>     | <b>466</b>        | <b>71</b>                            |

In addition to direct service delivery positions located at institutions, BOP’s expanded service delivery requires additional headquarters-based staff to oversee program fidelity and implementation and to manage transfer pipelines in and out of specialty programs. The Residential Reentry Management Branch and its associated contracting office are also managed through BOP headquarters and require significant expansion to increase FSA-related bedspace. Additionally, consistent with FSA requirements, BOP will benefit from filling positions with the National Institute of Corrections to support BOP in delivering programs and with training staff. The chart below categorizes staffing needs for BOP headquarters program delivery positions.

**Estimated Additional Program Delivery Positions, Headquarters**

| <b>Branch</b>                     | <b>Positions</b> |
|-----------------------------------|------------------|
| Residential Reentry Management    | 77               |
| Women and Special Populations     | 4                |
| Chaplaincy                        | 1                |
| Psychology                        | 4                |
| Education                         | 7                |
| Contracting                       | 5                |
| Correctional Programs             | 1                |
| Support and Advocacy              | 4                |
| National Institute of Corrections | 20               |
| <b>Total</b>                      | <b>123</b>       |

FSA implementation also includes MAT services. The BOP now offers MAT at all locations and is working through required medical licensing requirements to dispense prescriptions. The chart that follows shows the needed MAT positions for BOP institutions.

**Needed MAT Positions, Institutions**

| <b>Discipline</b>    | <b>Positions</b> |
|----------------------|------------------|
| Psychology           | 130              |
| Medical <sup>8</sup> | 293              |
| <b>Total</b>         | <b>423</b>       |

Barring unforeseen circumstances and allowing for some flexibility in adding intensive programs, BOP currently estimates about 2,398 additional FTE are needed to fully implement FSA and ensure adequate programming opportunities for all incarcerated persons. As this is an ambitious staffing surge, BOP would need to develop incremental, multiyear hiring plans with additional funding spread over several years to achieve these position increases.

*B. Programming and Reentry Support.*

BOP offers a wide array of programs across need areas. Additional equipment may be needed to increase capacity in existing programs. This equipment supplements hands-on job training, but it is also used in support of mental health and reentry interventions. Examples of materials needed include automotive maintenance supplies, rigs and tractor trailers, simulators for trades, forklifts for building trades, software licenses, journals and workbooks, tools and machinery, wood, tablets and support, release identification documents, and gardening and greenhouse supplies.

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<sup>8</sup> 150 of these positions will be provided in Fiscal Year 2023.

Although some of these costs will recur from year to year, BOP estimates 10-year costs in this category of \$120 million over a period of 10 years.

*C. Buildings and Facilities.*

As noted earlier, many BOP facilities were built decades ago, before the body of evidence developed showing the rehabilitative value of programming. As a result, space issues often keep capacity low because multiple programs cannot be offered at the same time. The table below highlights in alphabetical order some of the potential projects across numerous BOP institutions necessary to fully maximize FSA programming.

| <b>Institution</b> | <b>Project</b>  |
|--------------------|---|
| FCI ALICEVILLE     | Purchase of a mobile culinary training structure to allow students to complete curriculum objectives for completion of a program which addresses FSA work needs.                                    |
| FCI ASHLAND        | Construction of a camp building trades and horticulture classroom with shop space would allow the institution to increase capacity and serve more individuals with an FSA work need.                |
| USP BIG SPRING     | Replace roof for a vocational training building to allow for more capacity to serve more individuals with an FSA work need.   |
| FPC BRYAN          | Purchase equipment for FSA PA (treadmill, exercise bikes, exercise step) to serve those with FSA Recreation/Leisure/Fitness and medical needs.  |
| FCC BUTNER         | Expand outside recreational space on locked housing units to increase capacity to serve more incarcerated individuals.  |
| FCC BUTNER         | Add internal recreational spaces in locked treatment units to increase capacity to provide FSA classes to those with FSA needs.   |
| FCC BUTNER         | Add outside recreational spaces or an extension of a larger enclosed space adjoining locked units to increase capacity to provide FSA classes to those with FSA needs.                              |
| FCC BUTNER         | Convert a short range into an indoor recreational space to increase capacity to provide FSA classes to those with FSA needs.  |
| FCC BUTNER         | Add therapeutic enclosures to increase capacity to provide FSA classes to those with FSA needs.   |
| FCI CUMBERLAND     | Construct a vocational training and/or culinary arts program building (approx. 80,000 sq ft space available) to increase capacity and programming options to those with an FSA work need.           |
| FCI DANBURY        | Renovate programming space for camp to increase capacity to provide FSA classes to those with FSA needs.  |
| FCI EL RENO        | Purchase equipment for vocational training Programs (welding simulator, workbooks, CNC machine, knee mill) to provide instruction and increase capacity in FSA programs for those with a work need. |
| FCC FLORENCE       | Create additional programming space to increase capacity and program options to provide FSA classes to those with FSA needs.  |

|                  |  |
|------------------|--|
| USP LEE          | Retrofit former UNICOR factory (approx. 40,000 sq ft) into FSA programming area to increase capacity and program options to provide FSA classes to those with FSA needs.   |
| FCI LEXINGTON    | Renovate and upgrade large, unused auditorium to accommodate expansion of FSA programs to increase capacity and program options to provide FSA classes to those with FSA needs.  |
| FCI MIAMI        | Renovate the expanded education and recreation annex to increase programming opportunities and available classroom space. Renovations include the installation of a computer lab, VT Barber Shop Program, and physical upgrades to create more usable programming space for all FSA programming needs. |
| FCI MARIANNA     | Add Portable Classrooms to increase capacity and program options to provide FSA classes to those with FSA needs.   |
| FCI MARIANNA     | Add Tool cage and retrofit of storage space for Vocational Instructor's office to secure storage of tools, materials, and supplies to support the expansion of FSA programs for individuals with a work need.  |
| FCI PHOENIX      | Add programming space at the camp to increase capacity and program options to provide FSA classes to those with FSA needs.   |
| FCI SEAGOVILLE   | Purchase Greenhouse for Horticulture VT Program to allow students to obtain the necessary skills to complete program requirements.   |
| FCI TALLADEGA    | Renovate vacant unit and adjoining recreation yard for a secure program unit to provide FSA classes to those with FSA needs.   |
| FCI SHERIDAN     | Create vocational rehabilitation program area to address the needs of those who have FSA needs who cannot be served in traditional vocational trades programs.   |
| USP THOMSON      | Install modular type structures with secure programming space on the South compound to offer in person classes for the population to address FSA needs.  |
| USP THOMSON      | Modify existing empty ranges on the SMU side to facilitate small groups to address FSA needs.  |
| USP THOMSON      | Modify unit to facilitate additional programming space for Restrictive Housing Unit (RHU) population to include a computer lab to address FSA needs.   |
| USP THOMSON      | Install modular type structures at the camp to afford Education additional programming space to increase capacity and program options to provide FSA classes to those with FSA needs.  |
| USP THOMSON      | Build a sorting facility for a recycling vocational program at the Camp to increase capacity and program options to provide FSA classes to those with FSA needs.   |
| FCI THREE RIVERS | Purchase equipment for vocational training programs (semi-tractor, low boy trailer, laser engraver, barber shop items, welding simulator, welding stock, lumber stock, building trades) to address current in-demand skills necessary to those in vocational programs                                  |

|                    |   |
|--------------------|---|
|                    | with an FSA work need.  |
| FCC YAZ<br>OO CITY | Add portable classrooms to increase capacity and program options to provide FSA classes to those with FSA needs.  |
| Multiple           | Add 15 life skills labs to address the FSA needs of those with special learning needs and various disabilities.   |
| Multiple           | Add vocational space for newer technologies, automotive repair, and welding training to increase capacity and program options to provide FSA classes in in-demand, high-paying fields to those with FSA work needs. |

BOP estimates these projects to increase program space will cost approximately \$500 million over several years, considering the variation in building costs due to supply chains and other market trends. Should the BOP move forward with these projects, the Bureau would secure an independent government cost estimate. If fully funded, BOP expects these infrastructure changes could expand capacity to existing EBRRs and PAs to serve an additional 10,000 inmates per year.

**V. Prisoner Assessment Tool Targeting Estimated Risk and Needs (“PATTERN”)**

One principal goal of the FSA’s prison reforms was to reduce recidivism by encouraging individuals in BOP custody to participate in programs and other services. Consistent with that purpose, the FSA required the development and implementation of a risk and needs assessment system for people in federal custody. The FSA also provides that eligible inmates in BOP custody can earn FSA time credits toward prerelease custody or early transfer to supervised release for successfully completing approved EBRR Programs or PA assigned to each individual based on that person’s risk and needs assessment.

In response, development consultants for the NIJ created a risk assessment tool, the PATTERN, to assess individuals’ risk of engaging in crime once they are released from federal custody. In addition to PATTERN, the BOP released its needs assessment system, the Standardized Prisoner Assessment for Reduction in Criminality (SPARC-13), in January 2020. SPARC-13 captures the assessment of 13 needs, 12 of which were identified and assessed pre-FSA.

The Department continues to revalidate and refine the PATTERN tool. After its initial development in July 2019, PATTERN was subjected to public review and comment. Based on participant input and suggestions, several revisions were introduced, including the removal of two items believed to exacerbate racial disparities. The first revised version of the tool, referred to as PATTERN 1.2, was implemented in January 2020. Title I of the FSA also requires the Department to review, validate, and release publicly its risk and needs assessment system on an annual basis. In January 2021, NIJ’s review and revalidation expert consultants reported that they had discovered discrepancies with some of the measures used to create PATTERN 1.2. NIJ’s expert consultants collaborated with staff from BOP’s Office of Research and Evaluation to correct these issues.



In December 2021, NIJ released the annual review and revalidation report which documented the coding and specification errors detected in version 1.2 and described the development of a revised version 1.3, which was released in May 2022. PATTERN 1.3 comprises 15 variables spread across four tools: (1) general recidivism for males, (2) violent recidivism for males, (3) general recidivism for females, and (4) violent recidivism for females.

A. Individuals Released Early Due to Earned Time Credits.

As of January 28, 2023, 29,944 individuals have been released early from BOP custody due to earned time credits pursuant to the FSA. Of the individuals released, 3,722 people have recidivated (were either rearrested or returned to BOP custody). Of those recidivating, 2,757 individuals were rearrested but did not return to BOP custody; 929 individuals were revoked from supervision and returned to the BOP for technical violations; and 36 were returned to the BOP for new crimes. Of those who returned to BOP custody after having been released pursuant to the FSA, 150 individuals were classified as high risk at the time of their release, 65 as medium risk, 142 as low risk, 40 as minimum risk, and 568 had no classified risk level at their time of release.<sup>9</sup> Of the 3,722 who recidivated, 503 individuals were classified as high risk in PATTERN, 306 as medium risk, 1,020 as low risk, and 298 as minimum risk. An additional 1,595 had no classified PATTERN risk level at their time of release.

B. Assessment of PATTERN's Impact.

As required in Section 3631 of the FSA, the annual review and revalidation of PATTERN includes an assessment of “the rates of recidivism among similarly classified incarcerated individuals to identify any unwarranted disparities, including disparities among similarly classified individuals of different demographic groups.”<sup>10</sup> Based on the 2021 and 2022 review and validation reports, PATTERN continues to be a strong and valid predictor of general and violent recidivism.

In the most recent report, published in March 2023, statistics indicated that the tool accurately distinguishes between individuals who will and will not recidivate.<sup>11</sup> PATTERN also accurately predicted general and violent recidivism risks at the one-, two-, and three-year follow-up periods. Comparisons of recidivism rates by Risk Level Category (RLC) and predictive value analyses by risk level grouping also continue to indicate that such risk level designations provide meaningful distinctions of recidivism risk.

In addition, the results continue to suggest that individuals can change their risk scores and levels during confinement, and changes in risk were not driven exclusively by changes in age. Those

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<sup>9</sup> Additional data is available in the April 2023 PATTERN Report, <https://www.ojp.gov/first-step-act-annual-report-april-2023>, which is incorporated herein by reference. However, due to the BOP's data limitations, this information does not necessarily reflect only those individuals who recidivated within the first year of their release and who were resentenced after a conviction.

<sup>10</sup> FSA § 3631(b)(4)(E).

<sup>11</sup> See National Institute of Justice (NIJ), *2022 Review and Revalidation of the First Step Act Risk Assessment Tool* (the “PATTERN Report”) (Mar. 2023), [National Institute of Justice 2022 Review and Revalidation of the First Step Act Risk Assessment Tool \(ojp.gov\)](https://www.ojp.gov/first-step-act-annual-report-april-2023).

who reduced their RLC from first to last assessment were shown to have the lowest recidivism rates, followed by those who maintained the same risk level and those with a higher risk level, respectively.

The Department's leading concerns related to PATTERN, however, remain the disparity across racial and ethnic groups. NIJ's review and revalidation reports have examined the race and ethnic neutrality of PATTERN through differential prediction analyses which assesses the key question whether racial and ethnic subgroups have different probabilities of recidivism controlling for one's PATTERN score. As discussed in detail in the Department's 2022 PATTERN Report, there remains evidence that the instrument overpredicts the risk of recidivism for some racial and ethnic groups relative to white individuals (e.g., Black, Hispanic, and Asian males and females on the general tools).

As detailed below, the Department remains committed to revising and updating PATTERN to improve the equitability, efficiency, and predictive validity of the risk assessment system, including to ensure that racial disparities are reduced to the greatest extent possible, as required by the FSA. Consistent with that effort, in April 2022, the Attorney General amended the general recidivism risk level cut points to reduce racial and ethnic disparities in PATTERN, which led to an expansion in the number of individuals eligible for FSA benefits. Throughout 2022, the NIJ engaged with subject matter experts to discuss potential strategies for addressing racial and ethnic disparity. The Department also held stakeholder engagement sessions to solicit additional feedback on PATTERN more generally. These engagements have informed the ongoing efforts to refine and improve PATTERN, including considerations of how recidivism is defined, which data inputs are used for scoring, and whether modeling changes might reduce the racial and ethnic disparities in the tool.

### *C. PATTERN Strategic Plan and Timeline*

The Department is committed to ensuring that the risk and needs assessment systems developed in response to the FSA and in use by BOP are fair and free of bias. To ensure the Department strategically addresses disparities and makes needed improvements to the risk and needs assessment systems, PATTERN and SPARC-13 undergo an annual review and validation as required in Section 3631 of Title I.

1. *PATTERN*. Since its initial development in July 2019, the NIJ has released three reports documenting findings from the review and revalidation of PATTERN. These reports are available on the NIJ website. As mentioned previously, PATTERN is a strong and valid predictor of recidivism. While the tool continues to predict accurately across the five racial and ethnic groups analyzed, there remains evidence that the instrument overpredicts the risk of recidivism for some racial and ethnic groups relative to white individuals (e.g., Black, Hispanic, and Asian individuals on the male and female general tools).

In 2022, the NIJ and the Office for Access to Justice hosted two stakeholder sessions to support the Department's review of efforts to implement the FSA. The sessions brought together several stakeholders with the goal of soliciting feedback about further refinements to PATTERN. Through these sessions, the Department has received recommendations about

possible improvements to the tool and changes were made, including but not limited to changing the recidivism measure from arrests to convictions or significant violations of supervised release, the inclusion of additional dynamic variables, for example programmatic-level variables, as they become available, and assessing the use of the disciplinary infraction measures used in PATTERN to ensure the measures do not unnecessarily penalize incarcerated persons for the same infractions. Statements submitted by the stakeholders are available on NIJ's website.

The Department is committed to ensuring PATTERN continues to predict risk accurately and does not disproportionately impact individuals in any ethnic or racial group. Efforts include:

- To further the examination of the overprediction of risk, NIJ will continue to consult with external experts to develop possible strategies to address bias in PATTERN. This work will be completed in concert with the 2023 annual review and revalidation of PATTERN. Findings are expected later this year.
  - Engage with stakeholders on a regular basis on matters related to PATTERN and the implementation of the FSA.
  - Consistent with stakeholder feedback, the BOP, in consultation with NIJ, will explore options for changing the definition of recidivism when considering the predictive validity of the tool. This means that the value of the tool will be assessed in its ability to predict reconviction, rather than rearrest, for an offense following release. Currently, PATTERN relies on the FBI National Law Enforcement Telecommunication System database, which provides relatively complete and reliable information on arrests as reported into the system from state and local jurisdictions. Following a case downstream to capture disposition, however, poses data challenges as states report outcomes differently and with different rates of detail, completeness, and reliability. Nevertheless, BOP is exploring whether text analytics techniques would allow for a sufficiently complete and reliable measure of recidivism as conviction for a new crime and/or a significant violation of supervised release, in lieu of arrests. This would allow for a narrower and more probative definition of recidivism. BOP is working to assess the usefulness of the data, and if valuable the intent is to use that information for the 2024 PATTERN validation.
2. *SPARC-13*. SPARC-13 captures the assessment of 13 needs, 12 of which were identified and assessed pre-FSA. The thirteenth need, dyslexia, is statutorily required by the FSA to be included in BOP's needs assessment process. The needs include Anger/Hostility, Antisocial Peers; Cognition; Dyslexia; Education; Family/Parenting; Finance/Poverty; Medical; Mental Health; Recreation/Leisure/Fitness; Substance Use; Trauma; and Work.

Under SPARC-13, an individual's needs are assessed as part of the intake process, with reassessment occurring at least semi-annually throughout a person's term of incarceration. Findings are used to inform the referral to and provision of appropriate programs to address criminogenic and/or other needs. As required by FSA, the annual review and revalidation of SPARC-13 is underway, and findings are expected in spring 2023. A report detailing the

findings and recommendations for improvement to the needs assessment system will be made available on NIJ's website.

## **VI. Conclusion**

This report outlines the Department's and the BOP's efforts to implement both the provisions and the intent of the FSA. Both the Department and the BOP look forward to continued engagement with external stakeholders and partners across the Government as work continues toward the shared goal of full implementation of the FSA.