

**Report and Recommendations
Concerning the Department of
Justice's Response to Sexual
Misconduct by Employees of the
Federal Bureau of Prisons**

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Working Group of DOJ Components

Use of this Report

This Report was drafted to provide an overview of the Department's approach to sexual misconduct perpetrated by employees of the Federal Bureau of Prison and to propose recommendations to improve that response. The Report is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this Report, including the policy recommendations, should be construed to impair or otherwise affect the authority granted by law to a department or agency, or the head thereof, or the functions of government officials relating to budgetary, administrative, or legislative proposals. Recommendations will be implemented only as consistent with applicable law and subject to the availability of appropriations. Both implementation and application of policy recommendations involve the exercise of judgment of relevant Department officials.

INTRODUCTION

On July 14, 2022, Deputy Attorney General Lisa O. Monaco issued a memorandum identifying deep concerns about instances of reported and proven sexual misconduct by Federal Bureau of Prisons (“BOP”) employees. The memorandum directed the Principal Associate Deputy Attorney General to chair a group of senior officials (the “Working Group”) from relevant components of the Department of Justice (the “Department” or “DOJ”) to review the Department’s approach to rooting out and preventing sexual misconduct by BOP employees. This group was tasked with developing and proposing “recommendations and reforms to address gaps, deficiencies, and problems identified.”

Over a 90-day review period, the Working Group¹ has assessed the Department’s policies and practices related to preventing, reporting, investigating, prosecuting, and administratively disciplining sexual misconduct by BOP employees. During its review, the Working Group engaged with components across the Department, including BOP, the Executive Office for U.S. Attorneys (“EOUSA”), the Civil Rights Division (“CRT”), the Federal Bureau of Investigation (“FBI”), and the Office of the Inspector General (“OIG”), among others. It reviewed relevant BOP Program Statements, policies, and procedures, and collected relevant data related to the incidence of and response to sexual misconduct. The Working Group also held multiple listening sessions with external stakeholders, including formerly incarcerated persons and victim advocacy organizations. During one particularly powerful session, the Working Group heard firsthand accounts from survivors of sexual assault by corrections officers.

In this report, the Working Group outlines recommendations for immediate action—and areas for further review—to better protect the safety and wellbeing of those in BOP custody and better hold accountable those who abuse positions of trust. These recommendations center around five pillars: (1) Prevention; (2) Reporting; (3) Investigation; (4) Prosecution; and (5) Employee Discipline. The recommendations and their rationales are detailed below.

EXECUTIVE SUMMARY

The Working Group was charged with reviewing the Department’s response to allegations of sexual misconduct perpetrated by BOP personnel and identifying recommendations to improve that approach.² During the 90-day review period, the Working Group reviewed representative

¹ In addition to the PADAG, the Working Group included representatives from the following components: Access to Justice, BOP, CRT, EOUSA, FBI, Justice Management Division, Office of Legal Policy, Office of Public Affairs, Office on Violence Against Women, U.S. Attorney’s Office (“USAO”) for the District of Colorado, Office of the Associate Attorney General, Office of the Deputy Attorney General (“ODAG”), and Office of the Attorney General. This written report memorializes the findings and recommendations from the Working Group’s review, which were previously briefed to the Deputy Attorney General at a meeting on October 12, 2022.

² The Working Group was asked to examine only issues of sexual misconduct by BOP personnel. Although some of our recommendations may also apply to issues of sexual misconduct by individuals in custody, we have not reviewed that issue directly.

BOP policies and practices, collected relevant data, consulted with relevant components, convened listening sessions with stakeholders, and drew from the expertise and experience of its members. This review reinforced the need for immediate actions to address the Department's approach to sexual misconduct perpetrated by BOP staff, as well as the importance of further review to consider longer-term—and more systemic—changes.

In particular, the Working Group recommends the following actions:

1. ***BOP should enhance prevention of sexual misconduct perpetrated by BOP staff.*** The Department's most basic goal is to prevent sexual misconduct before it occurs, and that begins with changing the culture and environment in BOP facilities. To do so, BOP should adopt early intervention models, promote stronger leadership at its women's facilities, and improve staff training and wellness. It should increase camera technology and coverage and consider leveraging the insights of formerly incarcerated persons in assessing the safety of its facilities. Finally, the Department should conduct a comprehensive, data-based review of BOP facilities and prevention programs, while also collecting and analyzing data on sexual misconduct cases at particular facilities and across specific time periods, and make appropriate changes based on that review.
2. ***BOP should enhance reporting of BOP staff who commit sexual misconduct.*** BOP should encourage reporting, protect the safety and wellbeing of those who report, and ensure that its response to misconduct reporting is meaningful and consequential. Victims and witnesses should have secure and readily available channels to report sexual abuse. BOP should remove barriers to reporting and create checks to ensure victims do not face negative consequences—including retaliation—for reporting abuse. Likewise, BOP should assess how to offer channels for family and friends of incarcerated persons to report abuse, including through the creation of new liaison or ombudsperson positions across the Bureau.
3. ***DOJ should enhance and prioritize investigations of BOP staff who are accused of sexual misconduct.*** The Department should ensure that investigations are purpose-driven, victim-centric, and trauma-informed and that BOP's structure and law enforcement coordination support those investigations. BOP's investigators, who often conduct initial interviews and investigations, should receive specialized training and operate independently from the leadership of the facility. The FBI, which may jointly investigate these cases with OIG, should consider establishing specially trained points of contact for investigations of staff-involved sexual assault, as well as investigations involving inmate-perpetrated sexual assaults. Consistent with the Deputy Attorney General's directive, FBI and OIG should continue to prioritize these investigations and coordinate investigative efforts with prosecutors from the U.S. Attorneys' Offices and the Civil Rights Division.
4. ***DOJ should enhance and prioritize prosecutions of BOP employees who commit sexual misconduct.*** The Department should ensure that prosecutors handling these cases have

appropriate training and experience, and it should encourage prosecutors to seek sentences that reflect the egregiousness of the conduct at issue. At the same time, the Department should pursue legislative changes to strengthen the statutes that prohibit and punish this conduct, and it should continue to urge the U.S. Sentencing Commission to strengthen the applicable sentencing guidelines. The Department’s prosecution practice should be victim-centered. It should encourage the use of victim assistance specialists throughout the lifecycle of a case. On a case-by-case basis—and only at the appropriate juncture of a case and after appropriate consultations—Department prosecutors should consider filing motions to seek sentence reductions for victims, paying careful attention to the impact such a motion could have on any pending prosecution and any resulting disclosure obligations. Finally, the Department should consider creating a continuing Advisory Group to further consider and coordinate best practices for investigating and prosecuting sexual misconduct cases.

5. ***BOP should enhance the use of administrative actions and discipline of BOP employees who commit sexual misconduct.*** Following a report of sexual misconduct, the Bureau of Prisons should take steps to (1) ensure appropriate separation between the reporting party, the alleged victim (if different than the reporting party), and the alleged perpetrator, and (2) elevate allegations and their proposed dispositions to sufficiently high levels within BOP to ensure appropriate attention to and oversight of the disciplinary action process. In the short term, BOP leadership should emphasize the importance and availability of administrative actions, while also instituting appropriate documentation and reporting requirements to allow for oversight of these decisions (including reporting up to the Director). The Director should also immediately issue guidance to relevant staff that reiterates that all allegations of misconduct must receive individualized and equitable treatment, consistent with the Prison Rape Elimination Act (“PREA”).³ In the long term, BOP should conduct a comprehensive review of its disciplinary procedures and options.

BACKGROUND

Consistent with the Deputy Attorney General’s directive, the Working Group conducted a top-to-bottom, 90-day review of the Department’s approach to sexual misconduct cases involving BOP officials. Given the expedited timeframe, the Working Group’s review was necessarily

³ In 2003, Congress unanimously passed PREA, which has a stated purpose to “provide for the analysis of the incidence and effects of prison rape in federal, state, and local institutions and to provide information, resources, recommendations and funding to protect individuals from prison rape.” PREA also created the National Prison Rape Elimination Commission and charged it with recommending standards for eliminating prison rape to the Attorney General. Following the Commission’s report, in 2012, the Department of Justice issued “National Standards to Prevent, Detect, and Respond to Prison Rape” as a final rule codified at 28 C.F.R § 115.

targeted,⁴ but it reinforced the view of Department leadership that the problem warrants significant and expedited attention.

As an initial matter, the Working Group collected data from BOP, OIG, CRT, and EOUSA related to the current level of misconduct cases and their dispositions.⁵ This data reflected that BOP has received hundreds of complaints of sexual abuse perpetrated by its employees over the past five years. While not every complaint is meritorious or prosecutable, the volume alone is a strong signal of the need for attention to this problem. Likewise, over the past five years, the Department has prosecuted 45 cases of sexual misconduct involving BOP corrections officers, and the recurrence of this egregious conduct across multiple facilities poses serious concerns.

The Working Group also heard direct reports that reinforced those concerns. During its review period, the Working Group convened three listening sessions. In one, the Department heard accounts from formerly incarcerated women who were survivors of sexual assault by corrections officers.⁶ Other listening sessions featured representatives from the following organizations:

- American Civil Liberties Union
- California Coalition for Women Prisoners
- Centro Legal De La Raza
- Just Detention International
- Ladies of Hope Ministries
- MacArthur Justice Center
- The Legal Defense Fund
- National Council for Incarcerated and Formerly Incarcerated Women.⁷

Each of these external stakeholders raised troubling allegations of a culture of permissiveness toward staff misconduct and retaliation against victims who report abuse.

Finally, the Working Group reviewed examples of recent cases involving sexual misconduct by BOP staff. These revealed instances of inadequate administrative sanctions and initial prosecutorial declinations for employees ultimately convicted of egregious misconduct.⁸

⁴ Because of the expedited timeframe, the Working Group has not obtained clearance for these recommendations from stakeholders such as the Attorney General's Advisory Committee.

⁵ See **Appendix A** for the full list of data requested and policies reviewed.

⁶ To protect the privacy of these individuals, their names are omitted from this report.

⁷ The Working Group also reviewed correspondence to the Deputy Attorney General from FAMM.

⁸ In particular, the Working Group reviewed the timeline of events related to the prosecution of BOP Correctional Officer/Recreation Specialist Jimmy Highsmith in the Northern District of Florida. BOP first received allegations in 2012 that Mr. Highsmith had engaged in sexual abuse of inmates starting in October

Even where prosecutions were brought, the Working Group reviewed cases where applicable sentencing guidelines called for disproportionately lenient sentences when compared to the admitted or proven misconduct. For example:⁹

- In the Eastern District of Kentucky, the Department prosecuted BOP corrections officer Hosea Lee, who served as a Drug Treatment Specialist. He eventually pleaded guilty to five counts of violating 18 U.S.C. § 2243(b) for engaging in sexual acts with four different female inmates who were assigned to his drug treatment classes. Not unlike other BOP official defendants, he groomed his victims, exploiting vulnerabilities that he knew from treating them. He sought to cover up his conduct by avoiding detection on surveillance video and by directing them to destroy physical evidence. Under Section 2A3.3 of the United States Sentencing Guidelines, Lee’s advisory guideline range was 18 to 24 months. As a result, the government moved for an above-guidelines sentence, and the court granted the motion, varying upward to a sentence of 80 months in prison.
- In the Northern District of California, the Department prosecuted James Highhouse, a BOP chaplain, who, like Hosea Lee, was sentenced in August 2022. Highhouse pleaded guilty to two counts of 18 U.S.C. § 2243(b), two counts of 18 U.S.C. § 2244(a)(4), and one count of 18 U.S.C. § 1001, for his repeated sexual abuse of an incarcerated woman over a nine-month period. Despite the egregious nature of the conduct and his predatory pattern of behavior towards other incarcerated women, Highhouse faced an advisory guidelines range of only 24 to 30 months. Ultimately, despite indicating that it had rarely, if ever, imposed an upward variance before, the court granted the government’s motion for an above-guidelines sentence and sentenced the defendant to 84 months in prison.

DISCUSSION

Following its review, the Working Group advanced the following recommendations:

1. Enhance Prevention of Sexual Misconduct by BOP Staff.

The core purpose of this review is to better protect the safety of individuals in BOP custody. While it is important to identify—and appropriately punish—misconduct when it happens, the Department’s most fundamental goal is to prevent instances of sexual misconduct in the first place. During this review, internal and external stakeholders all emphasized that prevention begins with changing culture. To that end, the Working Group recommends that BOP adopt several practices to promote a safer culture and environment.

2010. In March 2022, Mr. Highsmith was sentenced to 48 months’ imprisonment for engaging in sexual acts with one inmate.

⁹ The Department also detailed these two prosecutions in its annual report to the U.S. Sentencing Commission, sent on September 12, 2022.

1.1 Apply early-intervention models.

BOP should adopt an early-intervention approach that identifies warning signals and enables and rewards reporting, and it should pilot innovative programs from related disciplines.¹⁰

1.1.1 **Develop an early warning system.** BOP should train its personnel to detect and report warning signs that other staff may be engaging in misconduct and to intervene before the situation escalates. There are several indicators that may signal problems, including, for example, a disproportionate number of complaints targeting a particular office or prison setting, officer tardiness following rounds, and routine AWOL status of officers during shifts. BOP should equip, encourage, and support supervisors and fellow officers to recognize and report those indicators, and approach stopping wrongful conduct before it occurs as a core responsibility.

1.1.2 **Pilot early intervention programs.** BOP should consider adopting on a pilot basis prevention programs used in law-enforcement settings, many of which have already proven effective in changing culture and preventing harm. Such programs include “duty to intervene” models like the New Orleans Police Department’s EPIC program and PERF’s ICAT de-escalation model.¹¹ Likewise, BOP should explore bystander intervention models, such as the Active Bystandership for Law Enforcement (“ABLE”) program (used for incidents of law enforcement excessive force),¹² as well as models used by the Department of Defense and other federal agencies to prevent sexual assault and misconduct.¹³ BOP could consult with the experts from these projects, as well as corrections experts and formerly incarcerated people, to develop its own model.

¹⁰ We recommend that BOP explore already existing PREA-related resources. The National PREA Resource Center site highlights webinars related to PREA efforts and activities. Information about targeted training and technical assistance, BJA demonstration sites, and curricula is available in the Training & Technical Assistance section of the National PREA Resource Center site. Also, the National Institute of Corrections (“NIC”) conducts training, technical assistance, and education programs for federal, state, and local authorities responsible for the prevention, investigation, and punishment of instances of prison rape.

¹¹ See <http://epic.nola.gov/home/>; <https://www.policeforum.org/icat-training-guide>.

¹² See <https://www.law.georgetown.edu/cics/able/>.

¹³ See, e.g., https://dod.defense.gov/News/Special-Reports/0417_sexual-assault-awareness-and-prevention/.

1.2 Examine how BOP selects, supervises, and supports wardens in women’s facilities.

Leadership is essential to creating the appropriate culture in BOP facilities, but stakeholders and some BOP employees have reported a perception that wardens assigned to female facilities are less qualified than those assigned to male facilities.¹⁴ BOP’s current pay scale compounds the problem: BOP wardens can be classified and compensated either at the GS-15 level or at the more coveted and higher salaried Senior Executive Service (“SES”) level, but BOP currently ties compensation to factors which include the security designation of the warden’s facility. Because women’s facilities are designated as low- or minimum-security, wardens at all the solely women’s facilities are currently at the GS-15 level.¹⁵

BOP should consider the following steps to improve the leadership at its women’s facilities:

- 1.2.1 Improve compensation for wardens in women’s facilities.** BOP should ensure that the wardens of women’s facilities receive compensation that is equitable compared to wardens of men’s facilities and appropriate to reflect the complexity of their responsibilities, notwithstanding the security designation of these facilities. Increasing the pay scale would not only recognize the unique challenges and security risks presented at women’s facilities; it would also signal that serving as warden at these facilities is a prestige post, reserved for the most talented administrators and those with genuine interest and passion for ensuring the protection of women housed in these facilities.¹⁶
- 1.2.2 Identify strong candidates to serve as wardens in women’s facilities.** BOP should prioritize selection of wardens with a strong desire to work at women’s facilities and the necessary skills to address the unique issues faced in such facilities.
- 1.2.3 Strengthen performance criteria for wardens and their supervisors.** BOP should consider an official’s past approach to addressing sexual misconduct—including through implementation of innovative prevention programs, as well as prompt and appropriate responses to allegations as they arise—as part of the performance criteria for all wardens, as well as for the Regional Directors who monitor the performance of wardens in each facility.

¹⁴ The Working Group recognizes that staff-perpetrated sexual assault occurs at both male and female facilities. Moreover, there is reason to believe that male victims may be less likely to come forward as victims. While most of our recommendations apply equally at all BOP facilities, some recommendations address issues unique to women’s facilities.

¹⁵ The only exception to this rule is FMC Fort Worth, which is primarily a female facility, but is also a medical center that includes male inmates. The warden at that facility is an SES employee.

¹⁶ In addition to the SES level, the Senior Level (“SL”) also offers compensation above the GS schedule.

1.3 Promote employee wellness.

During its review, the Working Group repeatedly heard—including from formerly incarcerated individuals—the importance of promoting employee wellness, which helps improve the culture of the institution and, in turn, prevent instances of misconduct. The Working Group understands that the new BOP Director is acutely focused on these issues, including addressing staffing shortages and considering other climate issues that might foster misconduct. In addition to that review, the Working Group recommends that BOP consider the following steps to promote employee wellness:

- 1.3.1 **Adopt strict policies to prevent sexual harassment of BOP staff.** Sexual harassment among staff, particularly of female corrections officials, contributes to and reflects a poor climate in BOP facilities. “Bureau of Prisons Anti-Harassment Policy,” codified at Program Statement 3713.2, prohibits “both sexual and non-sexual” harassment in the workplace, but it does not specifically distinguish between those two forms of harassment or provide recommended penalties for those who engage in sexual harassment. BOP should continue to highlight existing policies that prohibit sexual harassment of colleagues—and emphasize the gravity of this conduct—during mandatory annual training. It should also update those policies to specifically address the penalties of sexual harassment and impose significant disciplinary consequences on policy violators. Likewise, BOP should address sexual harassment perpetrated by inmates against staff, which can impair BOP’s ability to recruit and retain staff and also contribute to a culture of acceptance of sexual harassment more generally. BOP should establish support systems for staff who report being sexually harassed by inmates and impose meaningful consequences for such conduct.
- 1.3.2 **Adopt training and screening specific to staff at women’s facilities.** BOP should adopt measures to ensure that staff are adequately equipped to address the unique issues faced in women’s facilities. In her recent testimony before the Senate Judiciary Committee, Director Peters explained that this begins with “hir[ing] the right people,” *i.e.*, those “who show a propensity to succeed in our correctional environments.” The Working Group agrees that during the hiring stage, it is critical that BOP screen for persons who understand—and are interested in addressing—the challenges posed at women’s facilities. Likewise, Director Peters testified that BOP is exploring providing “additional training, including gender responsive training, trauma-informed training, and de-escalation training.” The Working Group endorses that effort and recommends that BOP develop mandatory training that is tailored to the specific challenges presented at women’s facilities, including sexual abuse and harassment.

1.4 Improve monitoring in BOP facilities.

Detection is critical to deterrence. BOP should leverage both technological and human resources to better detect—and therefore prevent—sexual misconduct in its facilities, including through the following steps:¹⁷

- 1.4.1 **Improve use of camera technology.** BOP should continue to upgrade camera technology and implementation and, beginning with female institutions, review and expand coverage of currently deployed cameras across BOP systems to eliminate “blind spots.” We understand that this work is already underway in BOP, but we recommend that BOP prioritize this effort on an accelerated time frame to be determined by the Director, including as to allocation of existing resources. BOP should review its video preservation and collection practices, with a view towards extending the time that all video footage is preserved for as long as practically possible, as well as isolating and collecting all video footage relating to incidents under investigation and preserving such footage for the pendency of all criminal and administrative investigations.
- 1.4.2 **Collaborate with formerly incarcerated people and use the lessons learned from their experiences.** BOP Office of Internal Affairs (“OIA”) and the Women and Special Population Branch co-chair the ongoing Women’s Institution Cultural (“WIC”) Assessment, which is responsible for regularly visiting and assessing women’s facilities. BOP should solicit the views of outside advocates and former inmates in conducting assessments; in appropriate circumstances, and consistent with security concerns and within the confines of policy, BOP may wish to include external stakeholders—including a formerly incarcerated individual—in its visits. Formerly incarcerated individuals can provide insight into a facility’s culture, help communicate with currently incarcerated individuals, identify facility-specific compliance problems, such as the physical locations of blind spots where abuse occurs, and offer suggestions for prevention and response.

1.5 Enhance research and data.

Consistent with the Department’s increased emphasis on evidence-based practices,¹⁸ the Department should develop enhanced data and research so that it can better target its prevention

¹⁷ In addition to the steps outlined below, the Working Group recommends that BOP address the open recommendations in OIG’s 2016 *Review of the Federal Bureau of Prisons’ Contraband Interdiction Efforts*. OIG reported that contraband has been used to groom victims, so steps to reduce the introduction of contraband into its facilities can also reduce the opportunity for sexual exploitation.

¹⁸ The Department’s FY2022-FY2026 [Strategic Plan and Learning Agenda](#) emphasizes the importance of “rigorous evidence building, including research, evaluation, statistics, and analysis,” which “will advance the Department’s ability to effectively achieve its strategic goals and objectives, both in the short term and in the long term.”

efforts, including the investigations and prosecutions designed to deter this misconduct. In particular, the Working Group recommends that the Department consider the following steps:

- 1.5.1 **Conduct a climate study focused on sexual abuse and misconduct.** BOP should consider executing a climate study to determine the prevalence of sexual abuse and misconduct in its facilities. This survey could be tied to efforts by the Department’s Sexual Harassment Steering Committee. BOP could also examine—and possibly replicate—the Department of Defense’s approach, which recently updated its annual climate survey to include additional questions about sexual harassment and sexual assault.¹⁹ BOP might similarly use climate data to identify facility-specific risk and protective factors, which can be used in hiring and screening of staff and to develop targeted prevention efforts.
- 1.5.2 **Review and validate BOP’s prevention programs.** BOP should partner with the National Institute of Justice for research, development, and evaluation of its prevention programs, including its development of early-intervention models described in Recommendation 1.1.2.
- 1.5.3 **Use data to develop targeted, district-level recommendations to address misconduct.** The Working Group compiled basic data on the incidence of complaints of sexual misconduct perpetrated by BOP officials; the number of such complaints sustained by OIG; the number of such complaints referred for prosecution; and the number of prosecutions of these cases. As explained above, this data reinforced the Working Group’s view that the problem of sexual misconduct warrants significant and expedited attention. The Working Group, however, did not conduct an in-depth analysis of this data or compare the data across districts. Moving forward, the Working Group recommends that the Department further analyze this data—and collect additional data, as needed—to identify trends and advance recommendations targeted to specific facilities or districts. This project should be assigned for immediate execution to the recommended advisory group, *see* Recommendation 4.6.

2. Enhance Reporting as to BOP Staff who Engage in Sexual Misconduct.

BOP should create and foster a culture where all stakeholders—from inmates to families to BOP personnel—feel empowered to report misconduct and confident that such reporting will result in a meaningful response from BOP officials, investigators, and prosecutors. During listening sessions, advocates and formerly incarcerated women identified several obstacles to reporting sexual abuse, including a fear of not being believed, a fear of retaliation, and a fear that

¹⁹<https://media.defense.gov/2022/Mar/31/2002967307/-1/-1/1/2021-ON-SITE-INSTALLATION-EVALUATION-REPORT.PDF>. The Department of Defense also has a new function called the Violence Prevention Cell (“VPC”) that resides at the Office of Force Resiliency. The VPC is examining integrated prevention, including as to sexual assault, sexual harassment, and other problematic behaviors, and linking it to climate and culture.

reporting would not result in consequences for the perpetrator. In part, addressing these issues requires systemic changes to the culture in BOP facilities. (See Recommendations 1.1, 1.2, and 1.3.). We also recommend the following steps to encourage reporting, protect the safety and wellbeing of reporting parties, and ensure that reporting misconduct is meaningful and consequential.²⁰

2.1 Improve the mechanisms and procedures for victim reporting.

During listening sessions, the Working Group heard about the barriers to reporting, and the importance of readily available and anonymous reporting channels. BOP should consider the following steps to facilitate reporting by the victims of sexual abuse or other inmates:

- 2.1.1 **Standardize the information inmates receive about the reporting process.** BOP should regularly provide each inmate with detailed information on how to report sexual misconduct, which should include specific instructions on what to include in any report (e.g., details on who, what, where, when, and whether there are other potential victims). Where possible, BOP should provide additional guidance to inmates on what to expect after a report is made (e.g., “You should expect to be contacted for a statement.”).
- 2.1.2 **Emphasize the availability of confidential reporting to OIG.** Inmates can currently send reports of sexual abuse to a dedicated email address run by OIG, and they can request that the report remain confidential. In highlighting this reporting option consistent with Recommendation 2.1.1, BOP should stress that OIG is entirely independent of BOP and that OIG protects the identity of victims and complainants to the greatest extent possible, while still thoroughly vetting and investigating the allegations. BOP should also make it clear that both inmates and staff can make third-party reports to OIG regarding victimization of *other* inmates and encourage inmates and staff to exercise that option.
- 2.1.3 **Expand the available channels for reporting.** BOP should consider developing a hotline option for the use of inmates and their families and representatives to report sexual abuse, and this hotline should be staffed by individuals trained in working with victims of sexual assault. Indeed, in consultation with BOP staff and inmates, OVW is currently working on a blueprint for a national line that could facilitate reporting to outside entities and victim services. We recommend that a hotline option be implemented as soon as possible.
- 2.1.4 **Install a victim liaison position at BOP headquarters and an ombudsperson in each of the Regions.** BOP should establish new positions designed to facilitate and monitor victim reporting. First, BOP should consider creating a new, headquarters-level position for a “victim liaison,” who would interact with victims who have reported

²⁰ Recommendations 3, 4 and 5 are all designed to promote accountability following a report of misconduct.

sexual misconduct, assure victims that reports have been received and ongoing investigations will be tracked, and provide victims with guidance about what to expect during the investigative process. Likewise, we recommend that BOP establish a cadre of ombudspersons in each Region, who can serve as a resource for both victims and their families (see Recommendation 2.3.2), while also reviewing the facility-level response to reports of sexual misconduct.

2.2 Ensure victims do not experience penalties for reporting.

During its review, the Working Group consistently heard that victims feared the consequences of reporting abuse perpetrated by BOP staff. During listening sessions, formerly incarcerated individuals reported that corrections officers have threatened retaliation against reporting individuals, including by restricting access to children. Furthermore, BOP policies meant to protect victims may inadvertently cause negative consequences for those who report abuse. For security reasons, well-intentioned officials may transfer a victim to another BOP facility, where they are usually more distant from their family and community, or place them into the Special Housing Unit (“SHU”), where they inevitably lose privileges—such as visits, phone calls, and commissary access—which are lifelines to those who are incarcerated. The placement of victims in SHU, even if intended for protection, can have a chilling effect on reporting.

To better encourage reporting, the Working Group recommends that BOP consider the following steps:

- 2.2.1 **Examine BOP policy on review or appeal of privilege restrictions and access to necessity items.** To prevent retaliation, BOP should create additional review structures for any disciplinary actions relating to inmates who have made reports of sexual misconduct. It should also require reporting to the Regional Office when any individual who reports sexual abuse is placed in the SHU or transferred to another facility, with notice to and oversight from the Central Office. This report should be made to either the Regional Director or, as suggested in Recommendation 2.1.4, a regional ombudsperson.
- 2.2.2 **Review BOP policy on restrictive housing.** As part of BOP’s ongoing review of its SHU and SMU policies, BOP should address any policy or practice that results in an individual being placed in restrictive housing after a report of sexual misconduct by staff and ensure compliance with applicable PREA regulations.²¹ This includes ensuring that victims are not subjected to other punitive conditions (restrictions on property, visitation, phone, etc.) while segregated. Ultimately, BOP should consider creating an area in its female facilities that is specifically designated as administrative segregation—rather than disciplinary segregation—that allows similar programming and visitation opportunities as standard housing. Where feasible, administrative segregation should be in a physically different location from disciplinary segregation;

²¹ See 28 CFR § 115.43.

at minimum, BOP should emphasize that inmates on administrative segregation should not share cells with those on disciplinary segregation. In all events, we recommend that BOP make clear to both staff and incarcerated individuals that, under BOP policies, security measures like SHU placement or facility transfer will be voluntary or imposed only as an option of last resort in response to imminent threats to inmate safety, not as a measure of discipline for reporting.

2.3 Enhance reporting options for third parties.

BOP should improve the ability of third parties, including the family and friends of victims, to report sexual misconduct, including through the following steps:

- 2.3.1 **Improve publicly available channels for third-party reporting.** BOP should consider how to better facilitate third-party reports through its reporting website,²² which directs parties to report abuse via a mailing address to BOP OIA. This website should include an email or web form so that families can connect directly with OIA and OIG.
- 2.3.2 **Make regional ombudspersons available to families.** Consistent with Recommendation 2.1.4, BOP should install in each of BOP's Regions an ombudsperson, who, among other responsibilities, could serve as a liaison for family members, including with respect to reports of sexual misconduct.
- 2.3.3 **Review BOP policy as to staff reporting of misconduct by other staff members.** BOP policy requires “[e]mployees [t]o immediately report any violation, or apparent violation, of standards of conduct to their Chief Executive Officer (“CEO”) or another appropriate authority.”²³ The Department currently has robust policies protecting staff whistleblowers from retaliation, and BOP policy likewise makes “retaliation or discrimination against those who make such a report” a removable offense.²⁴ BOP should review these policies to ensure they provide the maximum protection for staff reporting of other staff members’ sexual misconduct and regularly remind staff, including through training, of the importance of reporting misconduct, including conduct related to sexual misconduct in particular.

²² https://www.bop.gov/inmates/custody_and_care/sexual_abuse_prevention.jsp.

²³ See P.S. 3420.11 at 2; see also *id.* at 5-6 (requiring employees to “[a]s soon as practicable (but no later than 24 hours) report to their CEO (or other appropriate authority such as the Office of Internal Affairs or OIG) any violation, appearance of a violation, or attempted violation of these Standards or of any law, rule, or regulation”).

²⁴ *Id.* at 34.

3. Enhance Investigations of BOP Staff who are Accused of Sexual Misconduct.

To a greater degree than investigations of other forms of BOP staff misconduct, sexual misconduct investigations frequently rely heavily on the victim's account. Sexual misconduct allegations often do not lend themselves to direct corroboration from law enforcement or other inmates, as such crimes typically do not occur in front of witnesses. Perpetrators of sexual misconduct often engage in behavior to avoid detection, for example by committing misconduct outside surveillance camera view, disposing of DNA evidence, threatening victims with repercussions if they report, and otherwise convincing them that no one will believe them because of their incarcerated status. As a result, these cases often rise and fall primarily based on the credibility of the victim.

Investigating these cases successfully thus requires an understanding of trauma-informed, victim-centered practices.²⁵ Investigators should recognize, for instance, that victims reporting a sexual assault frequently elide details or recount events out of order because of the neurobiological impact of traumatic memory.²⁶ Likewise, victims may minimize events during the first interview or interviews thereafter because, for example, the victim may be embarrassed, may think she will not be believed, or may be uncomfortable with the prosecutor or investigator.²⁷ This is especially applicable in connection with allegations of sexual misconduct at BOP, as victims may already distrust law enforcement and fear for their safety because of the roles and status of the perpetrators involved. The Working Group's recommendations are therefore meant to ensure that investigations are purpose-driven, victim-centric, and trauma-informed. Investigations should be objective, with the purposes of assessing the victim's account, developing corroboration, and protecting victims from unfair attacks on their credibility, while adhering to the Department's *Principles of Federal Prosecution*.²⁸

²⁵ See *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*, Dep't of Justice (May 22, 2022), <https://www.justice.gov/opa/file/799366/download>; *Investigating and Prosecuting Law Enforcement Sexual Misconduct Cases*, DOJ J. OF FED. LAW & PRACTICE, Jan. 2018, at 77, <https://perma.cc/9DGQ-FEPZ>.

²⁶ *Id.* at 87.

²⁷ *Id.* at 86-87.

²⁸ See *JM* § 9-27.220 (“The attorney for the government should commence or recommend federal prosecution if he/she believes that the person’s conduct constitutes a federal offense, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless (1) the prosecution would serve no substantial federal interest; (2) the person is subject to effective prosecution in another jurisdiction; or (3) there exists an adequate non-criminal alternative to prosecution.”).

3.1 Assign specially trained, neutral agents to investigate allegations of sexual misconduct by BOP staff.

Given the special considerations applicable to investigations of sexual misconduct at prison facilities, it is important that those investigating such allegations are provided proper training to promote a trauma-informed, victim-centered approach. The Working Group heard anecdotal stories of flawed investigations from a variety of components where prosecutors or agents did not fully or effectively adhere to this approach. Additionally, the Working Group is concerned about whether investigative staff working in the BOP facility where the alleged misconduct took place can be—and can appear to victims to be—neutral and free from undue influence. Therefore, we recommend the following steps to shift structural assignments and improve training and support provided to those investigating sexual misconduct committed by BOP staff.

3.1.1 Eliminate the use of SIS officers in initial interviews or investigations. Historically, BOP has assigned Special Investigative Services (“SIS”) lieutenants to conduct intake of allegations of sexual misconduct, which often includes taking initial statements from victims or witnesses. This assignment prompts several concerns. First, SIS officers are usually corrections officers who rotate in and out of that position without specialized sex-crime or trauma-informed training. Because these officers lack specific training in this area, they may conduct or document interviews in a manner detrimental to an ensuing investigation. Second, the nature of the SIS position and the rotation of correctional officers into and out of the SIS Unit may deter the reporting of sexual assault allegations. SIS officers may be—or appear to victims to be—friends or colleagues of the alleged perpetrators, creating at least the appearance of a conflict of interest. As a result, victims may fear that if they report sexual misconduct, they will face retaliation from fellow inmates or from staff members who are friendly with the perpetrator. We understand that a BOP reorganization designed, in part, to address these concerns is already underway. To mitigate these concerns, the Working Group recommends that, as part of this reorganization, no SIS officer—or any other person who reports to institution leadership—should participate in any initial interview or investigation involving a report of sexual misconduct perpetrated by BOP staff.²⁹

3.1.2 Dedicate Special Investigative Agents (“SIAs”) to investigate sexual misconduct allegations. Rather than using SIS officers, BOP should assign specially trained SIAs to these investigations. Consistent with this recommendation, we understand that BOP plans to assign SIAs to the 29 BOP facilities that house female inmates. BOP should ensure that these SIAs (a) have a commitment to conducting effective sex crimes investigations; and (b) are trained in conducting trauma-informed investigations. SIAs—rather than another member of the SIS staff—should further facilitate interviews by OIG, FBI, or BOP’s OIA to the extent those interviews must occur in the

²⁹ Consistent with Recommendation 3.2.1, BOP should also ensure that adequate alternative staffing is available so that implementation of this recommendation does not slow down the response to misconduct.

BOP facility. Additionally, BOP should have specially trained SIAs available for deployment to its other facilities as needed, as sexual assault and related misconduct are not limited to women’s facilities.

3.1.3 Create reporting structures that promote objectivity. To ensure objectivity, the Working Group recommends that BOP hire the requisite staff and reorganize its investigative structure to ensure that SIAs report to OIA and not the individual institution’s leadership, *i.e.*, the warden. We understand that BOP intends to implement such an approach—a change we endorse. Likewise, BOP should ensure that all SIAs report allegations of misconduct to the Central Office, OIG, and the FBI, where appropriate, and that SIAs provide all reports and evidence gathered to date at the time of the report. BOP’s revamped reporting structure should require full and regular reporting of allegations of sexual misconduct to BOP’s Central Office.

3.1.4 Publicize these changes to incarcerated individuals. BOP should inform inmates that sexual misconduct investigations will be handled by either by independent OIG or FBI agents or investigators assigned to the Headquarters internal affairs unit, rather than by local facility personnel. BOP should make clear that investigators and officials at the local facility, including the warden, will not participate in the investigation and will have no control over the outcomes of sexual misconduct investigations involving BOP staff. Finally, BOP should inform reporting parties about statutes that protect the rights of crime victims and assist with victim services.

3.2 Employ victim-centered, trauma-informed investigative techniques during BOP investigations.

The Working Group recommends that BOP approach investigations consistently with PREA and best practices for investigations discussed above, *see supra* at 14. In particular, the Working Group highlighted one BOP practice that caused concerns: Until recently, SIS officers were encouraged during initial intake interviews to obtain from victims sworn declarations in writing under penalty of perjury, presumably for a later administrative investigation. There is no legal requirement for sworn statements or affidavits, and the evidentiary value of these sworn affidavits may be limited.³⁰ At the same time, requiring such sworn statements run counter to trauma-informed practices and may chill reporting, as it heightens a victim’s fear that she may face prosecution if her account is not believed. The Working Group therefore recommends that BOP discourage its SIA investigators from asking or requiring a victim of sexual misconduct to give sworn affidavits or sworn statements as a standard practice.

³⁰ For example, an intentional false statement in the affidavit could constitute a violation of 18 U.S.C. § 1001, but that statute does not require the statement to be under oath.

3.3 Promote expertise among FBI agents who investigate allegations of sexual misconduct perpetrated at BOP facilities, including any joint investigations into misconduct by employees where OIG has primary jurisdiction.

OIG has primary jurisdiction for all investigations of criminal conduct by DOJ employees from any component, including BOP. At BOP facilities, the FBI primarily investigates criminal activity by and between inmates, as well as criminal activity involving non-DOJ staff. In some circumstances, including where an investigation of employee conduct stems from an FBI inquiry into the conduct of an inmate or another individual who is not a BOP employee or contractor, or where a joint investigation is appropriate, the FBI is also involved in investigations that involve BOP staff. The Working Group recommends that the FBI take the following steps, consistent with those investigative responsibilities:

3.3.1 Designate trained points of contact at FBI field offices. FBI field offices with BOP facilities within their areas of responsibility should formally identify a Special Agent to serve as a BOP Point of Contact (“POC”). That POC would be responsible for engaging directly with OIG and the SIA within the facility, who could then alert the POC when sexual misconduct allegations warranting FBI attention arise. The POC should receive appropriate and effective training on how to investigate sexual misconduct, as discussed directly below.

3.3.2 Require training for agents who investigate these cases. We recommend that agents at all DOJ components with responsibility to investigate sexual misconduct cases at BOP receive training on effective investigation of allegations of sexual misconduct, including by corrections officers and other government actors.³¹ We also suggest broader consideration of mandatory training for all agents who investigate sex crimes.³²

³¹ For example, CRT has created a three-part webinar series on investigating and prosecuting law enforcement sexual misconduct. That series is currently available on FBI’s Virtual Academy as an optional training, but we suggest it be assigned training for all agents responsible for sexual misconduct investigations involving BOP personnel. To the extent additional training is necessary or appropriate, we recommend that the FBI work to develop such training or contract with outside experts.

³² We note that many agents are assigned color of law/sexual misconduct investigations, to include BOP sexual misconduct allegations, at the outset of their careers. As a result, we would encourage review of whether the FBI and other agencies who conduct these investigations should include training on investigating sexual misconduct allegations as part of their initial training module.

3.4 Improve coordination and communication among investigators and prosecutors.

The Working Group recommends that investigators take several steps to improve communication and coordination among the different entities responsible for investigating and prosecuting sexual misconduct cases.

- 3.4.1 **Provide appropriate notifications to OIA.** Currently, pursuant to OIG’s internal policies, OIG notifies BOP OIA when it learns of allegations of sexual misconduct and when it declines to pursue any matter, so that BOP OIA can take administrative action as appropriate. When the FBI learns of allegations of sexual misconduct by BOP employees, it is required to notify the OIG. To the extent that FBI learns of an allegation of BOP sexual misconduct and notifies the OIG of such misconduct, FBI should also notify BOP OIA of having made such notification to OIG, thereby providing OIG the right of first refusal to investigate. Upon request by OIA or OIG, we recommend that FBI turn over investigative materials, including FD-302s, so that OIA is aware of the universe of evidence and need not conduct redundant interviews, particularly of victims.
- 3.4.2 **Provide appropriate notifications to headquarters and prosecutors.** We recommend further discussion about ways to increase communication and coordination of allegations and investigations of sexual misconduct at BOP facilities. As of now, FBI field agents only notify FBI headquarters of assessments if they deem the allegation “significant,” but it is unclear how a determination of significance is made. FBI should explore earlier notifications to headquarters, the local USAO, and CRT.

4. Enhance Prosecutions of Sexual Misconduct Perpetrated by BOP Staff.

While prosecution alone cannot solve the problem of sexual misconduct in prison, the Working Group believes that accountability and deterrence, including through criminal prosecution, are critical to any effective strategy to address this issue. The purpose of the following subset of recommendations is to promote consistency and best practices in BOP sexual misconduct prosecutions.³³

³³ These best practices might also be applied more broadly to sexual misconduct cases committed under color of law. As noted in Recommendation 4.6, we recommend creating an Advisory Group to further explore these issues, as we recognize that sexual misconduct by BOP officials is a subset of these broader color of law prosecutions and shares similar prosecution challenges. Thus, raising competency on cases involving sexual misconduct by those acting under color of law generally will also improve the more specific response to sexual misconduct by BOP officials.

4.1 Designate points of contact in U.S. Attorneys’ Offices with BOP facilities in their districts.

We recommend that each USAO—beginning with USAOs whose district contains a BOP facility where female inmates are housed—be directed to designate a criminal Assistant United States Attorney (AUSA) as a POC for intake of sexual misconduct prosecutions and other criminal matters involving BOP staff.³⁴ As a best practice, the POC should be trained and/or have experience in conducting trauma-informed investigations, should have reviewed relevant Department training for prosecuting sex crimes by government actors and other sexual misconduct cases, and should be well-versed in the federal statutes and federal rules of evidence that govern these investigations and prosecutions.³⁵ The POC should work with USAO leadership to ensure that any federal prosecutor assigned to a sexual misconduct case involving an incarcerated victim should be different from the prosecutor who originally prosecuted the victim for her offense of conviction.

4.2 Use available tools to pursue a fair and proportional sentence.

The Department of Justice has jurisdiction to prosecute BOP staff members under a variety of statutes. Prosecutors should become familiar with these options and, consistent with the *Principles of Federal Prosecution*, make appropriate, individualized charging decisions and sentencing recommendations to reflect the seriousness of the conduct.³⁶

4.2.1 Consistent with the *Principles of Federal Prosecution*, prosecutors should consider the full array of statutes—including recently enacted authorities—when making charging decisions. Prosecutors handling these cases should consider the availability of all statutes—including the new substantive and penalty statutes that became effective on October 1, 2022, following the reauthorization of the Violence Against Women Act (“VAWA”)—when making charging decisions.³⁷ These authorities include, but are not

³⁴ As previously noted, BOP sexual abuse is a subset of color of law violations involving sexual misconduct where the subjects are government actors, government contractors, or law enforcement officers. As discussed in Recommendation 4.6.3, U.S. Attorneys’ Offices may also benefit from designating a POC to cover this broader group of allegations.

³⁵ Depending on the case, this POC may have overlapping responsibility with other coordinators and POCs in the USAO, such as the Criminal Civil Rights Coordinator, Project Safe Childhood and Human Trafficking Coordinator, or the Tribal Liaison. In some cases, USAOs may choose an AUSA to perform multiple POC/coordinator roles. But where expertise and jurisdiction of multiple coordinators overlap, the sexual misconduct POC and others in the USAO should work together.

³⁶ In general, cases may be declined for a variety of appropriate reasons. Nothing in these recommendations conflicts with proper and faithful application of the *Principles of Federal Prosecution*.

³⁷ See Appendix B for additional information on the new authorities set forth in VAWA 2022.

limited to, offenses for which consent is not a defense.³⁸ Misconduct can also be prosecuted under other federal sexual abuse and civil rights statutes, which require proof of lack of consent or coercion, or another element that shows that the victim was an unwilling participant (*e.g.*, physical force or placing in fear of physical harm).³⁹ Such statutes carry higher maximum penalties and higher recommended advisory sentencing guidelines ranges and may thus provide an alternative means to obtain more just sentences than moving for variances, as discussed below in 4.2.2. Likewise, 18 U.S.C. § 2244(a)(1)-(2) governs cases involving sexual contact that would violate Section 2241(a) or (b) or Section 2242 had the sexual contact been a sexual act. The POC at each USAO, *see* Recommendation 4.1, should serve as an expert resource for AUSAs on statutory authorities and available training on sexual misconduct investigation and prosecution.

4.2.2 *In appropriate cases, prosecutors should move for upward departures or variances from the applicable Sentencing Guidelines range.* As described further in Recommendation 4.3, the Department has recently urged the U.S. Sentencing Commission to review—and strengthen—the guidelines applicable to sexual misconduct cases involving federal corrections officers, specifically violations of 18 U.S.C. §§ 2243(b) and 2244(a)(4). Until the guidelines are strengthened, we recommend that Department leadership encourage prosecutors to seek upward departures or variances in appropriate cases, consistent with JM § 9-27.730, to secure sentences that reflect just punishment.

4.3 Pursue appropriate changes to the statutes and sentencing guidelines applicable to these cases.

The Department should advocate for changes to both the United States Sentencing Guidelines and the United States Code to strengthen its response to BOP sexual abuse specifically and sexual misconduct by government actors more broadly. In particular, the Working Group recommends that the Department:

³⁸ This includes 18 U.S.C. §§ 2243(b) and 2244(a)(4), which prohibit sexual acts and sexual contact, respectively, and apply to prosecutions of sexual abuse of inmates by BOP staff; 18 U.S.C. §2243(c), applicable to conduct that occurs on or after October 1, 2022, essentially expands the jurisdiction of Section 2243(b) beyond the prison walls to all federal law enforcement officers who engage in sexual acts with those in their custody, under their supervision, or in detention. 18 U.S.C. § 2244(a)(6) provides penalties for sexual contact that would violate Section 2243(c) had the sexual contact been a sexual act.

³⁹ This includes violations of 18 U.S.C. § 2241 and 2242, as well as 18 U.S.C. §§ 250 and 2242(3), which are applicable to conduct that occurs on or after October 1, 2022. Section 250 is a penalty statute for civil rights offenses involving sexual misconduct and can be charged in conjunction with violations of 18 U.S.C. § 242; Section 2243(3) expands the definition of federal sexual abuse to include knowingly engaging in nonconsensual or coercive sexual acts.

4.3.1 **Continue to encourage the U.S. Sentencing Commission to strengthen applicable guidelines.** In its recent annual report to the U.S. Sentencing Commission, the Department highlighted that the current guidelines provision applicable to sexual abuse of a ward, in violation of 18 U.S.C. § 2243(b), is often insufficiently punitive to reflect the egregious conduct at issue, promote respect for the law, afford adequate deterrence, and protect the public; further, the overly lenient guidelines provision is at odds with the statutory maximum penalty provided by Congress and the guidelines provisions applicable to comparable sex offenses.⁴⁰ The Department reiterated its concerns in a follow-up letter submitted earlier this month.⁴¹ We recommend continued engagement with the U.S. Sentencing Commission to urge it to review—and strengthen—these guidelines.

4.3.2 **Pursue appropriate legislation to strengthen the Department’s tools to prosecute sexual misconduct.** Following the enactment of 18 U.S.C. § 250 (penalties for civil rights offenses involving sexual misconduct), 18 U.S.C. § 2242(3) (sexual abuse involving lack of consent or coercion), and 18 U.S.C. §§ 2243(c) and 2244(a)(6) (sexual acts or contact with individuals in federal custody), there is a need to amend several non-substantive existing statutes and guidelines that cover sex offenses – *e.g.*, the limitation period for prosecution, pretrial release or detention, supervised release, and sentencing – to integrate these new provisions. We therefore propose consideration of legislative language, including through expedited clearance with appropriate components, such as the Office of Legislative Affairs (“OLA”), as well as the Attorney General Advisory Committee. In order to expedite this process, the Working Group has developed draft legislative text for a proposed bill and an accompanying analysis for submission to OLA for review, which are available to share upon request.

4.4 Consider seeking a reduced sentence or other benefit for qualifying sexual misconduct victims, where warranted, only at the appropriate juncture and only after thoughtful, individualized consultations.

During listening sessions and in written submissions, external stakeholders have urged BOP to seek, and federal prosecutors to file, motions for sentence reduction for victims whose allegations of sexual assault have been found credible, as well as to consider signing U-Visa certifications on behalf of non-citizen survivors. The Working Group carefully considered these proposals and recommends an approach that balances ensuring effective criminal enforcement and overall accountability with recognizing the detrimental impact of sexual assault on victims and the potential suitability of early release.

⁴⁰ Letter from Assistant Attorney General Kenneth A. Polite, Jr. & Jonathan J. Wroblewski to Hon. Carlton W. Reeves, Chair, U.S. Sentencing Commission (September 12, 2022).

⁴¹ Letter from Deputy Attorney General Lisa O. Monaco to Hon. Carlton W. Reeves, Chair, U.S. Sentencing Commission (October 17, 2022).

- 4.4.1 BOP and federal prosecutors should make individualized assessments as to the appropriateness of sentence reductions or U-Visa certifications, taking into account both timing and justification. The Working Group takes seriously the trauma that victims of sexual misconduct suffer, and we recognize the ongoing harm that victims may experience while in custody. At the same time, members of the Working Group had serious concerns that the use of these actions during the pendency of an investigation would undermine victim credibility and thus compromise the Department’s ability to hold perpetrators of these offenses accountable. The Working Group therefore encourages BOP and federal prosecutors to make individualized assessments as to the appropriateness of a Rule 35 motion or a U-Visa application on a case-by-case basis, taking into account both timing and justification. Particularly during the pendency of an investigation or prosecution, prosecutors should carefully consider the impact that any such action may have on the credibility of the victim, with the understanding that such motions are likely best suited (and have a better chance of success on the merits) after a case or investigation is completed. Such a decision should be made in consultation with the USAO POC, a supervisor with relevant experience, or another prosecutor experienced in sexual misconduct cases.
- 4.4.2 BOP should address the use of compassionate release for individuals determined to be victims of sexual assault perpetrated by BOP personnel. At the direction of the Deputy Attorney General, the BOP Director is considering whether and how BOP policy regarding compassionate release can be implemented or modified to address circumstances where an individual in BOP custody has been determined to have been the victim of sexual assault perpetrated by BOP personnel. The Working Group supports expedited completion of this review. The Advisory Group (discussed in Recommendation 4.6) will also assess how BOP and DOJ prosecutors are addressing the applicability of compassionate release in these circumstances on a case-by-case basis.
- 4.4.3 Prosecutors should provide appropriate notifications—and, as appropriate, recommendations—reflecting the victim’s experience. In cases where a Rule 35 sentence reduction, U-Visa, or compassionate release motion is under consideration, the U.S. Attorney’s Office or component that prosecuted the sexual misconduct should notify and coordinate with the U.S. Attorney’s Office or component that originally prosecuted the victim. If the victim is informed or aware of the possibility of a reduced sentence or other benefit prior to any testimony or sworn statement, that fact must be disclosed to the defendant in accordance with Department policy and our constitutional obligations. Likewise, prosecutors should consider the victims of the underlying conviction when considering sentence reductions, U-Visas, or compassionate release for those affected by misconduct, and prosecutors should act consistently with victim’s rights and after appropriate notifications are made to those victims.

4.5 Increase the availability of victim specialists through a prosecution’s life cycle.

- 4.5.1 **Promote the use of OIG victim specialists.** We recommend that victim specialists be made available in all BOP sexual misconduct prosecutions. Under an agreement currently in place between the FBI and EOUSA, USAO victim specialists take over for FBI advocates upon indictment. The OIG has requested funds to hire a victim advocate, but in the interim, we recommend that federal prosecutors work with OIG agents to promote access for victims to a specialist before indictment. CRT currently employs two victim-witness specialists who work with victims from the investigative stage throughout the pendency of a case.
- 4.5.2 **Promote continuity of victim advocacy.** We further recommend that prosecutors evaluate on a case-by-case basis whether the continuity of a victim specialist would benefit the victim, and work with the FBI, OIG, the USAO, and/or CRT to determine if there is a specialist who can work with the victim throughout the pendency of the entire case, from investigation to prosecution.⁴² This practice will further promote the principles underlying the Crime Victims’ Rights Act, 18 U.S.C. § 3771.

4.6 Create a continuing Advisory Group to further address investigations and prosecutions of sexual misconduct.

We recommend continuing the efforts of the Working Group by creating an Advisory Group with representatives from across the Department—including OVW, CRT, the U.S. Attorney community, the FBI, and OIG—to further consider improvements to sexual misconduct investigations and prosecutions, including those that involve other government actors. We recommend that this group report regularly to ODAG and consider at least the following areas for policy and procedure development:

- 4.6.1 **Develop best practices for sexual misconduct cases.** We recommend that the Advisory Group develop best practices for prosecuting sexual misconduct cases involving BOP personnel or, as appropriate, other government actors. Given the concerns discussed in connection with Recommendation 3.2, the group should consider issues related to the use of audio or video recordings during victim interviews and subject employee interviews; taking sworn statements from victims and subject employees; placing a victim before a grand jury to testify; preservation and collection of evidence, including BOP video footage; and the Department’s role in and approach to representing BOP personnel accused of sexual abuse in civil proceedings. The Advisory Group should also oversee data collection and analysis, *see* Recommendation 1.5.3, and consider

⁴² Because of the different roles of investigative and prosecutive victim advocates, the Working Group recognizes that a single victim advocate may not be suited to handle all aspects of a case from investigation to prosecution in all cases.

ways to expand the “community of practice” that is created by the pilot group of POCs, including ways to engage and coordinate with local prosecutors responsible for sex crimes prosecutions where federal jurisdiction may overlap. The purpose of such coordination and collaboration is to determine whether federal prosecution may better remedy the violation, to ensure that federal interests are appropriately vindicated, and to facilitate the effective identification, investigation, and prosecution of such allegations.

- 4.6.2 **Consider dedicating investigators to crimes of sexual misconduct.** We recommend that the Advisory Group consider the viability of the Department creating a specialized unit, team, or task force of sex crimes investigators. For example, the FBI does not have a cadre of agents who are trained in best practices for sexual assault investigations, including trauma-informed interviewing.⁴³ This stands in contrast to many local and some federal law enforcement agencies with dedicated sex crimes units.⁴⁴ As the Group considers whether and how to adopt a specialized unit at the Department, relevant components could consider whether such agents will be from OIG, the FBI, or some combination thereof, as well as the interplay of these investigations with human trafficking and child exploitation investigations.
- 4.6.3 **Consider identifying POCs for sexual misconduct cases across all USAOs.** In Recommendation 4.1, we proposed that USAOs with BOP facilities that house female inmates in their districts be directed to create a POC dedicated to responding to allegations of sexual misconduct. The Advisory Group could assess the effectiveness of this POC system and consider whether it should be expanded to all USAOs whose districts contain BOP facilities—male or female—or to all USAOs across the country.
- 4.6.4 **Assess the role of BOP’s Central Office in overseeing applicable policies, procedures, and compliance.** The Advisory Group should assess whether BOP’s Central Office is receiving sufficient levels of notice and conducting appropriate oversight of policies and procedures to root out sexual misconduct by BOP personnel and is sufficiently engaged in overseeing compliance therewith.

5. Enhance the Use of Administrative Actions and Discipline of Sexual Misconduct by BOP Staff.

When a BOP employee is the subject of credible allegations of sexual misconduct, administrative action is critical to protect the safety of the reporter and to hold accountable the

⁴³ Agents assigned to investigate crimes in Indian Country may be the exception by default, but they are assigned to investigate violent crime in general. Moreover, it is the Subcommittee’s understanding that there is no mandatory specialized sex crimes training for any FBI agent.

⁴⁴ The Department of Defense, for example, is developing Offices of Special Trial Counsel devoted entirely to the prosecuting of military sex crimes.

perpetrator. In the view of the Working Group, supported by input from BOP, BOP's decisions on reassignment, administrative leave, and appropriate discipline require more effective and heightened levels of review. As a result, the Working Group focused on ways to (1) ensure appropriate separation between the reporting party, the victim (if someone other than the reporting party), and the alleged perpetrator, and (2) elevate allegations and disposition of those allegations to sufficiently high levels within BOP to ensure appropriate oversight of the disciplinary action process. Recommendations 5.1-5.4 operate in the context of BOP's current disciplinary procedures and are intended for immediate implementation. Recommendation 5.5 is meant to supplement these recommendations as a long-term course of action to be implemented over time.

5.1 Issue immediate tone-from-the-top guidance from the BOP Director.

- 5.1.1 **Issue message of gravity of misconduct and seriousness of consequences.** The Director of BOP should issue a message reiterating the gravity of sexual misconduct and expressing that sexual misconduct will not be tolerated.
- 5.1.2 **Issue directive highlighting attention to sexual misconduct allegations from BOP leadership and the Director.** The BOP Director should issue a directive instructing Chief Executive Officers ("CEOs") of BOP facilities, including wardens, that immediately upon receiving any allegation of sexual misconduct, the CEOs must report it to their Regional Director and to BOP OIA, which will track all allegations of sexual misconduct and report them to the Director's Office.
- 5.1.3 **Issue guidance that reiterates that all allegations of misconduct must receive individualized and equitable treatment.** In particular, the BOP Director should issue guidance to relevant staff reiterating that all administrative misconduct assessments, investigations, and disciplinary determinations must be assessed on a case-by-case basis, without any prohibition against substantiating misconduct based on inmate testimony, and that the credibility of all alleged victims, suspects, and witnesses will be assessed on a case-by-case basis and not determined solely based on the person's status as inmate or staff. This guidance, drawn from PREA, 34 U.S.C. § 30307, and implementing regulations, 28 C.F.R. Part 115, applies to all allegations of BOP staff misconduct.

5.2 Promote the appropriate use of administrative actions or reassignment.

- 5.2.1 **Issue written guidance to ensure safety following serious allegations of sexual misconduct.** BOP should circulate written guidance for CEOs to ensure they immediately leverage all available options to ensure the safety and security of the institution and its relevant populations (including the reporting party, the victim, if different than the reporting party, the overall prisoner population, and BOP staff) and to ensure that the sexual misconduct does not recur. The written guidance should include factors for CEOs to consider when deciding, for example, whether to assign

the subject of the investigation to other responsibilities or duties, place the subject on limited duty, recommend re-assignment of the subject to another facility or assignment within BOP, or recommend placing the employee on administrative leave. The CEO should likewise determine whether additional steps should be taken to protect victims and witnesses, which also should be documented.

- 5.2.2 **Require documentation and review of CEO decisions.** Together with the Regional Director, CEOs should consider how best to continue addressing the status of the accused employee while the allegations are pending. CEOs must document the decision they have made concerning whether to change the subject's work assignments or take other administrative actions, which should be shared with Regional Directors and the Central Office. Regional Directors should ensure that the CEO's determination is reasonable. The Employment Law Branch of the Office of General Counsel should track all decisions so that a regular report can be made to the BOP Director regarding BOP's handling of sexual misconduct allegations and associated personnel and safety decisions.
- 5.2.3 **Report to the Director on a regular basis regarding these decisions.** In order to ensure transparency, accountability, and consistency about use of administrative leave and allegations of misconduct to BOP leadership, each region should regularly provide to the Central Office and the Director's Office a summary report detailing the decisions regarding administrative and other leave resulting from allegations of sexual misconduct.

5.3 Promote the appropriate use of administrative discipline.

- 5.3.1 **Require reporting of disciplinary actions to the Director's Office.** To better promote accountability and consistency, at the conclusion of misconduct investigations, CEOs should be required to report to their supervising Regional Director the investigative findings, as well as proposed disciplinary actions, which can include reprimand, suspension, and/or removal from federal service. The Regional Director will then report the disposition to the Central Office and the Director's Office, who will draw on that data in regularly reviewing the policies and procedures applicable to administrative discipline in these cases.
- 5.3.2 **Commission a comprehensive review of employee discipline.** In the long-term, BOP — potentially with help from outside consultants — should conduct a comprehensive and data-based review of options for discipline involving allegations of sexual misconduct. This should include whether there are options — such as training — available when there is insufficient evidence to take legal action (administrative or prosecutorial) to force separation but it nonetheless seems likely that abuse or harassment has occurred.

APPENDICES

- Appendix A – Data Requests and Policies Reviewed
- Appendix B – Explanation of the Violence Against Women Act Reauthorization of 2022

APPENDIX A

Data

- **From DOJ OIG:**
 - Number of staff-on-inmate sexual misconduct complaints (FY 2017-2022 YTD)
 - Number of DOJ prosecutions for sexual misconduct (FY 2017-2022 YTD)
 - Number of complaints of sexual misconduct or abuse at each BOP Women's Facility (January 2019-March 2022)
 - Number of BOP employees with multiple allegations of sexual misconduct (April 2017-April 2022)
 - Number of complaints of staff-on-inmate sexual misconduct or abuse at all BOP facilities (with disposition) (FY 2016-2022 YTD)
 - Of these complaints, the number which OIG substantiated
 - Of these complaints, the number which OIG referred to BOP OIA (with disposition)
 - Of these complaints, the number of which OIG referred (by entity) and the number of such referrals declined, including (by entity)
 - Number of prosecutions related to staff-on-inmate sexual misconduct (FY 2016-2022 YTD)
 - For each of these prosecutions, identify which charges were brought (*e.g.*, 18 U.S.C. § 2243, 242, etc).
 - For each of these prosecutions, identify the entity was involved (USAO or CRT or both)
 - Average length of time elapsed from (1) complaint of sexual misconduct to referral for prosecution; and (2) from referral to prosecution (2016-2022 YTD)
- **From BOP OIA:**
 - Number of complaints of staff-on-inmate sexual misconduct or abuse at female facilities (2017- 2021)
 - OIG referrals related to sexual misconduct to BOP OIA from female facilities, with disposition (January 2017 – March 2022)
 - Complaints of staff-on-inmate sexual misconduct and abuse at all facilities, including disposition (2016-2022 YTD)
 - If possible, please include a brief description of the allegation
 - Number of substantiated findings and description of discipline imposed by BOP in cases involving allegations of staff-on-inmate sexual misconduct (2016-2022 YTD)
 - Number of BOP employees who, after previous discipline for misconduct, (i) are the subject of a separate allegation of sexual misconduct (regardless of disposition); and (ii) are the subject of a separate allegation of sexual misconduct that is sustained (2016-2022 YTD).

- **From EOUSA:**
 - Identify (by case name and number) any BOP sexual misconduct cases prosecuted, including how the case was referred, what was charged, the case outcome, and the sentence imposed (2016-2022 YTD)
 - Identify any cases involving alleged sexual misconduct by BOP staff that they have declined (FY2016-FY2022 YTD)
- **From FBI:**
 - Number of sexual misconduct complaints to FBI in BOP facilities or BOP-contracted facilities where the allegations were staff-on-inmate (FY 2017-2022 YTD)
 - Number of these allegations that FBI jointly investigated with DOJ OIG
 - Number of such allegations that were marked as a potential civil rights violation.
 - Number of such allegations referred (by entity) and the number of such referrals declined (by entity)

Policies/Guidance

- BOP Master Collective Bargaining Agreement
- BOP Program Statements
 - [P.S. 1210.24](#) – Office of Internal Affairs
 - [P.S. 1330.18](#) – Administrative Remedy Program
 - [P.S. 1351.05](#) – Release of Information
 - [P.S. 3420.11](#) – Standards of Employee Conduct
 - [P.S. 3713.24](#) – Discrimination and Retaliation Complaints Processing
 - [P.S. 3713.25](#) – BOP Anti-Discrimination Policy
 - [P.S. 3713.26](#) – BOP Anti-Harassment Policy
 - [P.S. 3730.05](#) – Workplace Violence Prevention, Staff
 - [P.S. 5324.12](#) – Sexually Abusive Behavior Prevention and Intervention Program
- Office of Internal Affairs Annual Report for [FY2020](#), [FY2019](#), [FY2018](#), [FY2017](#), and [FY2016](#)

Other Materials

- Combined Press Releases of Recent Prosecutions Involving Sexual Misconduct by BOP Staff
- BOP Sexual Abusive Behavior Prevention and Intervention Booklet (For Offenders)
- BOP PREA Poster (English)
- [DOJ Book: Sexual Misconduct by Law Enforcement and Other Government Actors](#)
- Fara Gold, 2022 Update: Prosecuting Sexual Misconduct by Government Actors, DOJ Journal of Federal Law and Practice 49 (March 2022)

- Sexual Misconduct Committed by Law Enforcement & Other Government Actors (PowerPoint)

APPENDIX B

2022 VAWA Sexual Misconduct Statutes: Effective as of Oct. 1, 2022

- **18 U.S.C. § 250** (Penalties for Civil Rights Offenses Involving Sexual Misconduct): This statute applies to all Chapter 13 Offenses, *i.e.*, violations of 18 U.S.C. §§ 241, 242 and hate crime statutes.
 - This new penalty statute will mostly impact violations of 18 U.S.C. § 242 (Deprivation of Rights Under Color of Law).
 - Prior to enactment of § 250, most color of law/sexual misconduct violations were misdemeanors, absent one of the Section 242 statutory enhancements; even coerced penetration, coerced oral sex; and groping under clothes were all misdemeanors.
 - Newly enacted 18 U.S.C. § 250 makes every form of sexual assault under color of law a felony. The potential penalty varies depending on the type of sexual conduct involved (*i.e.*, sexual act or sexual contact, as defined pursuant to 18 U.S.C. § 2246(2) and (3), respectively), as well as other attendant circumstances (*e.g.*, whether the conduct was under or through clothing; whether the conduct involved coercion, physical force, or placing the victim in fear of varying degrees of physical harm; whether the victim was physically incapable of showing unwillingness or was otherwise rendered unconscious by the defendant).
 - Because 18 U.S.C. § 250 is a penalty statute, it should be charged in conjunction with substantive civil rights violations, *e.g.*, 18 U.S.C. § 242 or hate crimes.
 - For a violation of 18 U.S.C. § 242 based on sexual misconduct committed under color of law, the government must prove that the victim did not consent and that the defendant had no legitimate purpose (such as in the case of a pretextual medical procedure or a gratuitous pat search).
 - Resources for investigating and prosecuting sexual misconduct under color of law can be found here: <https://dojnet.doj.gov/usao/eousa/ole/tables/subject/sexle.htm>
- **New Provision Under 18 U.S.C. § 2243**, now called “Sexual Abuse of a Minor, Ward, or an Individual in Custody:”
 - The new provision, **18 U.S.C. § 2243(c)**, makes it a federal crime for a federal law enforcement officer, while acting in that capacity, to “knowingly engage in a sexual act with an individual who is under arrest, under supervision, in detention,

or in Federal custody.” It is a felony punishable up to 15 years in prison, and consent is not a defense.

- This applies to every federal law enforcement officer as defined by 18 U.S.C. § 115.

- **New Provision Under 18 U.S.C. § 2242 (Sexual Abuse).**

- The new provision, **18 U.S.C. § 2242(3)**, makes it a crime to “knowingly engage[] in a sexual act with another person without that other person’s consent, to include doing so through coercion” where there is federal jurisdiction (*e.g.*, in SMTJ, federal prisons, etc.).
- This provision filled a statutory gap by extending the sexual abuse statute to criminalize all nonconsensual sexual acts that occur (*e.g.*, in SMTJ, federal prisons, etc.).

These statutes went into effect on October 1, 2022, and cannot be applied retroactively.