

RICHARD J. DURBIN, ILLINOIS, CHAIR

PATRICK J. LEAHY, VERMONT  
DIANNE FEINSTEIN, CALIFORNIA  
SHELDON WHITEHOUSE, RHODE ISLAND  
AMY KLOBUCHAR, MINNESOTA  
CHRISTOPHER A. COONS, DELAWARE  
RICHARD BLUMENTHAL, CONNECTICUT  
MAZIE HIRONO, HAWAII  
CORY A. BOOKER, NEW JERSEY  
ALEX PADILLA, CALIFORNIA  
JON OSSOFF, GEORGIA

CHARLES E. GRASSLEY, IOWA  
LINDSEY O. GRAHAM, SOUTH CAROLINA  
JOHN CORNYN, TEXAS  
MICHAEL S. LEE, UTAH  
TED CRUZ, TEXAS  
BEN SASSE, NEBRASKA  
JOSHUA D. HAWLEY, MISSOURI  
TOM COTTON, ARKANSAS  
JOHN KENNEDY, LOUISIANA  
THOM TILLIS, NORTH CAROLINA  
MARSHA BLACKBURN, TENNESSEE

## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

December 12, 2022

The Honorable Merrick Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

The Honorable Lisa Monaco  
Deputy Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Garland and Deputy Attorney General Monaco:

We write to follow up on our February 23, 2022, letter seeking information about sexual misconduct by Bureau of Prisons (BOP) personnel and requesting that the Department of Justice (DOJ) take immediate action to root out staff misconduct at BOP.

We appreciate that since our letter BOP has launched a multidisciplinary Task Force to assess Federal Correctional Institution (FCI) Dublin and implement changes necessary to protect those housed there from rampant sexual abuse.<sup>1</sup> Your directive to United States Attorneys' Offices to prioritize prosecuting cases involving criminal misconduct at BOP facilities is also a step in the right direction.<sup>2</sup> However, the actions that follow will determine whether these initial steps create the changes necessary to prevent misconduct in the future. The pervasive culture of sexual abuse at FCI Dublin should never be tolerated in any federal prison and those who perpetuate such abuse must be held accountable. Unfortunately, data that DOJ provided in response to our letter—together with the findings of a working group you convened to address BOP staff sexual misconduct—indicate that BOP's handling of misconduct investigations and administrative discipline requires significant improvement.

In response to our February letter, DOJ provided our offices extensive data regarding staff-on-staff and staff-on-inmate sexual misconduct and abuse investigations from 2017 to 2021.<sup>3</sup> This data show an alarming number of reports of sexual abuse across Bureau facilities, and that the majority of these reports were closed as unsustainable. A recent DOJ Office of the

<sup>1</sup> Department of Justice Letter to Chair Durbin dated March 9, 2022; Department of Justice Letter to Chair Durbin dated June 13, 2022.

<sup>2</sup> Department of Justice Letter to Chair Durbin dated July 22, 2022

<sup>3</sup> Due to the data's confidentiality, and the reported complexities in the ways this data was compiled, we have agreed to comply with DOJ's request not to publicly disclose this data at this time.

Inspector General (OIG) management advisory memorandum raises questions as to whether some of these closures may be the result of a BOP approach to misconduct investigations in cases where inmate testimony is necessary to sustain charges.<sup>4</sup> The memorandum found that BOP “is reluctant to rely on inmate testimony in administrative misconduct investigations...and, at least in matters involving staff on inmate sexual assault, is effectively requiring significantly more proof than necessary under the applicable preponderance of the evidence standard to sustain misconduct and take disciplinary action against BOP employees.”<sup>5</sup>

In July, you informed us that you would convene a working group of senior officials (“the Working Group”) to address sexual misconduct by BOP employees and propose recommendations and reforms.<sup>6</sup> On November 2, the Working Group published its findings in a report that recommended that DOJ and BOP take immediate action to enhance prevention, reporting, investigation, prosecution, and discipline related to staff sexual misconduct.<sup>7</sup> You further directed affected components and officials, including the BOP Director, to expedite review of the report and develop implementation work plans within 30 days.<sup>8</sup> The Working Group’s report is evidence of the need for reform and improved oversight. In particular, the Working Group emphasized that administrative action is “critical to protect the safety of the reporter and to hold accountable the perpetrator,”<sup>9</sup> and that BOP’s decisions on reassignment, administrative leave, and appropriate discipline require more effective and heightened levels of review. We agree.

Addressing the issues that led to the creation of the Working Group is critical to ending sexual misconduct in federal prisons and instilling public confidence in BOP’s handling of these cases. To that end, we request a briefing on BOP’s and DOJ’s implementation plan for recommendations related to BOP’s internal investigations and administrative discipline process. In addition, to better understand BOP’s administrative review of employee sexual misconduct, we request that DOJ provide the following information no later than January 9, 2023:<sup>10</sup>

1. For every sustained finding<sup>11</sup> of staff-on-inmate sexual misconduct from 2017 through 2021, please specify:

---

<sup>4</sup> U.S. Dep’t of Justice Office of the Inspector General, *Management Advisory Memorandum: Notification of Concerns Regarding the Federal Bureau of Prisons’ Treatment of Inmate Statements in Investigations of Alleged Misconduct by BOP Employees* at 2 (Oct. 13, 2022), <https://oig.justice.gov/sites/default/files/reports/23-001.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> Department of Justice Letter to Chair Durbin dated July 22, 2022.

<sup>7</sup> The Principal Associate Deputy Attorney General Working Group of DOJ Components, “Report and Recommendations Concerning the Department of Justice’s Response to Sexual Misconduct by Employees of the Federal Bureau of Prisons,” November 2, 2022, at 1.

<sup>8</sup> Deputy Attorney General Memorandum “Immediate Actions Following the Review of the Department of Justice’s Handling of Sexual Misconduct Allegations Concerning Federal Bureau of Prisons Employees,” November 2, 2022.

<sup>9</sup> Working Group Report at 24.

<sup>10</sup> For the following data requests the term “sexual misconduct” includes sexual abuse of persons in custody; sexual harassment; inappropriate relationships between employees and persons in custody; or unprofessional conduct that is sexual, lewd, or obscene in nature. For the following data requests BOP may anonymize its responses.

<sup>11</sup> A sustained finding is a finding, after the conclusion of either an OIG or OIA investigation, that a report of BOP employee sexual misconduct was substantiated, irrespective of whether DOJ initiated a criminal prosecution of the subject.

- a. Whether OIA has a record of disciplinary or adverse action being taken against the subject employee;
  - b. Whether records show that no administrative action or disciplinary action was taken; and
  - c. Where administrative, disciplinary, or adverse action was taken, please provide:
    - i. OIG's general description of the sustained misconduct, if any.
    - ii. OIA's general description of the sustained misconduct.
    - iii. OIA's classification level of the misconduct.
    - iv. The type and duration of the administrative sanction, discipline, or adverse action imposed.
2. Please provide the number of individuals currently employed by BOP who have received more than one disciplinary sanction related to sexual misconduct.
  3. For every OIA administrative closure of staff-on-inmate sexual misconduct, please provide:
    - a. The reason for the administrative closure;
    - b. OIA's classification level of the misconduct; and
    - c. OIA's general description of the misconduct (including physical or sexual abuse of persons in custody; discrimination and sexual harassment; inappropriate relationship between employees and persons in custody; or unprofessional conduct).
  4. Please provide the number of BOP employees who retired or resigned during the pendency of a sexual misconduct investigation between 2017 and 2021. For any employee identified in response to this question, please confirm whether the existence of the sexual misconduct investigation and/or the disposition of the investigation is included in the employee's personnel file.
  5. Please provide a timeline of activity for and recommendations provided by the multidisciplinary Task Force launched in relation to FCI Dublin.

Thank you for your prompt attention to this important matter. We look forward to continuing to work together to ensure that BOP operates federal prisons safely, securely, and effectively.

Sincerely,



Richard J. Durbin  
United States Senator  
Chair



Charles E. Grassley  
United States Senator  
Ranking Member



---

Dianne Feinstein  
United States Senator



---

Alex Padilla  
United States Senator