

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

July 18, 2025

The Honorable Carlton W. Reeves, Chair
United States Sentencing Commission
One Columbus Circle, NE
Washington, DC 20002-8002
Attention: Public Affairs

Dear Chair Reeves:

I write in response to the Sentencing Commission's request for comment on its Proposed 2025-2026 Priorities.

Proposed Priority: Bureau of Prisons practices and effectiveness in meeting the purposes of sentencing.

In the federal criminal justice system, district courts must seek to achieve the purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—when deciding upon a defendant's sentence,¹ by imposing one that is “sufficient, but not greater than necessary” to:

(A) reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.^[2]

The United States Sentencing Commission, too, must strive to ensure the Sentencing Guidelines meet these purposes.³ Though no longer binding, the Sentencing Guidelines nevertheless “serve an important role” by providing courts with “a meaningful benchmark” in the initial determination of a sentence” and guidance “throughout the sentencing process.”⁴ Indeed, in Fiscal Year 2024, 28,038 sentences—or 45.7 percent—were imposed within the recommended range, not including cases where a departure applied, evidencing the central role that the Guidelines play in guiding thousands of federal criminal justice outcomes annually.⁵

¹ *Tapia v. United States*, 564 U.S. 319, 325 (2011). The Supreme Court explained in *Tapia*, however, that “a particular purpose may apply differently, or even not at all, depending on the kind of sentence under consideration.” *Id.* at 326. Retribution, § 3553(a)(2)(A), for example, cannot be considered for imposing supervised release terms, *id.*, and rehabilitative needs, § 3553(a)(2)(D), cannot be used to impose or lengthen a prison term, *id.* at 335.

² 18 U.S.C. 3553(a)(2).

³ 28 U.S.C. § 994(g).

⁴ *Rosales-Mireles v. United States*, 585 U.S. 129, 133 (2018) (quoting *Peugh v. United States*, 569 U.S. 530, 541, (2013)).

⁵ U.S. SENT'G COMM'N, DATAFILE (2024), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2024/Table29.pdf>.

Of course, the relevance to the goals of sentencing of the type and length of a recommended sentence under the Guidelines will necessarily vary depending on *how* that sentence is executed. For years, the Bureau of Prisons (BOP) has faced significant challenges in the performance of its mandate, undermining the Commission’s intent to tailor recommended sentences to anticipated outcomes for incarcerated individuals. I therefore urge the Commission to prioritize “[a]ssessing the degree to which certain practices of the Bureau of Prisons are effective in meeting the purposes of sentencing as set forth in 18 U.S.C. 3553(a)(2) and considering any appropriate responses including possible consideration of recommendations or amendments” in the upcoming amendment cycle.⁶

Chronically underfunded and understaffed, BOP has struggled to maintain safe and effective carceral settings for nearly 156,000 federal inmates, over 143,000 of whom are in BOP custody.⁷ Currently, BOP is authorized to have 14,900 correctional officer positions, with 12,766 active officers in pay status.⁸ Authorized “other” full time positions were recently reduced from 27,498 to 23,949, and there are 23,896 active employees in pay status.⁹ The resulting challenges BOP faces are both longstanding and pervasive:

- Infrastructure. In May 2023, the Department of Justice’s Office of the Inspector General (OIG) released the results of an audit of BOP’s “aging and failing infrastructure,” finding issues such as buckling concrete, crumbling façades, water leaks, poor ventilation, and energy inefficiencies.¹⁰ Late last year, BOP announced plans to permanently close one facility and idle six others due in part to “crumbling infrastructure.”¹¹ That BOP would need to close facilities as a result of unsustainable cost is not new—just three years prior, BOP closed Metropolitan Correctional Center (MCC) New York “after an in-depth conditions assessment found that substantial building deficiencies jeopardized the safety and security of the staff and inmates who occupied the building.”¹² As of February 2024, then-BOP Director Colette Peters estimated that BOP had a maintenance and repair backlog of approximately \$3 billion.¹³

⁶ *Federal Register Notice of Proposed 2025-2026 Priorities*, U.S. SENT’G COMM’N, <https://www.ussc.gov/policymaking/federal-register-notice/federal-register-notice-proposed-2025-2026-priorities> (last visited July 9, 2025).

⁷ *Statistics*, FED. BUREAU OF PRISONS, https://www.bop.gov/about/statistics/population_statistics.jsp#:~:text=155%2C933%20Total%20Federal%20Inmate&text=Last%20Updated%20July%203%2C%202025,Thursday%20at%2012%3A00%20A.M (last visited July 9, 2025). An additional nearly 12,800 federal inmates are reported to be in “other types of facilities.” *Id.*

⁸ FED. BUREAU OF PRISONS, FED. BUREAU OF PRISONS FACT SHEET (2025), https://www.bop.gov/about/statistics/docs/fbop_fact_sheet.pdf.

⁹ *Id.*; FED. BUREAU OF PRISONS, FED. BUREAU OF PRISONS FACT SHEET (2024), https://web.archive.org/web/20250226151445/https://www.bop.gov/about/statistics/docs/fbop_fact_sheet.pdf.

¹⁰ U.S. DEP’T OF JUST., OFF. OF THE INSPECTOR GEN., NO. 23-064, AUDIT OF THE FEDERAL BUREAU OF PRISONS’ EFFORTS TO MAINTAIN AND CONSTRUCT INSTITUTIONS 6 (2023), https://oig.justice.gov/sites/default/files/reports/23-064_1.pdf.

¹¹ Michael R. Sisak & Michael Balsamo, *The US government is closing a women’s prison and other facilities after years of abuse and decay*, ASSOCIATED PRESS (Dec. 5, 2024), <https://apnews.com/article/federal-prisons-closing-ap-investigation-abuse-decay-c02c96b6f6a3c5535cc3e3025d5d2585>.

¹² U.S. DEP’T OF JUST., *supra* note 10 at 5.

¹³ Senate Judiciary Committee Hearing, *Examining and Preventing Deaths of Incarcerated Individuals in Federal Prisons* (Feb. 28, 2024), at 00:30:45.

- Medical Care. In 2023, *NPR* reported on severely inadequate medical care within BOP facilities.¹⁴ One common complaint among sources was the agency’s failure to timely screen and treat inmates with serious illnesses, and the report found “[m]ore than a dozen waited months or even years for treatment, including inmates with obviously concerning symptoms: unexplained bleeding, a suspicious lump, intense pain.”¹⁵ Many suffered worsened conditions; some lost their lives.¹⁶ These problems persist.¹⁷ In a series of unannounced site inspections, OIG has identified several concerning medical practices and failures across various institutions.¹⁸ Most recently, OIG released an inspection last December of Federal Medical Center (FMC) Devens, finding “serious issues with . . . provision of healthcare” even at this *dedicated medical facility*, including “potentially dangerous medication distribution, lack of preventive healthcare screening, inappropriate placement of inmates in the Memory Disorder Unit (MDU), and inconsistent processes for requesting and accessing care.”¹⁹ Like other BOP institutions across the nation, FMC Devens suffers from a substantial employee shortage, “substantially affect[ing] the health, welfare, and safety of . . . inmates.”²⁰ It is perhaps unsurprising that in Fiscal Year 2024, district court judges granted compassionate release requests under 18 U.S.C. § 3582(c)(1)(A) on the basis, at least in part, of medical-related concerns in a notable

¹⁴ Meg Anderson, *1 in 4 inmate deaths happens in the same federal prison. Why?*, NPR (Sept. 23, 2023), <https://www.npr.org/2023/09/23/1200626103/federal-prison-deaths-butner-medical-center-sick-inmates>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Walter Pavlo, *Cases Show Medical Care Under Scrutiny At Federal Bureau Of Prisons*, FORBES (Mar. 13, 2025), <https://www.forbes.com/sites/walterpavlo/2025/03/13/cases-show-medical-care-under-scrutiny-at-federal-bureau-of-prisons/>.

¹⁸ To date, OIG has released the results of five inspections. In the first four inspections, OIG found, in part: at FCI Waseca, inmates with higher care levels than the institutions at which they were housed, significant delays in nonemergency medical care, and limited ability to provide psychology services beyond “crisis focused” care, U.S. DEP’T OF JUST., OFF. OF THE INSPECTOR GEN., 23-068, INSPECTION OF THE FED. BUREAU OF PRISONS’ FED. CORR. INST. WASECA 1, 26–29 (2023), <https://oig.justice.gov/sites/default/files/reports/23-068.pdf>; at FCI Tallahassee, suboptimal timing of medication dispensation, such as insulin and psychiatric medication, which can negatively affect drug efficacy, insufficient availability of bilingual staff to communicate with patients, and incomplete health care screenings at intake, U.S. DEP’T OF JUST., OFF. OF THE INSPECTOR GEN., 24-005, INSPECTION OF THE FED. BUREAU OF PRISONS’ FED. CORR. INST. TALLAHASSEE 1, 34–35 (2023), <https://oig.justice.gov/sites/default/files/reports/24-005.pdf>; at FCI Sheridan, a longstanding phlebotomist vacancy that, while eventually filled, led to a backlog at one point of over 700 laboratory orders, barriers to inmates requesting and accessing care for routine conditions, delays in medical and dental care due to lack of medical equipment and supplies, a backlog of outside medical visits, and potentially dangerous medication distribution practices, U.S. DEP’T OF JUST., OFF. OF THE INSPECTOR GEN., 24-070, INSPECTION OF THE FED. BUREAU OF PRISONS’ FED. CORR. INST. SHERIDAN 1, 8–13 (2024), https://oig.justice.gov/sites/default/files/reports/24-070_0.pdf; and at FCI Lewisburg, intake screening errors, certain prescription medication discontinuation decisions made without speaking with or examining the patients in advance and without tapering as recommended by BOP clinical guidance, colorectal cancer screenings provided to less than half of inmates within the recommended risk range and significant delays in providing colonoscopies to those for whom it was ordered, and failure to provide A1C tests to the majority of qualifying inmates within recommended time frames, U.S. DEP’T OF JUST., OFF. OF THE INSPECTOR GEN., 24-113, INSPECTION OF THE FED. BUREAU OF PRISONS’ FED. CORR. INST. LEWISBURG 1, 10–14 (2024), <https://oig.justice.gov/sites/default/files/reports/24-113.pdf>.

¹⁹ U.S. DEP’T OF JUST., OFF. OF THE INSPECTOR GEN., 25-009, INSPECTION OF THE FED. BUREAU OF PRISONS’ FED. CORR. INST. DEVENS i (2024), <https://oig.justice.gov/sites/default/files/reports/25-009.pdf>.

²⁰ *Id.*

number of cases.²¹ In one recent order granting compassionate release, a district court judge found BOP's failure to provide necessary and "relatively straightforward" treatment to the petitioner "incomprehensible and very far below the standards that I expect for anyone held in custody."²²

- Safety and Security. Several factors undermine BOP's ability to ensure the safety of those in its custody. For example, in 2022, the union representing BOP employees condemned a deadly fight at United States Penitentiary (USP) Beaumont, decrying the "chronic understaffing" that "is jeopardizing the lives of both workers and inmates."²³ Indeed, in a February 2024 OIG report evaluating issues surrounding inmate deaths, "BOP specifically identified insufficient staffing as an issue in at least 30 of the inmate deaths in [OIG's] scope."²⁴ Correctional staff shortages hinder efforts to prevent and respond to immediate threats, while medical staff shortages limit the ability to provide risk-mitigation treatments and programming.²⁵ In addition to other challenges, BOP also faces longstanding obstacles to effective interdiction of contraband drugs and weapons, overreliance on mandated staff overtime and augmentation, and "fundamentally ineffective" staff discipline processes—each compounding the serious risk to institutional safety.²⁶

While these concerns significantly limit BOP's ability to effectively meet the purposes of sentencing, they are by no means exhaustive. Inadequate funding and staffing levels affect all aspects of BOP's ability to discharge its mission. We have asked the agency to do far too much with far too little for far too long—and the ripple effects of severe BOP under resourcing are apparent across facilities nationwide.²⁷ Despite these limitations, the Administration has now asked BOP to add an additional mission by accepting and processing Department of Homeland

²¹ Sentencing courts listed serious physical or medical condition in 12.5 percent of cases, ongoing COVID-19 pandemic concerns unable to be timely mitigated in 3.3 percent of cases, and BOP failure to provide treatment in 1.7 percent of cases, among other reasons. U.S. SENT'G COMM'N, COMPASSIONATE RELEASE DATA REPORT 1, 17 (2025), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/FY24-Compassionate-Release.pdf>.

²² Order for Immediate Release of Defendant Bovis, *United States v. Bovis*, No. 20-cr-00204, Dkt. 100 (N.D. Cal. Mar. 6, 2025); *see also* *United States v. Diggs*, No. 02-CR-1129, 2025 WL 1371367, at *8 (N.D. Ill. May 12, 2025) (granting compassionate release after finding "BOP has shown no intention and/or ability to provide the necessary care [to the petitioner], despite its doctors' recommendations").

²³ Angel San Juan, *Prison Pay: Low Pay Rates for Correctional Officers is Creating a Staffing Crisis*, 6KFDM (May 19, 2023), <https://kfdm.com/news/local/prison-pay-low-pay-rates-for-correctional-officers-is-creating-a-staffing-crisis>.

²⁴ U.S. DEP'T OF JUST., OFF. OF THE INSPECTOR GEN., 24-041, EVALUATION OF ISSUES SURROUNDING INMATE DEATHS IN FED. BUREAU OF PRISONS INST. 1, 65 (2024), <https://oig.justice.gov/sites/default/files/reports/24-041.pdf>.

²⁵ *Id.*

²⁶ *Id.* at 54, 67, 70.

²⁷ Though Congress recently provided \$5 billion in additional funding to BOP, *see* Act of July 4, 2025, Pub. L. No. 119-21, this appropriation represents just the first small step needed to begin to correct the institutional problems caused by underfunding BOP. Commission consideration in this area remains imminently necessary given the longstanding and ongoing impacts of BOP challenges on effectuating the purposes of sentencing.

Security (DHS) detainees.²⁸ As I have previously written to the Attorney General, this decision further threatens the safety and well-being of incarcerated individuals.²⁹

Given the myriad difficulties facing our federal prison system, I respectfully urge the Commission to consider possible recommendations or amendments in the upcoming amendment cycle that account for the limited “nature and capacity of . . . facilities and services available”³⁰ to incarcerated individuals.

Sincerely,



Richard J. Durbin
Ranking Member

²⁸ Letter from Richard J. Durbin, U.S. Senator, Adam B. Schiff, U.S. Senator, Sheldon Whitehouse, U.S. Senator, Mazie Hirono, U.S. Senator, Cory A. Booker, U.S. Senator, Alex Padilla, U.S. Senator, and Peter Welch, U.S. Senator, to Pam Bondi, U.S. Att’y Gen. (Feb. 25, 2025), <https://www.judiciary.senate.gov/imo/media/doc/Letter%20to%20AG%20Bondi%20re%20BOP%20facilities%20for%20ICE.pdf>.

²⁹ *Id.*

³⁰ 28 U.S.C. § 994(g).