



United States Government Accountability Office

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Testimony Before the Subcommittee  
on Crime, Terrorism, and Homeland  
Security, Committee on the Judiciary,  
House of Representatives

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For Release on Delivery  
Expected at 10 a.m. ET  
Friday, January 21, 2022

## FEDERAL PRISONS

# Monitoring Efforts to Implement COVID-19 Recommendations and Examining First Step Act Implementation

Statement of Gretta L. Goodwin, Director,  
Homeland Security and Justice

# GAO Highlights

Highlights of [GAO-22-105691](#), a testimony before the Subcommittee on Crime, Terrorism, and Homeland Security, Committee on the Judiciary, House of Representatives

## Why GAO Did This Study

BOP is responsible not only for the supervision and custody of more than 157,000 federal inmates, but also for their health care, safety, and rehabilitation. The COVID-19 pandemic has strained BOP's institutions, yet BOP's obligation to provide inmates with programs to advance their education and development remains. Further, BOP has ongoing challenges with leadership instability and staff shortages. In response, GAO raised federal prison management as an emerging issue on its High-Risk List.

This statement discusses (1) three recommendations GAO made in July 2021 to enhance BOP's COVID-19 response and efforts to date to address them, and (2) GAO's ongoing review of DOJ's and BOP's implementation of FSA requirements related to inmate assessments and programming.

GAO updated information on BOP's activities in response to GAO recommendations, reviewed FSA requirements, and conducted preliminary research to design its audit work

## What GAO Recommends

In July 2021, GAO recommended that BOP evaluate communication of COVID-19 guidance, develop an approach to capture and share best practices and lessons learned, and ensure that facilities apply these practices as appropriate. BOP concurred with these recommendations and is planning or taking actions to implement them.

View [GAO-22-105691](#). For more information, contact Gretta L. Goodwin at (202) 512-8777 or [goodwing@gao.gov](mailto:goodwing@gao.gov).

January 21, 2022

## FEDERAL PRISONS

### Monitoring Efforts to Implement COVID-19 Recommendations and Examining First Step Act Implementation

## What GAO Found

GAO's July 2021 report on the Bureau of Prison's (BOP) response to the COVID-19 pandemic found that, while BOP developed and updated COVID-19 guidance with input from the Centers for Disease Control and Prevention (CDC), BOP staff reported confusion about how to implement the guidance. In response, GAO recommended that BOP routinely evaluate how it communicates its COVID-19 guidance to facility staff and modify its approach, as needed, to ensure more clear communication about BOP protocols. Since GAO issued the report, BOP has developed two questions on its annual feedback survey to BOP staff about its COVID-19 guidance and deployed the survey in December 2021. This is a promising step; however, the recommendation remains only partially addressed, as BOP still needs to review and assess staff feedback to determine whether modifications to its guidance are needed. GAO will continue to monitor BOP's efforts.

In addition, BOP has processes, such as teleconferences among BOP officials and facility inspections, to identify best practices and lessons learned related to BOP's COVID-19 response. However, BOP does not capture or share, bureau-wide, the lessons and practices discussed at its teleconferences, or have an approach for ensuring that facilities apply them, as appropriate. In response, GAO recommended that BOP develop and implement an approach to (1) capture and share best practices and lessons learned for responding to COVID-19 and future public health emergencies; and (2) ensure its facilities are applying, as appropriate, these best practices and lessons learned. At the time of GAO's report issuance, BOP indicated that it planned to conduct an after-action assessment of its pandemic response to help ensure preparedness for any future public health emergencies. BOP has yet to implement these two recommendations, and GAO will continue to coordinate with BOP for updates on BOP's progress.

The First Step Act (FSA) requires the Attorney General, in consultation with an Independent Review Committee, to develop and release publicly on the Department of Justice (DOJ) website a risk and needs assessment system. This system is to be used to determine the recidivism risk of each federal inmate as part of the intake process. It is also to be used to help determine and assign the type and amount of evidence-based recidivism reduction (EBRR) programming—activities designed to help inmates succeed upon release from prison—appropriate for each inmate. Generally, eligible inmates who successfully complete EBRR programming may earn time credits that will allow them to be placed in prerelease custody or supervised release earlier than they were previously allowed.

GAO is currently reviewing DOJ's and BOP's implementation of certain FSA requirements related to the risk and needs assessment and has a number of audit steps planned. These include examining BOP data and documentation on progress, and conducting interviews with DOJ and BOP officials, as well as selected stakeholders knowledgeable in the area of recidivism. GAO expects to publish the findings of its work, and any related recommendations that may stem from its findings, later in 2022.

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January 21, 2022

Chair Jackson Lee, Ranking Member Biggs, and Members of the Subcommittee:

I am pleased to be here today to talk about the recommendations we made to improve the Bureau of Prisons' (BOP) pandemic response,<sup>1</sup>—as well as provide an update on our ongoing review of BOP's implementation of specific provisions in the First Step Act (FSA).<sup>2</sup>

BOP is responsible not only for the supervision and custody of more than 157,000 federal inmates, but also for their health care, safety, and rehabilitation. The Coronavirus Disease 2019 (COVID-19) pandemic has placed great strain on institutions providing congregate care. Because inmates and the staff working in prison facilities function in confined spaces and in close proximity to each other, the prison population has been particularly vulnerable during infectious disease outbreaks.

As of January 13, 2022, BOP reports 6,043 inmates and 939 staff were currently positive for COVID-19; 42,678 inmates and 9,027 staff have recovered, and 277 inmate deaths and seven staff member deaths were attributed to COVID-19. While BOP has put COVID-19 protocols in place to protect inmates and staff, BOP is still obligated to provide inmates with programs to advance their education and development. Our ongoing work to address FSA requirements that BOP conduct inmate risk and needs assessments—and address those risks and needs through programming—is both timely and relevant in light of COVID-19's impact.

In addition, in March 2021, we issued our biennial High-Risk List, which raised the management of the federal prison system as a challenge

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<sup>1</sup>GAO. *Bureau of Prisons: BOP Could Further Enhance its COVID-19 Response by Capturing and Incorporating Lessons Learned*, [GAO-21-502](#), (Washington, D.C.: July 29, 2021).

<sup>2</sup>Pub. L. No. 115-391, 132 Stat. 5194 (Dec. 21, 2018). In general, the First Step Act requires the development and implementation of a risk and needs assessment system to determine the recidivism risk of inmates and the type and amount of programming that is appropriate for inmates; prohibits the use of certain restraints on inmates in the custody of BOP and the United States Marshals Service during the period of pregnancy, labor, and postpartum recovery with certain exceptions; and reauthorizes, expands, and amends certain federal grant programs related to inmate reentry; among other things.

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facing our nation that merits continuing close attention.<sup>3</sup> In particular, our published and ongoing work has shown that BOP's deficiencies can generally be categorized into three themes: (1) inadequate management of staff and resources, (2) inadequate planning for new programs or initiatives that help inmates prepare for a successful return to the community, including drug treatment programs; and (3) insufficient monitoring and evaluation of these inmate programs, which has led to imprudent spending. Furthermore, BOP has experienced significant leadership instability, with five different acting or permanent directors from 2016 through 2020—as well as the January 2022 announcement of the current BOP Director's upcoming retirement.

Among our ongoing and planned studies reviewing BOP's management and operations, our work to assess BOP's implementation of the FSA will be critical to determining BOP's progress in enhancing inmate programs and reducing recidivism. As the primary agency responsible for the safety, care, and rehabilitation of individuals sentenced for committing federal crimes, BOP must demonstrate leadership commitment, capacity, and action planning. We will determine whether strengthening management of the federal prison system should be added to the High-Risk List based on BOP's implementation of certain FSA provisions and once our relevant assessments are complete.

My statement today discusses (1) the three recommendations we made to enhance BOP's COVID-19 response and BOP's efforts to date to address them, and (2) the approach we plan to take to assess BOP's implementation of the FSA requirements related to inmate assessments and programming—and the extent to which DOJ has fulfilled its related FSA obligations.

To conduct our work on BOP's COVID-19 response, we reviewed BOP policies, data, and other documentation related to the impact of COVID-19 and how BOP addressed this impact. We also conducted nongeneralizable interviews of officials from five BOP facilities and one private facility operating under contract with BOP, selected based on inmate infection rates and other factors. More detailed information about our scope and methodology can be found in our issued report. To design

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<sup>3</sup>GAO's High-Risk Series identifies government operations with vulnerabilities to fraud, waste, abuse, and mismanagement, or in need of transformation to address economy, efficiency, or effectiveness challenges. See GAO, *High Risk Series: Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas*, [GAO-21-119SP](#), (Washington, D.C.: March 2, 2021).

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our work on FSA implementation, we reviewed the FSA requirements, developed an audit plan to assess BOP's and DOJ's satisfaction of these requirements, and identified stakeholder groups knowledgeable in the area of recidivism who could provide perspectives to inform our work.

We conducted the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## BOP Has Taken Some Early Steps to Enhance Its COVID-19 Response

In our July 2021 report that examined BOP's COVID-19 response, we assessed, among other things, BOP's efforts to develop and update its COVID-19 guidance. We found that, while BOP developed and updated guidance with input from the Centers for Disease Control and Prevention (CDC), BOP staff reported confusion about how to implement the guidance. For example, the DOJ Office of Inspector General (OIG) sent a survey to all BOP employees in April 2020, in part to gather anonymous staff perspectives on the adequacy of the guidance they received from BOP about exposure to COVID-19. Of the 28 percent of employees who responded, 59 percent of respondents thought the guidance was not clear and 53 percent thought the guidance was not timely.<sup>4</sup> We also interviewed BOP union officials during our review about BOP's guidance and they noted areas of confusion about BOP's guidance, such as the use of personal protective equipment (PPE).

In response, we recommended that BOP routinely evaluate how it communicates its COVID-19 guidance to facility staff and to modify its approach, as needed, based on the results to ensure that BOP protocols are clearly communicated to staff. BOP concurred with our recommendation, and, in its formal comment letter, noted that the continuous evaluation of its efforts to communicate COVID-19 guidance is necessary to help ensure that BOP institutions are provided the most recent guidance in the most effective manner. The agency noted that it

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<sup>4</sup>Specifically, the OIG invited 38,651 total employees to take the survey and received 10,735 responses, a 28 percent response rate. The scope and methodology of each inspection, including a description of the survey, is located in each of the OIG's individual Pandemic Response Reports for remote inspections conducted with selected BOP facilities (<https://oig.justice.gov/reports/pandemic>). Given the low response rate, the results of this survey are not generalizable to the entire BOP staff population.

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had established an email box for staff to submit questions on its COVID-19 guidance. Since then, BOP has taken further action to implement our recommendation. For example, it developed two questions on its annual feedback survey to BOP staff that asked whether staff knew where to find BOP's COVID-19 guidance and whether staff knew where to get further information on the guidance if they have any questions. BOP deployed the survey in December 2021. These are promising steps and partially address our recommendation. To fully implement our recommendation, BOP still needs to review and assess the feedback it receives and make a determination on whether any modifications to its COVID-19 guidance are needed. We will continue to monitor BOP's efforts.

In addition to assessing BOP's COVID-19 guidance, we also examined the extent to which BOP incorporated lessons learned into its COVID-19 response. We found that BOP has processes, such as teleconferences among BOP officials and facilities' inspections, to identify best practices and lessons learned related to its COVID-19 response. However, BOP does not capture or share, bureau-wide, the lessons and practices discussed at its teleconferences, or have an approach for ensuring that facilities apply them, as appropriate.

In response, we made two recommendations to BOP that it should develop and implement an approach to (1) capture and share best practices and lessons learned for responding to COVID-19 and future public health emergencies; and (2) ensure that its facilities are applying, as appropriate, best practices and lessons learned related to COVID-19 and future public health emergency response efforts. BOP concurred with both of our recommendations. In commenting on our report, BOP noted that capturing and sharing best practices is vital to ensure continuous improvement in the current, and any future, pandemic. The agency also noted that it will continue to identify lessons learned through its facilities inspections and through teleconferences among BOP officials, and that it also plans to conduct an after-action assessment of its pandemic response to help ensure preparedness for any future public health emergencies. BOP has yet to implement these two recommendations, and GAO will continue to coordinate with BOP for updates on BOP's progress. We will continue to coordinate with BOP for updates on its efforts and progress as it works to implement our recommendations.

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## Our Work to Address FSA Implementation

We are currently reviewing BOP's implementation of certain FSA requirements related to the risk and needs assessment. The FSA requires the Attorney General, in consultation with an Independent

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Review Committee,<sup>5</sup> to develop and release publicly on the DOJ website a risk and needs assessment system, among other things.<sup>6</sup> BOP is to use this system to determine the recidivism risk of each federal inmate as part of the intake process and determine and assign the type and amount of evidence-based recidivism reduction (EBRR) programming that is appropriate for each federal inmate.<sup>7</sup> Generally, eligible inmates who successfully complete EBRR programming or productive activities may earn FSA time credits that will allow them to be placed in prerelease custody (i.e., home confinement or a Residential Reentry Center) or supervised release earlier than they were previously allowed.<sup>8</sup>

Section 103 of the FSA requires GAO to review various actions taken by BOP and DOJ to implement the risk and needs assessment system and continually review and report on it. We are reviewing the extent to which (1) BOP is fulfilling its requirements as described in section 103 of the FSA and (2) DOJ is fulfilling the requirements of 18 U.S.C. § 3631(b) as added by section 101(a) of the FSA. To carry out this work, we will:

- analyze BOP data to determine BOP's frequency of risk and needs assessments, BOP's application of FSA time credits, and inmates' participation in EBRR programs and productive activities, among other things;

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<sup>5</sup>Section 107 of the First Step Act, Pub. L. No. 115-391, § 107, 132 Stat. 5194, 5215-16, requires DOJ's National Institute of Justice (NIJ) to select a nonpartisan and nonprofit organization with expertise in the study and development of risk and needs assessment tools to host the Independent Review Committee. The organization that NIJ selects shall appoint not fewer than six members to the Independent Review Committee whose members shall all have expertise in risk and needs assessment systems.

<sup>6</sup>Pub. L. No. 115-391, § 101, 132 Stat. 5194, 5195-5208. See 18 U.S.C. § 3632.

<sup>7</sup>Pub. L. No. 115-391, § 101, 132 Stat. 5194, 5195-5208. See 18 U.S.C. § 3632(a)(1), (3). Pursuant to 18 U.S.C. § 3635(3), "[t]he term 'evidence-based recidivism reduction program' means either a group or individual activity that—(A) has been shown by empirical evidence to reduce recidivism or is based on research indicating that it is likely to be effective in reducing recidivism; (B) is designed to help prisoners succeed in their communities upon release from prison; and (C) may include—(i) social learning and communication, interpersonal, anti-bullying, rejection response, and other life skills; (ii) family relationship building, structured parent-child interaction, and parenting skills; (iii) classes on morals or ethics; (iv) academic classes; (v) cognitive behavioral treatment; (vi) mentoring; (vii) substance abuse treatment; (viii) vocational training; (ix) faith-based classes or services; (x) civic engagement and reintegrative community services; (xi) a prison job, including through a prison work program; (xii) victim impact classes or other restorative justice programs; and (xiii) trauma counseling and trauma-informed support programs."

<sup>8</sup>18 U.S.C. § 3632(d)(4).

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- analyze DOJ and BOP documentation on agencies' efforts;
  - interview DOJ, BOP, and BOP union officials about DOJ's and BOP's actions to address the FSA requirements in regard to the risk and needs assessment system;
  - interview BOP officials from four BOP facilities, selected based on the facility security level, region, population (male/female), and institution type; and
  - interview stakeholders knowledgeable in the area of recidivism and members of the Independent Review Committee to obtain their perspectives on BOP's EBRR programs.

We expect to publish the findings of our work, and any related recommendations that may stem from our findings, later in 2022.

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In closing, our prior work illustrates the importance of BOP effectively communicating its COVID-19 guidance to staff and ensuring that lessons learned from the pandemic are captured, shared, and applied, as appropriate. Our ongoing work will also highlight the progress that BOP and DOJ have made in implementing FSA provisions and potentially provide recommendations, should we note any areas that can be strengthened.

Chair Jackson Lee, Ranking Member Biggs, and Members of the Subcommittee, this completes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

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## GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact Gretta L. Goodwin, Director, Homeland Security and Justice, at (202) 512-8777 or [GoodwinG@gao.gov](mailto:GoodwinG@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Joy A. Booth (Assistant Director), Tracey Cross (Assistant Director), Billy Commons, Benjamin Crossley, Elizabeth Dretsch, Wendy Dye, Emily Flores, Julia Vieweg, and Kellen Wartnow.



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