

I appreciate this opportunity to provide practical, “**shovel ready**” reforms but will also comment on current correctional treatment practices and pending legislation if my 4 minutes permit.

My perspective is from **both sides of the fence** having worked directly with the incarcerated in classification, programs and re-entry, having audited BOP facilities, policy writing and training case management staff. Since my retirement from BOP in 2011, I have continued to work with the incarcerated, their families and attorneys throughout the country as an advocate.

I believe I have a pulse on the agency policy and culture yet occupy a neutral position as both a retiree and reformer. I am not here to criticize nor defend the BOP. I simply have a passion for Federal prison reform. **The most important I can recommend is that the BOP has good policy but there must be a broader interpretation to maximize its potential under the existing framework.**

We; as a nation; have failed as evidenced by the high rate of recidivism, demographic makeup of our prison population and lifetime “collateral consequences” of a felony conviction.

Before I found out I had 4 minutes to speak, I had typed 20 plus pages of testimony which I eventually condensed to 8 but even that doubled the amount of time allocated. I could talk to this commission for 40 minutes so, I am simply going to cut to the chase.

1) Population Reduction recommendation: Something that can be implemented immediately is regarding various **Reduction in Sentence initiatives, (RIS)** contained in **PS # 5050.49, Compassionate Release**. The BOP is **NOT** crediting **Good Conduct Time (GCT)** towards program eligibility for RIS initiatives. It is my opinion; the agency has the statutory authority to credit GCT under the **law**, specifically **18 USC 3624**:

“(b) Credit Toward Service of Sentence for Satisfactory Behavior.—

- (1) Subject to paragraph (2), a prisoner who is serving a term of imprisonment of more than 1 year ⁽¹⁾ other than a term of imprisonment for the duration of the prisoner’s life, **may receive credit toward the service of the prisoner’s sentence, beyond the time served**, of up to 54 days **at the end of each year of the prisoner’s term of imprisonment**, beginning at the end of the first year of the term, subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with institutional disciplinary regulations.

This discretion should be used for **ALL** RIS incentives especially “Elderly Offenders” who by some estimates cost the government upwards of \$56,000 yearly for medical center placement.

The crediting of earned good conduct time would result in substantial cost savings and crowding while not jeopardizing public safety as a BOP threat assessment is conducted prior to program approval.

2 Population Reduction recommendation: The BOP/DOJ has never used the authority in **8 U.S.C. § 1231(a)(4)(B)**, which authorizes the Attorney General to transfer custody of non-citizen prisoners convicted of certain non-violent offenses to ICE for repatriation before the end of their sentences. While a number of states have availed themselves of this authority to reduce populations of non-citizen prisoners, no regulations have been issued by the Justice Department to implement this program since its enactment as part of **AEDPA in 1996**.

3 Population Reduction recommendation: Review and **change** the “**Director’s Discretion**” exclusions under **BOP Policy 5331.02, Early Release Provisions** which **prohibit early release under 3621 (e)**. There is no need for the BOP to be any more restrictive in granting early release than what is written in the law and this policy even allows **certain Misdemeanor** offenders to be denied early release.

4 Rehabilitation and employment Programs recommendation: The next recommendation is I ask you review the BOP policy **5353.01, Occupational Educational Programs** and **strongly**

encourage this commission to study what progress the agency has made in regards to **Page 5, paragraph c.** as well as **set mandates or institutional quotas** to expand the use and involvement of the programs referenced in this directive. When I was hired by the BOP in 1988, there were College and Vocational (VT) apprenticeship programs through the DOL. The reduction in line staffing levels by increased caseloads has presented roadblocks for staff to assist with educational and vocational programs within this directive.

5 Staffing recommendation: The BOP should re-allocate some of their **39,000 plus** positions and increase staffing at the institutional level. Although the BOP is the largest correctional agency in the country, approximately **209, 000** as of (3/05/15), it holds only slightly more offenders than the state of Texas (**168,000**) (BJS-2013), yet it maintains **6 Regional offices, the DSCC, various training centers, and a Central Office with 10 Divisions.** An independent entity should study the administrative staffing levels and need for **regional offices and thousands** of bureaucratic employees who do not work directly with offenders for direct programs to accomplish re-entry goals.

When I was hired in 1988, the average caseload for case managers was manageable at (**approx. 120 inmates**). There was a policy quota in the Unit Management manual for “*not less than once case manager per 100 inmates*”. This allowed regular, meaningful interactions with the population in offices directly on the ranges of the inmate housing units.

The BOP practiced a “**Unit Management**” concept which was a multi-disciplinary team consisting of a case manager, counselor, unit manager, education representative and staff psychologist. The average inmate team meeting or staffing (referred to as a program review) had a majority of the team in attendance to identify programs to address Criminogenic needs for a

comprehensive correctional treatment plan. This program review concept, no longer practiced **as intended**, is still included in the policy **Inmate Classification and program Review**, PS # **5322.13**: however, a majority of inmate program reviews are now on a **one on one basis**, without the physical presence of a unit manager, educational representative or staff psychologist. In many cases, this one on one, “**team**” has a focus to quickly sign forms and move along.

It should be noted the historical unit management concept and evolution came from various research articles from BOP personnel like Tom Kane and Doug Lansing, (See Federal Probation Journal) and called for caseloads of approximately 50 to 100 inmates per caseload. Years later, (1989) a national case management work group was established by the BOP Correctional Programs Division and was comprised of Wardens, Regional administrators and Central Office staff. The very first recommendation in the final report was to reduce caseloads to **90-100** inmates. Today, caseloads are approximately **200 inmates** while unit managers have upwards of **500** inmates. Case management staff does not have the time to interact with offenders or deliver groups and other programs given the paperwork and administrative responsibilities of such large caseloads.

6 Recommendation to Avert further growth/rehabilitation programs:

The next recommendation is regarding **Comprehensive Sanction Centers** (CSC). This concept is contained in **BOP Program Statement, 7310.04, CCC Utilization and Transfer Procedure**, but was also studied and deemed effective by BOP researches as reflected in the below survey:

http://www.bop.gov/resources/research_projects/published_reports/gen_program_eval/oreprsurvey.pdf

An urban, CSC concept can be expanded in conjunction with the AOUSC to offer **diversionary** drug treatment, mental health and veterans courts to divert individuals from the Federal correctional system. It would also operate as a day reporting center, long term housing facility and Residential Re-entry center to provide comprehensive and direct services while offenders also participate in work, educational and vocational programs.

One of the biggest failures regarding our prison system is the construction of large facilities far outside metropolitan areas away from the family unit and community resources. Large, urban CSC's could have both a diversionary and long term custodial mission, but include a pre-release unit for transition. The population would receive programs and services through community partnerships but also give support to the various community organizations and faith based groups in the spirit of restorative justice. This concept was practiced on a smaller level back in the 1990's in what was referred to as "**The Urban Work Cadre**". (see **BOP Operations Memo 225-91 (7300)**, entitled **Community Service Projects**, which allowed inmates in various parts of the country to work in the community 18 months from release. Even today, the BOP has partnered with other Federal agencies to provide labor and services which can be better formalized into vocational training programs.

From a BOP technical perspective, the classification policy, **PS 5100.08, Inmate Security Designation and Custody Classification**: allows inmates who are assigned to "**Community Custody**" to participate in work and/or community programs.

Prior to the widespread adoption of "**Satellite Camps**", the BOP allowed inmates who were even Medium security, to work outside secure facility fences based on the assessment done on what is/was referred to a **BP-338 (Custody Classification/Review)**. The Unit Team assessed the

various factors and characteristics of individuals and reduced the “**custody level**”. There is **already a BOP Threat Assessment tool - (BP-338)** in the BOP SENTRY system which can be modified rather than re-created which is suggested in the CORRECTIONS ACT.

7 Recommendation for a build out of the RRC infrastructure: There is a need to build out the RRC infrastructure, especially given the inmates being processed under the “Minus 2” provisions of the USSC. Although the Second Chance Act of 2007 increased the statutory amount of time individuals can be placed in RRC’s to 12 months, it has been my experience few are placed for over 6 months due to limited bed space. Current law and policy allows for direct designation to RRC’s for short sentences and longer periods of work/study release, yet placements are often restricted given limited because of bed space which does not honor the intent of the SCA of 2007. There also needs to be a **greater adherence** to the incentive in **PS # 5330.11, Psychology Treatment programs**: that directs warden’s to recommend “**The Maximum RRC placement**” for inmates who complete the **Non-Residential Drug Abuse Treatment Program**.

8 Legislative Changes Recommendation: The most profound suggestion I can make to this commission is similar in scope to **FedCURE’s Barber initiative which I strongly support**. This practical and easy to implement approach currently exists within the BOP framework and culture and is known as the “**Old Law**” **good time system**.

I am not advocating a return to the Federal parole system bureaucracy but the return to the good time system prior to the Sentencing Reform Act (SRA) which could save the government tens of millions (if not hundreds of millions) of dollars and provide a drastic population reduction

Specifically, inmates who maintain clear conduct and make satisfactory progress towards their **overall comprehensive treatment plan**, earn extra and statutory good time for the possibility of release just under **66%** or **(2/3)** of their sentence. In addition, forfeited good time because of misconduct could be earned back with periods of clear conduct so there are incentives for good behavior as well as programming with the enhancement of security and staff/inmate safety.

Under the current system, once good conduct time is withheld, it can **NEVER** be earned back.

In regards to current, back end, legislative efforts, there is no need to reinvent the wheel with pass labor intensive bills which allow the BOP too much discretion, created new bureaucratic tools that take years to study and implement. Look no further than the early release provisions under 3621 (e) for the **Residential Drug Abuse program (aka RDAP)**. It was an extremely cumbersome process with waiting lists and reduced time benefits. People now embellish drug and alcohol histories in the pre-sentence report and a cottage industry has evolved to manipulate RDAP eligibility due to the early release incentive. The single “Program”, not the treatment, becomes the end game.

The core philosophy of BOP correctional treatment is not some “magic” single program but an overall, **comprehensive treatment plan** which addresses multiple Criminogenic factors. It is this **multi-faceted program** plan that should be awarded with good time for **ALL** people making progress towards achieving correctional treatment goals similar in the way the BOP awards current GCT for GED program participation.

Cumbersome “back-end” bills incentivize single programs fall short of the core BOP concept of treatment. Most notably is the recent current “CORRECTIONS ACT” legislation which has morphed from previous bills and unequally rewards good time for inmates who have complete

“programs proven to reduce recidivism”. While this bill has good intent, it falls short in addressing comprehensive treatment goals, creates a new threat assessment tool unfamiliar to the BOP culture and allows far too much BOP discretion and time for program implementation.

I believe my time is up so I will end with four quick comments:

- 1) **Remove or reduce the 10 years mandatory minimum for the Elderly offender program and other RIS initiatives.**
- 2) **Remove the 6 month limitation restriction for home confinement to the actual 10% as indicated in the law.**
- 3) **Reinstate Pell Grants**
- 4) **Require the BOP to update their policies regularly or return to the Operations memorandum system.**