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# **First Step Act Implementation Fiscal Year 2020 90-Day Report**

June 2, 2020

## **FIRST STEP ACT IMPLEMENTATION FISCAL YEAR 2020 90-DAY REPORT**

### Legislative Summary

The Senate Report (S. Rept. 116-127) accompanying the Consolidated Appropriations Act, 2020 (P.L. 116-93) states, “The Committee directs the Department and BOP to fully and expeditiously implement the First Step Act (FSA or Act) (Public Law 115–391), and authorizes \$75,000,000 in new, dedicated funding for this purpose. While the Committee was encouraged by the Department’s progress in both establishing the Independent Review Committee and providing Congress with the outline of the Risk and Needs Assessment tool by the statutory deadline, the Department must fulfill the law’s other requirements no later than the deadlines established by the Act, including the completion of the initial intake risk and needs assessment for each inmate in the population through the Risk and Needs Assessment tool, the assignment of prisoners to appropriate evidence-based recidivism reduction programs based on that determination, and the establishment of additional earned time credits. The Department is directed to report to both the Committees on Appropriations and Judiciary, within 90 days of enactment of this act, and every 90 days thereafter, on all actions and expenditures to implement the FSA, including activities, expenditures and resource requirements to develop, implement, review, validate, and maintain the risk and needs assessment and to evaluate and provide evidence-based recidivism reduction programs and productive activities.”

The following information is provided to address the Committee’s request for the first 90-day period after enactment of the FY 2020 appropriation.

### Developed a New Risk & Needs Assessment System

- On July 19, 2019, prior to the statutory deadline, the Department released an industry-leading risk assessment tool (PATTERN) and a detailed description of planned enhancements to BOP’s already robust needs assessment system.
  - PATTERN achieved a high level of predictive performance across races, gender, and ethnicity, and exceeded what is commonly found for risk assessment tools in the United States.
  - DOJ’s established needs assessment system met all of the requirements of the Act, and DOJ identified additional opportunities to enhance the system to better recognize and address inmate needs, including implementing new trauma and dyslexia screening tools.
- Following the release of PATTERN, DOJ started a 45-day comment period to solicit input from stakeholders, advocates, and the public on ways to improve PATTERN.

- The Department received nearly 200 comments and statements.
  - The Department hosted two listening sessions, including statements from eight stakeholder organizations and received an additional eight sets of comments from interested stakeholders.
  - During that time period, BOP began conducting initial risk assessments and assigning preliminary risk scores.
- The Attorney General met with the IRC on November 19, 2019, to discuss proposed changes to PATTERN. The IRC recommended that the Attorney General implement the changes. BOP and NIJ concurred with this recommendation. The Department announced the enhancements to PATTERN in a January 2020 report. These changes were designed to increase PATTERN’s fairness and transparency without significantly impacting its anticipated high level of predictability. BOP conducted a new risk assessment using the revised PATTERN tool.
  - As described in the July report, the lowest raw score for the Minimum Risk Level Category was zero. After making the recommended changes to PATTERN, changes were made to raw scores to ensure that inmates were accurately placed in the appropriate Risk Level Category and the tool achieved the same high-level of predictive accuracy. The updated scoring information is described below:

**Revised PATTERN RLC Score Range, Population Distribution & Recidivism Rates**

RLC	Raw Score		Population in Each Risk Level Category%			Risk of Recidivism		
	Male	Female	All	Male	Female	All	Male	Female
<i>General</i>								
Minimum	< 11	< 6	17%	14%	34%	10%	10%	10%
Low	11 – 30	6 – 31	29%	26%	44%	31%	31%	34%
Medium	31 – 43	32 – 49	19%	20%	16%	55%	54%	58%
High	44+	50+	34%	40%	6%	75%	75%	75%
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RLC	Raw Score		Population in Each Risk Level Category			Risk of Violent Recidivism		
<i>Violent</i>	Male	Female	All	Male	Female	All	Male	Female
Minimum	< 7	< 3	20%	14%	51%	1%	1%	1%
Low	7 – 24	3 – 19	42%	42%	46%	9%	9%	7%
Medium	25 – 30	20 – 25	14%	16%	3%	21%	21%	23%
High	31+	26+	24%	28%	1%	31%	31%	31%

- Due to the modifications in PATTERN from the initial July 2019 tool to the revised tool implemented in January 2020, a small percentage of inmates changed risk categories, with a majority receiving a lower risk classification. Based on an analysis by BOP, the estimated impact to inmates were:

Decreased from MEDIUM to LOW

Males            9,162  
 Females        533

Increased from LOW to MEDIUM

Males	4,430
Females	296

Decreased from LOW to MINIMUM

Males	7,184
Females	436

Increased from MINIMUM to LOW

Males	3,282
Females	1,145

- DOJ has implemented PATTERN in accordance with the changes in the January 2020 report. As stated in the January 2020 report, DOJ intends to monitor PATTERN, study the data, and in consultation with the IRC, consider any improvements and adjustments that should be made for future assessments.
- On February 10, 2020, the Department released a competitive funding opportunity to hire outside consultants to review and revalidate PATTERN on an annual basis for up to five years. The deadline for submitting submissions was April 24, 2020. The peer review process is underway.

## Screened Inmates and Assigned Programming

- The Federal Bureau of Prisons (BOP) conducted risk and needs assessments for federal inmates and assigned evidence-based recidivism reduction programs by the January 15, 2020 FSA deadline.

## Retroactive Application of Fair Sentencing Act (Crack:Powder)

- The FSA's retroactive application of the Fair Sentencing Act of 2010 (reducing the disparity between crack cocaine and powder cocaine threshold amounts triggering mandatory minimum sentences) has resulted in 3,009 sentence reductions processed and 2,168 inmates released since FSA enactment (as of May 22, 2020)

## New/Expanded Programs and Policies

- While the FSA did not come with appropriated funds in FY 2019, the Deputy Attorney General announced in July 2019 that BOP had taken the initiative to adjust funding within its budget to cover a variety of targeted FSA activities, including:
  - Increasing Volunteers/Partnership Opportunities
  - Enhancing Medication Assisted Treatment
  - Providing English as a Second Language Workbooks and Textbooks
  - Expanding Education Programs and Programs for Women

- Providing Certifications for Vocational Training
- Increasing Vocational Training Opportunities
- Performing Evaluations for Evidence-Based Programs
- Developing a Needs Assessment System
- Compassionate Release
  - One of the first policy changes were new procedures (notification and assistance) for “compassionate release” sentence reductions under 18 U.S.C. §§ 3582 and 4205(g).
  - 479 inmates have been released via compassionate release since enactment of the FSA (as of May 26, 2020).
- Good Conduct Time Changes Took Effect on July 19, 2019, the date required by statute.
  - Resulted in approximately 3,100 releases from BOP custody.
  - Created individualized release plans for every inmate.
  - BOP distributed reentry booklets to all institutions (with an emphasis on those with FSA Good Conduct Time inmates) in the second week of June 2019.
  - Coordinated with US Pretrial and Probation Office to ensure a seamless transition.
- Transfers Closer to Home
  - 2,072 requests approved for inmate transfers to facilities nearer to their intended communities of release since FSA enactment (as of February 6, 2020)
- Expand the Use of Home Confinement
  - The FSA expanded a pilot program for elderly offenders to be transitioned to Home Confinement. As of May 26, 2020, 1,002 inmates have qualified.
  - The CARES Act created an additional expansion of Home Confinement. BOP has placed an additional 3,183 inmates on home confinement; an increase of 112 percent.
- Drug Treatment
  - The BOP has a robust drug treatment strategy, including programs whose effectiveness has been supported by past research. Offenders who have an identified need are provided with an individualized treatment plan to address their needs.
    - As of March 2020, over 34,000 were enrolled in drug treatment programs.

- BOP offers a variety of drug treatment programs, one of the most popular being the Residential Drug Abuse Program (RDAP), which is optimized to begin as the inmate is near release. As of March 2020, there was no wait list for RDAP.
  - Medication Assisted Treatment (Opioids)
    - The FSA requires BOP to assess the availability of and the capacity to treat heroin and opioid abuse through evidence-based programs, including medication-assisted treatment. In the wake of the opioid crisis, this is important treatment for those suffering from opioid addiction.
    - Offenders are initially screened to assess for potential benefits of Medication Assisted Treatment (MAT) program enrollment. Once identified, offenders undergo additional medical and psychological screening, and if they volunteer to participate, are provided an individualized treatment plan. As of February 6, 2020, every inmate within 15 months of release who might qualify for MAT had been screened.
    - BOP's MAT expansion efforts are ongoing, with goals to establish the internal infrastructure for all MAT-related services and medications, including obtaining approval from the U.S. Department of Health and Human Services (HHS) and the Drug Enforcement Administration (DEA) to allow BOP pharmacist practitioners to prescribe buprenorphine.
    - BOP's MAT framework also involves staff training in all divisions, the development of clinical guidance for treatment standardization, and monitoring, tracking, and reporting of MAT services.
- Re-Entry
  - On April 6, 2020, DOJ's Office of Justice Programs announced nearly \$70 million in grants to support successful reentry. The announcement listed 11 funding opportunities, including programs for both youth and adults, as well as efforts targeted to individuals with substance use disorders.
  - The Department announced our "Ready to Work" initiative, through which the BOP seeks to connect employers directly to inmates seeking employment to improve reentry outcomes. The Ready to Work initiative aims to enable every offender reentering his or her community an opportunity to secure employment.
  - BOP has issued policy guidance regarding release preparation and assisting inmates with obtaining identification.
  - In response to the FSA requirement to expand the use of outside resources, BOP added over 1,700 volunteers.

- BOP has 21 pilot dog programs operating under Sec. 608 of the Act.
- BOP has developed a youth mentoring program in accordance with the Act.
- BOP has issued policy guidance to enable its employees to carry and store personal weapons under 18 U.S.C. § 4050.
- BOP has issued guidance to field sites advising of changes in the law with regard to placing offenders within 500 driving miles of their release residence, as well as processing nearer release transfers, where appropriate.
- BOP has developed procedures implementing the dyslexia screening requirement, which will enable BOP to identify those offenders within the BOP inmate population who have this learning disorder.
  - BOP has also developed specific tracking codes for dyslexia to ensure that required reporting can occur.
- BOP has issued an updated advisory memo and distributed training for federal prison facilities housing female inmates regarding the Act's requirements prohibiting the use of restraints on pregnant inmates absent extreme circumstances (Note: BOP policy has prohibited the use of restraints on pregnant prisoners absent extreme circumstances since August 2014).
- The U.S. Marshals Service (USMS) has issued updated procedures and forms for USMS and its contracted private detention facilities regarding the Act's requirements prohibiting the use of restraints on pregnant inmates absent extreme circumstances.
- BOP has issued guidance to Wardens as to how to enter into partnerships with nonprofits and other private organizations (including faith-based, art, and community-based organizations); institutions of higher education; private vocational training entities; and industry-sponsored organizations. These partnerships will enable BOP to expand the opportunities for evidence-based recidivism reduction programs and productive activities.
- BOP has issued guidance to field sites regarding entering into partnership agreements with outside organizations to offer evidence-based recidivism reducing programs.
- BOP has engaged an independent, experienced research organization to assist in reviewing external programs for evidence demonstrating effectiveness in reducing recidivism. Additional details have been posted on BOP's website at the following links:
  - [https://www.bop.gov/inmates/fsa/docs/evidence\\_based\\_recidivism\\_reduction\\_programs.pdf](https://www.bop.gov/inmates/fsa/docs/evidence_based_recidivism_reduction_programs.pdf)
  - [https://www.bop.gov/inmates/fsa/docs/faqs\\_on\\_ebrp\\_expanded.pdf](https://www.bop.gov/inmates/fsa/docs/faqs_on_ebrp_expanded.pdf)

- BOP policies and contracts provide sanitary products and ensure they are available and accessible to female offenders in compliance with the Act.
- BOP and USMS policies comply with the Act’s requirements that prohibit certain room confinement for juvenile offenders. (BOP does not house juveniles in its facilities.)
- BOP offers specialized and comprehensive de-escalation training to its employees and officers in accordance with Sec. 606 of the Act (including mental health awareness training regarding inmates with psychiatric disorders), and more than 31,000 BOP employees have already received the updated training.
- BOP’s Federal Prison Industries (FPI) has begun work to expand markets under the Act.

## Recidivism Data

- Tracking the recidivism of individuals released from prison as a result of the FSA is a critical part of measuring the success of evidence-based recidivism reduction programs and of validating the risk assessment tool, PATTERN. As discussed previously, “recidivism” is defined as a return to BOP custody or a re-arrest within three years of release from BOP custody. It includes DUI and DWI, but excludes other traffic offenses.
- The data below is cumulative through March 31, 2020. On average, the 4,150 individuals in this data set were released from BOP custody within the last 8.6 months.
- Due to the relatively short time period from an inmate’s release (only 8.6 months on average), no final conclusions can or should be drawn from this data about the overall recidivism rate of those released early due to the FSA.

	<b>Fair Sentencing Act Reduction (1,891 Released)</b>	<b>Compassionate Release (165 Released)</b>	<b>Increase in Good Conduct Time (2,150 Released)</b>	<b>All Groups Combined (4,150 Released)</b>
<b>Arrested</b>	198 (10.5%)	1 (0.6%)	325 (15.1%)	520 (12.5%)
<b>Returned to BOP</b>	24 (1.3%)	0 (0%)	57 (2.7%)	81 (2.0%)
<b>Returned to BOP for Revocation</b>	23 (1.2%)	0 (0%)	53 (2.5%)	76 (1.8%)
<b>Returned to BOP w/ New Conviction</b>	1 (0.1%)	0 (0%)	5 (0.2%)	6 (0.1%)
<b>Recidivism for Violent or Sex Offense</b>	64 (3.4%)	0 (0%)	79 (3.7%)	141 (3.4%)



<b>All Recidivism</b>	199 (10.5%)	1 (0.6%)	332 (15.4%)	528 (12.7%)
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- Of the 528 who recidivated, 182 were arrested for one or more violent offenses, including: homicides (7); sexual assaults (25); robberies (14); domestic violence and other assaults (97); weapons offenses (51); and other violent offenses (12).
- One inmate received court-ordered Compassionate Release in July 2019, while serving a sentence for conspiracy to distribute methamphetamine and possession of a firearm in furtherance of a drug trafficking crime. She was arrested approximately seven months later for identity theft.
- 180 of the 528 recidivists participated in UNICOR and 36 completed RDAP.
- 19 of the recidivists were “non-violent,” white-collar offenders, previously convicted of fraud, embezzlement, or bribery.

## Publications Developed in Response to the FSA

Additional information about the Department’s diligent and robust implementation of the FSA can be found in the below reports and publications.

- Data Collected Under The First Step Act, 2019.
- The First Step Act of 2018 Risk and Needs Assessment System – January 2020 Update.
- The First Step Act of 2018 Risk and Needs Assessment System.
- Stakeholder Statements Submitted to NIJ’s September Listening Sessions.
- Key Components of the Federal Bureau of Prison's Current Needs Assessment System.
- Evidence-based Recidivism Reduction (EBRR) Programs and Productive Activities (PA)
- Stakeholder Statements Submitted in Response to NIJ’s First Step Act Listening Sessions.
- The Development of Metrics to Assess Outcomes for the Second Chance Act Grant Program: A Response to Title V of the Second Chance Reauthorization Act of 2018.
- First Step Act: Best Practices for Academic and Vocational Education for Offenders.