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**The Report of the Attorney General Pursuant to
Section 16(b)(i) of Executive Order 14074:**

**Department of Justice Efforts to Ensure that
Restrictive Housing in Federal Detention Facilities is
Used Rarely, Applied Fairly, and Subject to
Reasonable Constraints, and to Implement Other
Legal Requirements and Policy Recommendations**



Department of Justice Efforts to Ensure That Restrictive Housing in Federal Detention Facilities is Used Rarely, Applied Fairly, and Subject to Reasonable Constraints, and to Implement Other Legal Requirements and Policy Recommendations

I. Executive Summary

This report responds to Section 16(b)(i) of Executive Order 14074, which calls for the Attorney General to publish a report on the steps the Department of Justice (Department or DOJ) has taken (1) to ensure that restrictive housing in Federal detention facilities is used rarely, applied fairly, and subject to reasonable constraints; (2) to ensure that individuals in DOJ custody are housed in the least restrictive setting necessary for their safety and the safety of staff, other prisoners and detainees, and the public; (3) to ensure the Department's full implementation of DOJ's 2016 Report and Recommendations Concerning the Use of Restrictive Housing (2016 DOJ Report) and the Prison Rape Elimination Act of 2003 (PREA); and (4) to house prisoners as close to their families as practicable.

The Department's Bureau of Prisons (Bureau or BOP) has long had policies and procedures that require restrictive housing in Federal detention facilities be used only as necessary and appropriate. For example, BOP policies and procedures make clear that an individual may be placed in restrictive housing only following prescribed and impartial investigation and adjudication processes, and that incarcerated individuals must be given the opportunity to challenge a restrictive housing placement. BOP policies and procedures also limit the circumstances in which restrictive housing can be imposed on an individual and cabin the length of time an individual can be placed in restrictive housing for any particular disciplinary violation.

In 2016, the Department issued a report recommending regulatory and policy changes in the use of restrictive housing in Federal detention facilities.¹ Following the report, BOP updated affected policy and took other substantive measures to reduce its use of restrictive housing. Most notably, BOP updated its Special Housing Units (SHU) policy to discourage the use of restrictive housing. BOP also decreased the length of certain restrictive housing placements and implemented policy goals aimed at ensuring individuals are not released directly from restrictive housing to the community. Additionally, BOP developed a number of alternatives to restrictive housing, including Reintegration Units and Secure Mental Health Units. Finally, BOP is promulgating regulations amending the Inmate Disciplinary Program to significantly reduce the use and length of restrictive housing placements as punishment for disciplinary violations.

Because of these and other initiatives, BOP has successfully reduced its use of certain types of restrictive housing, including in the Special Management Unit and United States Penitentiary Administrative Maximum facilities. Notwithstanding those reductions, BOP's SHU restrictive housing placements have increased since 2016. BOP leadership has been, and continues to be, concerned about the increased SHU population. It is actively investigating causes for the increase to determine the most effective ways to reduce that population.

¹ U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing, (Jan. 2016), <https://www.justice.gov/archives/dag/file/815551/download>.

The BOP and the Department are committed to further addressing and reducing the use of restrictive housing. The BOP has recently begun work with the National Institute of Justice on a study to review and provide recommendations regarding the BOP's use of restrictive housing. In addition, the BOP recently assembled a task force of senior BOP officials to conduct a nearer-term assessment and provide more immediate recommendations for steps the BOP may take regarding restrictive housing.

As also required by Section 16(b)(i) of Executive Order 14074, this report describes various steps the Department has taken to implement PREA. Most notably, BOP implemented its PREA policy and national standards in 2012, months after the Department passed the final rule on PREA Standards. BOP educates its inmate population and trains staff regarding PREA and complies with all PREA auditing requirements. Nonetheless, the Department and BOP recognize that deeply troubling instances of sexual abuse of individuals in its custody have occurred. The Department is committed to rooting out and preventing sexual abuse of all kinds in BOP facilities.

Finally, this report concludes by addressing the Department's efforts to house prisoners as close to their families as practicable. BOP has longstanding policy to try, to the extent practicable, to place individuals within 500 miles of their release residence. The First Step Act of 2018 changed the way BOP determined designations within 500 miles of release residence and, as a result, BOP updated internal policy to respond to statutory requirements.

II. Restrictive Housing in Federal Detention Facilities

a. BOP's Restrictive Housing Policies and Procedures

Consistent with the 2016 DOJ Report, this report defines the term "restrictive housing" to mean any type of detention that involves three basic elements: (1) removal from the general population, whether voluntary or involuntary; (2) placement in a locked room or cell, whether alone or with another individual; and (3) inability to leave the room or cell for the vast majority of the day, typically 22 hours or more.² Restrictive housing can take many forms, but there are two basic restrictive housing statuses in BOP facilities: (1) disciplinary segregation and (2) administrative segregation.

Disciplinary Segregation. Disciplinary segregation is a punitive housing status imposed as a sanction for violating a disciplinary rule.³ The incarcerated individual is typically placed on disciplinary segregation status for a determinate term—akin to a prison sentence in a criminal proceeding—and then either released back to the general population or transferred to another facility. Not all disciplinary violations can be punished using disciplinary segregation, and disciplinary segregation is just one of various types of punishment typically available in the prison disciplinary system.⁴⁵ An individual can only be placed in disciplinary segregation

² 2016 DOJ Report at 3.

³ 28 C.F.R. § 541.22(b).

⁴ BOP program statements are documents that present official BOP policy for the various areas that they cover. All referenced policy is available on BOP's public website at www.bop.gov.

⁵ See Program Statement 5270.09: Inmate Discipline Program, § 1 (2011).

following a hearing, at which the individual is entitled to present evidence and call witnesses. A Discipline Hearing Officer (DHO), who operates outside traditional reporting lines within the institution, serves as the impartial adjudicator of an individual's disciplinary hearing.⁶ For each severity level, BOP policies dictate the maximum term an individual may be placed in restrictive housing, both for a first offense and for second or subsequent offenses, although DHOs may exercise their discretion and sentence an individual to a shorter, determinate term of segregation or, when appropriate, no segregation at all. If an individual commits additional disciplinary violations while in restrictive housing, he or she could be subject to further disciplinary sanctions, following the same process described above.⁷ Although BOP regulations impose maximum penalties for individual disciplinary violations, there is currently no limit on the cumulative amount of time an individual can spend in disciplinary segregation. As elaborated below, BOP is in the process of amending its Inmate Disciplinary Program regulations to further cabin the use and length of disciplinary segregation placements.

Administrative Segregation. An individual may also be subject to restrictive housing for certain non-punitive reasons. Specifically, BOP regulations allow an individual to be placed on administrative segregation status when (1) his or her presence in the general population “poses a threat to life, property, self, staff, other incarcerated individual, the public, or to the security or orderly running of the institution,” and (2) one of the following conditions applies:

- Investigative Segregation—the inmate is under investigation for violating a BOP regulation or criminal law;
- Protective Segregation—the individual requested, or BOP staff determined the individual needs, protection;
- Preventative Segregation—the individual is ending confinement in disciplinary segregation status, and his or her return to the general population would threaten the safety, security, and orderly operation of the correctional facility or public safety; or
- Transitional Segregation—the individual is pending transfer to another institution or location.⁸

In addition, an individual may be placed in administrative segregation pending classification after arriving at a new facility, or if held in “holdover status” during transfer to a designated institution.⁹ An individual is typically placed in administrative segregation for an indeterminate term, which lasts until prison officials determine that the applicable conditions no longer apply. As with disciplinary segregation, BOP regulations establish

⁶ See 28 C.F.R. § 541.8, *generally*.

⁷ See C.F.R. § 541.3, Tables 1 & 2, *generally*.

⁸ 28 C.F.R. § 541.23(c).

⁹ *Id.* §§ 541.23(a)-(b).

processes for investigating and adjudicating the need for administrative segregation.¹⁰ For example, consistent with the 2016 DOJ Report, BOP now has a particularized policy in place regarding the placement of individuals in investigative segregation. Among other things, that policy demands that routine investigations be completed promptly, to avoid unnecessarily extending an individual's time in investigative segregation.¹¹

For all types of restrictive housing, BOP regulations require that an individual receive notice of his or her placement in restrictive housing, and all incarcerated individuals in restrictive housing may submit formal grievances challenging their placement through the BOP's Administrative Remedy Program.¹² BOP regulations also demand that BOP staff regularly review an individual's restrictive housing placement to determine whether continued segregation is necessary. The review frequency varies by type of segregation, but in most cases, a Segregation Review Official must review the records supporting the individual's restrictive housing placement within three workdays of the placement; hold a hearing within seven calendar days of the placement; and review the individual's status at a hearing after every 30 calendar days of continuous placement.¹³ BOP regulations also require a psychological evaluation of each individual held in restrictive housing every 30 days.¹⁴ In addition, all BOP facilities conduct restrictive housing weekly reviews, during which the warden and an interdisciplinary team of prison officials, including psychological staff, review all incarcerated individuals currently held in restrictive housing. During the meeting, each individual is reviewed individually to ensure all staff are aware of the individual's status, proposed plan of action, recommendation for transfer or reintegration into the general population, discipline status, and physical and mental health.¹⁵

BOP oversees 135 institutions, and the vast majority of those institutions include space dedicated for restrictive housing. Most BOP inmates placed in segregation are housed in Special Housing Units (SHU) in their home institution. BOP also operates two additional restrictive housing programs: (1) the Special Management Unit (SMU), a three-phase unit at United States Penitentiary (USP) Thomson for individuals with heightened security concerns, and (2) the USP Administrative Maximum (ADX), in Florence, Colorado, for individuals who require the tightest controls and supervision because of the nature of their offense or their behavior while in prison.

Special Management Units. An SMU is a unit with three-stages of confinement for individuals who present unique security and management concerns.¹⁶ BOP created the SMU program in 2009, in response to a series of violent incidents within the federal prison system, including a staff homicide and a number of inmate homicides and serious assaults. As violence increased, so too did disciplinary violations, and eventually the number of individuals requiring punitive

¹⁰ See 28 C.F.R. §§ 541.26, 541.27, 541.28.

¹¹ Program Statement 5270.11: Special Housing Unit § 5 (2016); see 2016 DOJ Report at 108.

¹² 28 C.F.R. §§ 541.25; 541.26(d).

¹³ *Id.* § 541.26.

¹⁴ *Id.* § 541.32(b).

¹⁵ Program Statement 5270.11: Special Housing Unit § 7 (2016).

¹⁶ Program Statement 5217.02: Special Management Units § 1 (2016).

segregation outpaced the capacity of the Bureau's SHUs. When the 2016 DOJ Report was published, there were 1,235 individuals in SMUs in various institutions. As a result of BOP's efforts to limit the use of SMUs, today BOP has only one SMU (at USP Thomson), with only 558 individuals. Consistent with the 2016 DOJ Report's recommendations, BOP policy now holds that an inmate may only be referred to an SMU if he has at least two years left on his or sentence.¹⁷ To refer an individual to a SMU, a warden must submit a comprehensive referral packet, including all documents recording the individual's misconduct, to the relevant Regional Director. If the Regional Director determines the referral warrants further review, an impartial Hearing Administrator is appointed to conduct a hearing. Incarcerated individuals receive notice of the SMU hearing, including the reasons for their referral, and a staff member is made available to assist the individual with gathering documents and written statements. Individuals may appear at the hearing, make an oral statement, and present documentary evidence. The Hearing Administrator determines if the individual meets the SMU referral criteria and prepares a detailed report of his or her findings for the Regional Director. Additional information, such as a review of the individual's mental health history, is also provided. If the Regional Director determines an SMU referral is appropriate, the Regional Director will make a recommendation to BOP's Designation and Sentence Computation Center for an SMU designation. At this stage in the referral process, the Psychology Services Branch, Central Office, reviews every incarcerated individual and precludes any with serious mental illness from SMU placement. Individuals are provided a copy of the Hearing Administrator's report and advised of the opportunity to appeal the SMU designation via an expedited appeal process directly to the Bureau's Office of General Counsel.¹⁸ Once selected for SMU, an individual is transferred from his home institution to USP Thomson to begin SMU's three-phases of confinement, which, consistent with the 2016 DOJ Report's recommendations, typically last nine to 13 month, and a maximum of 24 consecutive months, in total.¹⁹

USP Administrative Maximum. Experienced correctional administrators have long recognized that a small group of extremely violent and influential incarcerated individuals can have a disproportionately negative effect on the safe and orderly operation of an institution. The mission of the USP Administrative Maximum (ADX) responds to this concern. ADX is designed to safely house the Bureau's most violent, predatory, disruptive, and escape-prone individuals in an environment providing each with an opportunity to demonstrate improved behavior, and the ability and motivation to eventually reintegrate into an open population at a different facility. The mission of ADX also allows the Bureau's other penitentiaries to operate safely and openly, permitting the significant percentage of the Bureau's population who want to serve their sentences without difficulty to do so safely. ADX houses just over 335 male individuals, constituting less than a quarter of one percent of BOP's total population. This number has stayed relatively stable despite the overall population increasing significantly since ADX opened in 1994. Through regular, careful case reviews, the Bureau ensures that ADX is used for only those individuals who need the security and controls available there. Incarcerated individuals are afforded multi-level reviews prior to their placement at ADX. BOP's current policy sets out a

¹⁷ *Id.* at § 2.

¹⁸ *Id.* at § 3.

¹⁹ *Id.* at § 6; 2016 DOJ Report at 111.

multi-step process, which includes a formal hearing, full clinical psychological evaluation (which is reviewed by the Bureau's Central Office), and medical review, for determining whether an individual is appropriate for placement at ADX.²⁰ Most ADX individuals are placed into the facility's general population and participate in its Step-Down Program. As an individual in this program demonstrates periods of clear conduct and positive institution adjustment, it is possible for the individual to progress from the general population units, through the intermediate, transitional, and pre-transfer units, with increasing degrees of personal freedom and privileges at each stage, and be transferred out of the program to another, open population institution. An individual's eligibility for advancement in the program is reviewed, at a minimum, every six months. His continued placement is then closely scrutinized on a regular basis to ensure only those individuals who require the security and controls of the institution are housed at ADX.²¹ BOP also recently developed the ADX Release Preparation Program Unit, which seeks to prepare ADX individuals, if and when appropriate, to transition to less secure housing, a Residential Reentry Center, or their communities upon release; the Unit seeks to do so through, for example, privilege incentive programming.²²

b. BOP's Efforts to Limit the Use and Length of Restrictive Housing Placements, Including Through Implementation of the 2016 DOJ Report

BOP has long had numerous policies and procedures meant to ensure that restrictive housing in Federal detention facilities is used only as necessary and appropriate. For example, as explained above, it is well established that an individual may be placed in restrictive housing only following prescribed and impartial investigation and adjudication processes, and that individuals must be given the opportunity to challenge a restrictive housing placement. BOP policies and procedures also limit the circumstances in which restrictive housing can be imposed on an individual and cabin the length of time an individual can be placed in restrictive housing for any particular disciplinary violation.

In recent years, BOP also has taken various steps to improve its restrictive housing policies and procedures, including by working to adopt and implement the recommendations set forth in the 2016 DOJ Report, aimed at decreasing BOP's restrictive housing population. As previously mentioned, the initiatives undertaken by the Department and BOP have resulted in the successful reduction of certain types of restrictive housing, including in the Special Management Unit and United States Penitentiary Administrative Maximum facilities. Specifically, BOP's Special Management Unit population has decreased 69% since DOJ's 2016 Report (from 1,260 on 12/5/2015 to 392 on 1/25/2023), and BOP's ADX population has decreased by 20% since the report (from 403 on 12/5/2015 to 323 on 1/25/2023). BOP has also taken numerous steps to reduce its use of Special Housing Unit (SHU) placements. Despite those efforts, however, SHU restrictive housing placements have increased by 29% since the 2016 DOJ Report (from 8,251 on 12/5/2015 to 10,635 on 1/25/2023). Preliminarily, it appears that the increase is likely due, in

²⁰ Program Statement 5100.08: Inmate Security Designation and Custody Classification, § 21 (2006).

²¹ Institutional Supplement FLM 5321.08(1)A, General Population and Step-Down Unit Operations (Aug. 2021).

²² Institutional Supplement FLM 5321.08(5)A, Release Preparation Program Unit Operations (June 2022).

part, to COVID mitigation measures that slowed the movement of all incarcerated individuals, which had a corresponding impact on the number of individuals in SHU waiting transfer to their designated facility. BOP believes that, once substantive regulatory changes to the Inmate Disciplinary Program mentioned above are finalized and implemented, it will be able to successfully reduce its SHU population. BOP continues to work diligently to promulgate those regulations and, more broadly, to review and improve its restrictive housing policies and procedures and thereby ensure that restrictive housing in Federal detention facilities is used only as necessary and appropriate.

Consistent with the 2016 DOJ Report's recommendations,²³ BOP recently updated its restrictive housing policies and procedures to expressly require that individuals be "housed in the least restrictive setting necessary to ensure their own safety, as well as the safety of staff, other incarcerated individuals, and the public."²⁴ BOP also revised its policies and procedures to mandate that the "specific reason[s]" for an individual's placement in restrictive housing "must be supported by objective evidence and clearly articulated" in writing,²⁵ and that an individual's placement in restrictive housing "always serve a specific penological purpose."²⁶ And BOP policies and procedures now strive to avoid releasing an individual directly from restrictive housing to the community and, where that is unavoidable, to ensure that the individual receives targeted reentry programming to prepare for his or her return home.²⁷

In addition, BOP policies and procedures require that an individual's initial and ongoing placement in restrictive housing be regularly reviewed by a multidisciplinary staff committee, including not only the leadership of the institution where the individual is housed, but also medical and mental health professionals.²⁸ BOP has also implemented the 2016 DOJ Report's recommendation requiring that correctional staff develop a clear plan for returning each individual in restrictive housing to less restrictive conditions as promptly as possible, and that they share that plan with the individual unless doing so would jeopardize the safety of the individual, staff, other incarcerated individuals, or the public.²⁹ And BOP has adopted the 2016 DOJ Report's proposals for improving BOP's regular training for correctional staff on restrictive housing policies.³⁰

Moreover, BOP has established standing committees, consisting of high-level correctional officials, to regularly evaluate BOP's restrictive housing policies and develop safe and effective alternatives to restrictive housing.³¹ Those committees have been hard at work, and their efforts remain ongoing. BOP has recently taken steps to implement task force recommendations aimed at reducing restrictive housing populations and reducing the practice of assigning only one

²³ 2016 DOJ Report at 105.

²⁴ Program Statement 5270.11: Special Housing Unit § 1(a) (2016).

²⁵ *Id.* § 6; *see* 2016 DOJ Report at 105.

²⁶ Program Statement 5270.11: Special Housing Unit § 1 (2016); *see* 2016 DOJ Report at 106.

²⁷ Program Statement 5270.11: Special Housing Unit § 14 (2016); *see* 2016 DOJ Report at 106.

²⁸ Program Statement 5270.11: Special Housing Unit § 7 (2016); *see* 2016 DOJ Report at 106.

²⁹ Program Statement 5270.11: Special Housing Unit § 14 (2016); *see* 2016 DOJ Report at 106.

³⁰ Program Statement 5270.11: Special Housing Unit § 15(1)-(2) (2016); *see* 2016 DOJ Report at 106.

³¹ *See* 2016 DOJ Report at 95.

individual to a cell (referred to as “single celling”). Some of those steps include improving the quality of employee training, including de-escalation and transgender training, for all staff, and prioritizing secure housing policies.

The 2016 DOJ Report further recommended that BOP eliminate restrictive housing as an available sanction for various low-level prohibited acts, reduce the maximum time an individual can be placed in segregation as a sanction for violating other disciplinary rules, and DHOs impose a sanction of disciplinary segregation only after concluding that the other available sanctions are insufficient to serve the purposes of punishment.³² BOP policies and procedures already empower BOP officials to release individuals from disciplinary segregation if they determine that a restrictive housing placement no longer serves a specific penological purpose.³³ The other recommended changes to BOP’s Inmate Disciplinary Program, however, can only be made via formal regulatory amendment. BOP began the amendment process shortly after the 2016 DOJ Report was issued. That process was halted for a time in light of Executive Order 13771, *Reducing Regulation and Controlling Regulatory Costs* (Jan. 30, 2017), which required that executive agencies withdraw pending regulations. But, since that Executive Order’s rescission in 2021, BOP has again been diligently working to promulgate the suggested regulatory amendments.

All told, BOP has adopted essentially all of the 2016 DOJ Report’s recommendations, and BOP is working diligently to implement the Report’s remaining suggestions in a timely fashion and consistent with regulatory requirements. The Department believes that the policy recommendations proposed in the 2016 DOJ Report, when fully adopted, will result in substantial additional reductions in BOP’s restrictive housing population overall.

Highlighting the importance of this issue, BOP recently initiated additional efforts to address and reduce the use of restrictive housing. The BOP is working with the DOJ’s National Institute of Justice to identify and hire an outside entity to conduct a study and provide recommendations regarding the BOP’s use of restrictive housing. The evaluation will include data analyses, site visits, staff interviews, and policy examination. In close coordination with the BOP, the reviewers will use these four information sources to develop long- and short-term recommendations to reduce the use of restrictive housing in BOP.

In addition to the outside entity study, the BOP has also recently assembled a task force made up of senior BOP officials. This task force will conduct a nearer-term assessment and provide recommendations for steps the BOP may take regarding restrictive housing by identifying appropriate and effective modalities and practices to help guide the agency restrictive housing practices

BOP’s most relevant policies, procedures, and ongoing regulatory efforts are described below.

³² 2016 DOJ Report at 109.

³³ Program Statement 5270.11: Special Housing Unit § 541.33 (2016).

Programming Designed to Prevent or Reduce the Need for Restrictive Housing Placements.

In recent years, BOP has intentionally expanded its use of mental health and other programming in an effort to minimize the need for restrictive housing placements *ex ante*. These programs broadly seek to promote rehabilitation and to prevent individuals from engaging in behaviors that necessitate placement in restrictive housing.³⁴ While some programs offer open enrollment to all individuals, others are intended for individuals who meet specific diagnostic criteria. For instance, BOP's Mental Health Step-Down Programs offer residential care for individuals with serious mental illness (typically a psychotic or mood disorder) who do not require inpatient treatment, but who lack the skills to function in a general population setting and have a history of serious violence.³⁵ The Step-Down Programs seek to provide evidence-based treatment to individuals with serious mental illness, maximize their ability to function, minimize relapse and the need for inpatient hospitalization, and support the individuals' ability to transfer to less restrictive environments, as appropriate.³⁶ Also illustrative are BOP's Steps Towards Awareness, Growth, and Emotional Strength (STAGES) Programs. These unit-based, residential programs offer an intermediate level of care to individuals with serious mental illness, typically borderline and/or antisocial personality disorder, and recent histories of violence, who do not require inpatient treatment, but who lack the skills to function in non-secure settings.³⁷

Alternatives to Restrictive Housing. BOP regularly seeks to use alternatives to restrictive housing where possible, as well. For instance, to limit long-term placement in protective custody, BOP staff will often transfer individuals out of the institution where the threat exists to the general population of another facility, rather than placing them in the institution's own restrictive housing. In recent years, BOP also has developed several alternative housing units for individuals who require protective custody. These specialized units allow BOP to divert protective custody individuals away from restrictive housing and into separate facilities where they can live safely and with fewer restrictions. For example, BOP currently operates Reintegration Units (RUs) at USP Atwater, USP Coleman, USP Lewisburg, FCI Oakdale, and USP Thomson that are designed to temporarily house protective custody individuals in residential units and to provide them certain targeted programming, with the goal of helping the individuals eventually reintegrate with the general population.³⁸ Additionally, for nearly a decade, BOP has utilized a gang disassociation process, through which gang members can formally disassociate from their gang and move into a general population unit with other individuals who have done the same. BOP's Intelligence and Counter Terrorism Branch undertakes a debriefing process to determine the sincerity of the disassociation, as well as the individual's security needs. The disassociation process has resulted in a decrease in the use of SHU to house individuals in administrative detention. With the help of these and other alternative housing programs, BOP has reduced the number of individuals in protective custody by half (from 921 to 465) since the 2016 DOJ Report was issued.

³⁴ See generally Program Statement 5330.11: Psychology Treatment Programs (2016).

³⁵ *Id.* at § 6.

³⁶ *Id.* at § 6.

³⁷ See *id.*, generally.

³⁸ See *id.*, generally.

Further, BOP has implemented enhanced mental health screenings to ensure that individuals with serious mental illness are diverted from restrictive housing, particularly SMU or ADX, wherever possible, and instead receive other intensive mental health treatment and programming. For instance, for individuals with a history of mental health issues referred for placement in an SMU, BOP's Psychology Services Branch reviews the individual's file pre-placement to ensure there are no factors precluding their placement in the program.³⁹ For ADX, a licensed, doctoral-level psychologist similarly conducts a comprehensive mental health evaluation of each individual, including a review of the prisoner's history of medical, mental health, substance abuse, psychosexual, and psychosocial issues. This evaluation, along with the full clinical record, is then submitted to the Psychology Services Branch for review and concurrence. BOP prohibits the placement of any Mental Health Care Level Three and Four individuals in SMU or ADX, except when the individual possesses such "extraordinary security needs" that they cannot be housed anywhere else.⁴⁰ (In such cases, BOP develops a mental health treatment plan commensurate with the individual's treatment needs for implementation in SMU or ADX.) Moreover, the Psychology Services Branch will preclude the placement of an individual in SMU or ADX if it appears that such placement would interfere with the individual's participation in necessary mental health treatments, if the individual's mental health disorder or cognitive limitations make it unlikely he or she would progress through the stages of SMU or ADX, or if documentation suggests SMU or ADX is "likely to exacerbate" an individual's mental health condition.⁴¹

Baseline Conditions of Confinement. BOP policies and procedures establish baseline conditions of confinement for all individuals held in restrictive housing. For example, all restrictive housing individuals—regardless of whether they are in disciplinary or administrative segregation and regardless of whether they are held in a SHU, SMU, or ADX—must have well-ventilated, adequately lighted, appropriately heated, and sanitary living quarters, and BOP regulations require that the individuals receive all appropriate medical care.⁴² They must receive a mattress, blankets, a pillow, and linens for sleeping, as well as opportunities to exchange those linens.⁴³ They must be given nutritionally adequate meals and access to a wash basin, toilet, and personal items necessary to maintain an acceptable level of personal hygiene.⁴⁴ They must receive the opportunity to exercise outside their individual quarters at least five hours per week, ordinarily on different days in one-hour periods.⁴⁵ They must receive a reasonable amount of non-legal reading material and be permitted to possess religious scriptures of their faith.⁴⁶ They must be permitted to conduct legal research, file lawsuits, and participate in legal visits and telephone calls under the same provisions as individuals in the general population.⁴⁷ They generally must have certain telephone, social visiting, and correspondence privileges.⁴⁸ And they typically have access to a

³⁹Program Statement 5310.16: Treatment and Care of Inmates With Mental Illness, § 8 (2014).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² 28 C.F.R. 541.32; Program Statement 5217.02: Special Management Units § 5 (2016).

⁴³ *Id.* 541.31(d); Program Statement 5217.02: Special Management Units § 5 (2016).

⁴⁴ *Id.* 541.31(f); Program Statement 5217.02: Special Management Units § 5 (2016).

⁴⁵ *Id.* 541.31(g); Program Statement 5217.02: Special Management Units § 5 (2016).

⁴⁶ *Id.* 541.31(h)(2); Program Statement 5217.02: Special Management Units § 5 (2016).

⁴⁷ *Id.* 541.31(i); Program Statement 5217.02: Special Management Units § 5 (2016).

⁴⁸ *Id.* 541.31(i-k); Program Statement 5217.02: Special Management Units § 5 (2016).

variety of programming activities, which can include cognitive behavioral interventions, literacy programs, adult continuing education, college correspondence classes, and parenting classes.⁴⁹

Mental Health Services in Restrictive Housing. Consistent with the 2016 DOJ Report’s recommendations, BOP has also implemented policy changes to ensure that all individuals in restrictive housing, in particular, receive mental health programming and comprehensive mental health evaluations commensurate with their needs. For instance, in 2017, BOP launched the Psychology Services Restrictive Housing Enhanced Mental Health Program to provide focused cognitive-behavioral programming in SHUs to create improved adjustment outcomes for individuals.⁵⁰ The program has four specific goals: (1) decrease the duration of SHU stays; (2) increase successful post-SHU adjustment; (3) increase voluntary program participation within SHUs and upon return to the general population; and (4) improve SHU climate and individual engagement, ultimately resulting in fewer disruptive behaviors in SHUs. The program seeks to do so by ensuring that restrictive housing psychologists carry a caseload of 12-24 individuals in SHU and delivering a combination of individual, group, and cell-side interventions to those individuals, among other things.

Particularized Rules for Individuals Who May Require Special Consideration. BOP recognizes that certain categories of incarcerated individuals—including those with serious mental illness, individuals with acute medical needs, young adults (those aged 18 to 24 at the time of conviction), pregnant and post-partum women, and juveniles (under 18 at the time of adjudication)—possess characteristics that may make them particularly susceptible to the effects of restrictive housing. BOP accordingly has specific policies and procedures in place for each of these categories of individuals so as to ensure that they are only placed in restrictive housing where necessary and appropriate in light of their particular circumstances and that, when they are so placed, they receive the additional care and programming required.

Individuals with Serious Mental Illness. Individuals with serious mental illness (SMI) and who are violent or disruptive pose a special challenge to BOP. Their behavior often requires removal from the general population, and yet traditional forms of restrictive housing (SHU, SMU, and ADX) present challenges to ensuring that an individual’s mental health does not deteriorate during restrictive housing placement. BOP has addressed these concerns with a three-pronged approach: (1) creating specialized secure mental health units, which allow BOP staff to divert SMI individuals from long-term segregation into less restrictive housing;⁵¹ (2) providing enhanced mental health services for individuals in SHU, SMU, and ADX, including screening and psychological programming;⁵² and (3) offering mental health care to all BOP individuals, which, as discussed above, more broadly helps prevent and reduce the disruptive behaviors that often result in segregation.⁵³

⁴⁹ *Id.* 541.31(n); Program Statement 5217.02: Special Management Units § 5 (2016).

⁵⁰ *See generally* Restrictive Housing Enhanced Mental Health Program (2017).

⁵¹ Program Statement 5330.11: Psychology Treatment Programs, § 6 (2016).

⁵² *Id.*

⁵³ *Id.*

BOP operates two types of secure mental health units: the Secure Steps Towards Awareness, Growth, and Emotional Strength (Secure STAGES) Program (for individuals with severe personality disorders) and the Secure Mental Health Step-Down Program (SMH-SDP) (for all other individuals with SMI).⁵⁴ Both are residential, unit-based programs for maximum- and high-security individuals designed to help them better manage the symptoms of mental illness, thereby decreasing the risk of violence and allowing individuals to transition back to general population (and, eventually, the community). The programs incorporate cognitive behavioral treatments, psychoeducational components, psychiatric care, and skills training. Both programs are led by doctoral-level psychologists, and staff-to-participant ratios are kept low to ensure effective treatment. Additional treatment staff include psychiatric care providers, psychologists, and treatment specialists. Placement decisions for both programs are made by BOP's Psychology Services Branch, in consultation with the sending and receiving institutions.

As the capacity of Secure STAGES and SMH-SDP has increased, BOP has diverted a large number of SMI individuals away from traditional restrictive housing, especially long-term SHU placements, as well as from SMU and ADX. And consistent with the 2016 DOJ Report,⁵⁵ BOP has approved the expansion of its specialized mental health unit programs, much of which is slated for completion in FYs 2023 and 2024. Specifically, the Secure Administration Unit and the Secure STAGES and Secure Skills programs will activate at the Federal Correctional Center in Allenwood Pennsylvania.

Incarcerated Individuals with Medical Needs. BOP likewise has policies and procedures in place to ensure that individuals placed in restrictive housing receive all necessary and appropriate medical care, whether they are suffering from acute medical conditions or have some level of chronic disease that requires ongoing medical attention.⁵⁶ All individuals in restrictive housing receive regular clinical evaluations, with the frequency of those evaluations depending on the individual's particular medical condition. Individuals with severe chronic medical needs are designated to one of BOP's Federal Medical Centers, and if their behavior necessitates a placement in SHU, their medical needs can be addressed in that facility's SHU setting. Generally, the medical needs of individuals who require only lower levels of care can be managed by their home institutions, even when they must be placed in restrictive housing.⁵⁷

Young-Adult Individuals. Younger incarcerated individuals who commit misconduct while in BOP custody are subject to the same array of sanctions and due process procedures as older incarcerated individuals. BOP recognizes, however, that young adults may still be developing, cognitively, emotionally, and otherwise, and accordingly has incorporated young-adult-specific programming services to try to prevent the misconduct that triggers a restrictive housing placement for younger individuals. For example, since 1998, BOP has operated the Rehabilitation and Values Enhancement (BRAVE) Program, a cognitive-behavioral, six-month residential psychology treatment program for young, medium-security individuals serving lengthy terms of

⁵⁴ See generally Program Statement 5330.11: Psychology Treatment Programs (2016).

⁵⁵ See 2016 DOJ Report at 113.

⁵⁶ 28 C.F.R. §§ 541.32; Program Statement 5217, Special Management Units, § 5 (2016).

⁵⁷ See Program Statement 6031.04, Patient Care, § 15 (2014).

incarceration.⁵⁸ The program is designed to support favorable institution adjustment, reduce misconduct, encourage the development of pro-social relationships, and direct individuals to meaningful self-improvement opportunities while incarcerated.⁵⁹

Juvenile Incarcerated Individuals. BOP policies and procedures mandate that juveniles (individuals who have not attained their 18th birthday) cannot be placed in a BOP facility unless the institution can ensure that the juvenile will not have regular contacts with adults.⁶⁰ As a result, juveniles are always housed in contract juvenile facilities, not in BOP-run institutions. Consistent with the 2016 DOJ Report's recommendation and the First Step Act, BOP prohibits facilities with which it contracts to house juveniles in restrictive housing, except in strictly limited circumstances related to imminent safety concerns.

III. The Department's Efforts to Comply with PREA

The Department has likewise worked diligently to fulfill its responsibilities under the Prison Rape Elimination Act of 2003 (P.L. 108-79). PREA was enacted to address sexual abuse in prisons and jails. PREA sets mandatory standards for the detection, prevention, and punishment of sexual abuse or rape in prisons. PREA also requires all correctional facilities, including BOP's, to collect and report detailed information regarding sexual victimization of individuals to the Bureau of Justice Statistics (BJS). On June 20, 2012, the Attorney General promulgated regulations implementing PREA.⁶¹ Those regulations adopt national standards for the detection, prevention, reduction, and punishment of prison rape. Pursuant to the regulations, DOJ is responsible for the implementation of the Standards, including compliance with the audit process in which facilities demonstrate compliance with the Standards to an independent auditor.

On August 20, 2012 (as updated June 4, 2015), BOP published an internal policy document implementing the Attorney General's PREA regulations.⁶² The policy emphasizes BOP's zero tolerance for sexual abuse or harassment of any type by staff or incarcerated individuals in BOP. The policy also seeks to prevent and detect sexually abusive behavior and to discipline and/or prosecute perpetrators.⁶³

BOP's National and Regional PREA Coordinators and institution PREA Compliance Managers oversee BOP's implementation of the law, regulations, and BOP policy.⁶⁴ BOP also provides annual training to all staff on PREA generally and to specialized staff on topics specific to their PREA responsibilities.⁶⁵ And BOP regularly collects and reports detailed data about sexual

⁵⁸ See Program Statement 5330.11, Psychology Treatment Programs, § 4 (2009).

⁵⁹ *Id.*

⁶⁰ Title 18 U.S.C. § 5039; Program Statement 5216.06, Juvenile Delinquents, § 3 (2019).

⁶¹ 28 C.F.R. 115 (2014).

⁶² Program Statement 5324.12: Sexually Abusive Behavior Prevention and Intervention Program (2015).

⁶³ *Id.* at § 1.

⁶⁴ 28 C.F.R. § 115.11(c).

⁶⁵ Program Statement 5324.12: Sexually Abusive Behavior Prevention and Intervention Program, § 115.31, (2015).

victimization of incarcerated individuals to BJS as required by PREA. BOP submitted its most recent PREA report to BJS, for calendar year 2021, on June 30, 2022.⁶⁶

Despite BOP's compliance with PREA standards, the Department and BOP recognize that deeply troubling instances of sexual abuse of individuals in its custody have occurred, even in institutions that passed PREA audits. This problem is systemic, and it is unacceptable. The Department is committed to rooting out and preventing sexual abuse of all kinds in BOP facilities.⁶⁷ The Deputy Attorney General recently directed a working group to conduct an expedited top-to-bottom review of the Department's response to staff sexual misconduct within BOP.⁶⁸ The Department has published the working group's recommendations, and the Deputy Attorney General issued a memorandum directing immediate actions in response. DOJ will continue to oversee BOP's implementation of those recommendations, which include, among other things, an anonymous reporting process for victims of sexual abuse in custody, a major restructure of BOP's Office of Internal Affairs to resolve staff investigations expeditiously, and a prioritization of prosecutions for employees that engage in this behavior. DOJ welcomes any changes to the PREA auditing process that may reform and improve PREA.⁶⁹

IV. The Department's Efforts to House Prisoners As Close to Their Families As Practicable

Finally, the Department has taken various steps to ensure that incarcerated individuals are housed as close to their families as practicable.

BOP recognizes that individuals benefit from maintaining ties with their families and communities during their terms of imprisonment, and incarcerating individuals close to home can help promote that connection. BOP has a longstanding policy to place individuals within 500 miles of their release residence, as available and appropriate.⁷⁰ BOP refers to these as "nearer release transfers." The First Step Act further refined this effort by requiring transfers, even if the individual is already within 500 miles of their release residence if another facility is closer and clarifying that the distance should be measured in *driving* miles. In September 2019, BOP updated its internal policy to adhere to the First Step Act 500 driving mile requirement.⁷¹

Today, the majority of BOP individuals are housed within 500 miles of their home residence,

⁶⁶ Federal Bureau of Prisons Annual PREA Report (CY 2021) (June 30, 2022), (https://www.bop.gov/inmates/custody_and_care/docs/prea_report_2021.pdf).

⁶⁷ Memorandum from the Deputy Attorney General to Heads of Affected Components: *Review of the Department's Approach to Instances of Sexual Misconduct by Federal Bureau of Prisons Employees* (July 14, 2022), <https://www.justice.gov/media/1233916/dl?inline=>

⁶⁸ *Id.*

⁶⁹ See *Report and Recommendations Concerning the Department of Justice's Response to Sexual Misconduct by Employees of the Federal Bureau of Prisons* (Nov. 2, 2022); <https://www.justice.gov/media/1257286/dl?inline=>

⁷⁰ See Program Statement 5100.08: Inmate Security and Custody Classification Manual (2006).

⁷¹ See Program Statement 5100.08: Inmate Security and Custody Classification Manual; see also www.bop.gov, Designations: https://www.bop.gov/inmates/custody_and_care/designations.jsp.

and the exceptions for reasons consistent with FSA exceptions. For instance, many individuals held more than 500 miles from home are so housed because a facility with a security level commensurate with their need is not available within 500 miles of their home residence. The Department and Bureau will continue to explore ways to maximize the proximity of incarcerated individuals to their families and communities.