

# FEDERAL BUREAU OF PRISONS



## U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines

KATHLEEN M. KENNEY  
ASSISTANT DIRECTOR/GENERAL COUNSEL

# Understanding the Role of the BOP



- BOP Overview
- Designation Process
- Drug Abuse Treatment Programs
- Sex Offender Treatment
- Compassionate Release/Reduction in Sentence
- Reentry & Community Corrections
- Clemency
- Retroactivity/Drug Reduction

# BOP Overview



- 1895 -USP Leavenworth, Kansas was the first federal prison built.
- 1930 – Federal Bureau of Prisons established to manage the 14 federal institutions then existing.
- 2015 – **122** Institutions
- Total BOP Staff: **39,789**

# BOP Inmate Population = 206,597



- Approximately 81% in BOP facilities, 19% in contract facilities.
- 93% male and 7% female.
- Average inmate age is 40.
- 49% of inmates were convicted of drug offenses.
- Average number of days in RRC is 146.

# Types of Facilities



- **Minimum** - Federal Prison Camps
- **Low** - Low security Federal Correctional Institutions (FCI)
- **Medium** - Medium security FCIs
- **High** - United States Penitentiaries

# Types of Facilities



- **Administrative Maximum** - ADX Florence
- **Administrative** –
  - Metropolitan Detention Centers,
  - Metropolitan Correctional Centers,
  - Federal Transfer Centers, and
  - Medical Referral Centers

# Inmates By Security Level



BOP facilities only:

- Minimum: 17%
- Low: 38%
- Medium: 29%
- High: 11%
- 3.5% of inmates have not been assigned a security level.

# Crowding



- Over the past decade, the inmate population has increased by an average of 4,700 inmates per year. It is worth noting that the growth has been slower the last two years and since the beginning of FY 2014 our population is down about 5,100 inmates.
- System-wide, the Bureau is operating at 23 percent over rated capacity and crowding is of special concern at higher security facilities, with 49 percent crowding at high security facilities and 32 percent at medium security facilities.



# DESIGNATION PROCESS



# DSCC Initial Designations



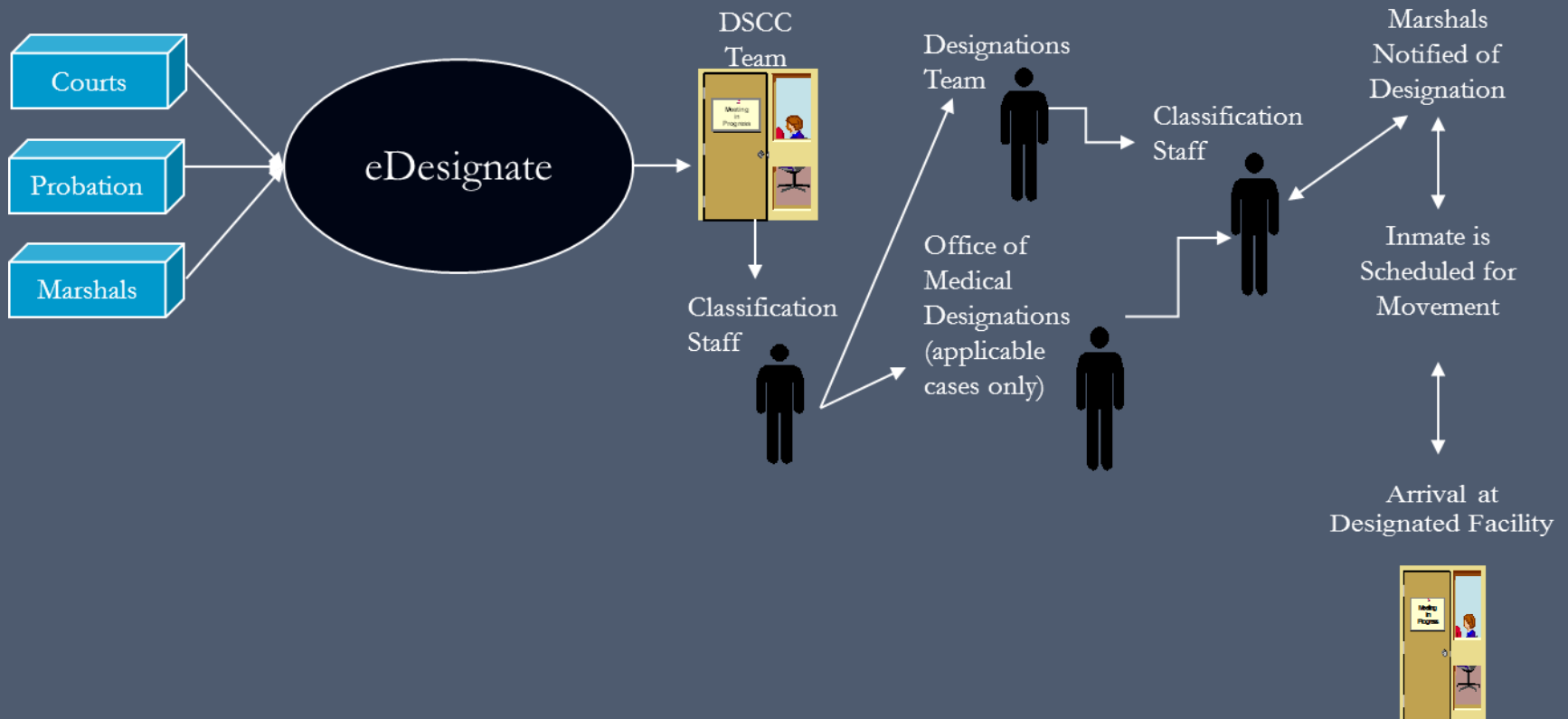
- 2007 – 70,057
  - 2008 - 62,290
  - 2009 - 75,694
  - 2010 - 78,037
  - 2011 - 89,366
  - 2012 - 80,511
  - 2013 - 79,176
  - 2014 - 73,454
  - 2015 - 40,201 (through June 2014)
- 648,786 Total

# Designation Process



- Program Statement 5100.08, *Inmate Security Designation and Custody Classification*, available at [www.bop.gov](http://www.bop.gov)
- Designation documents include:
  - Pre-Sentence Report (PSR)
  - Statement of Reasons (SOR)
  - Judgment in a Criminal Case (J&C)
  - US Marshals 129 (Custody Report)
- The US Court transmits the J&C to USMS
- USMS makes request for designation to responsible DSCC Team based on sentencing district (COJ)
- Current average time from request to designation is 7.8 days.

# Process from Sentencing to Designation



# Initial Designation Process



- eDesignate System is being used in all 94 Federal Judicial Districts and DC Superior Court.
- USPO loads J&C, PSR and SOR into eDesignate & sends to USMS.
- USMS sends request to responsible DSCC Team with USMS Form 129, J&C, PSR and SOR.

# Primary Factors



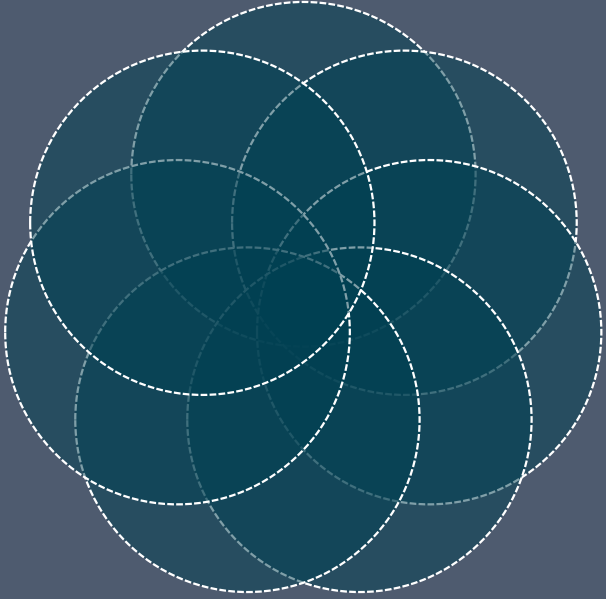
Severity of  
Current Offense

Detainer

Defendant's  
Age/Education

Drug/Alcohol  
Treatment Needs

Release Date



Judicial  
Recommendation

Criminal,  
Violence, and  
Escape History

# Judicial Recommendations



- The BOP is committed to following judicial recommendations when consistent with BOP policy and correctional judgment.
- Most common recommendations concern place of confinement and programming.
- Prefer recommendations in J&Cs based on reason (i.e. close to release residence, lowest security level facility) rather than recommending specific institution
- 74% of judicial recommendations regarding designations followed in calendar year 2015.

# Other Factors Considered



- Level of care (medical and mental health)
- Public safety factors
- Programming needs
- Release residence
- Bed space availability
- Parole eligibility
- Alien status
- Background of aggressive sexual behavior
- Central Inmate Monitoring
- Gang affiliation/ties to terrorist groups/activities



# Designation Process



- Upon designation, DSCC staff notifies USMS and designated facility via eDesignate of designation and packet is automatically forwarded to designated facility via eDesignate.
- Self-surrendering inmates are notified by the Probation Office, who receives via eDesignate the location for the inmate to report.

# Medical Care Levels



- Care Level 1 – Healthy/simple chronic care
- Care Level 2 – Stable, chronic care
- Care Level 3 – Unstable, complex chronic care
- Care Level 4 – Medical referral center care required



# Medical Centers (Care Level 4)



- FMC Butner, North Carolina
- FMC Carswell, Texas
- FMC Devens, Massachusetts
- FMC Lexington, Kentucky
- FMC Rochester, Minnesota
- MCFP Springfield, Missouri

# Designations Stats



- Disciplinary and Close Supervision Transfers
  - 2014 = 13,437
  - 2015 = 7,772 (through July 2015)
- Routine Transfers Processed
  - 2014 = 52,357
  - 2015 = 26,831 (through July 2015)

# Drug Abuse Treatment Programs



[http://www.bop.gov/inmates/custody\\_and\\_care/  
substance\\_abuse\\_treatment.jsp](http://www.bop.gov/inmates/custody_and_care/substance_abuse_treatment.jsp)

# Drug Abuse Treatment



- The BOP offers several drug abuse treatment programs.
  - Drug Abuse Education Course (offered at every facility);
  - the Non-Residential Drug Abuse Treatment Program; and
  - the Residential Drug Abuse Treatment Program (RDAP).

# Residential Drug Abuse Treatment Program



- The most intensive drug abuse program offered by the BOP.
- Eligible inmates who successfully complete the program may be granted up to 12 months early release. See 18 U.S.C. § 3621(e)(2)(B).
- 89 RDAPs are available in 77 institutions.
- Over 5,032 inmates are on the waiting list for RDAP participation.
- Generally, an inmate must be sentenced to a term of 27 months to complete all phases of the program.

# RDAP



- Admission based on proximity to release date.
- Participants are housed together to create a treatment community.
- 500-hour program (about a 9- to 12-month period).
- Components include a transitional drug program, when the inmate is returned to general population, and participation in community-based drug treatment, when the inmate is released to a Residential Reentry Center.



# RDAPs By Region



- Northeast Region: 11
- Mid-Atlantic: 14
- Southeast Region: 12
- North Central Region: 16
- South Central Region: 14
- Western Region: 9
- Contract Facility: 1 (Rivers, NC)

# RDAP Early Release



- Since June 1995, the BOP has awarded approximately **62,834** inmates a sentence reduction pursuant to 18 U.S.C. § 3621(e) upon successful completion of the RDAP.
- 2015 Average time off - **10.8 months**.

# RDAP Early Release Eligibility

## (28 C.F.R. § 550.55)



- Sentenced to a term of imprisonment under either:
  - 18 U.S.C. Chapter 227, Subchapter D for a nonviolent offense; or
  - D.C. Code § 24-403.01 for a nonviolent offense, meaning an offense other than those included within the definition of crime of violence in D.C. Code § 23-1331(4); and
- Successfully complete an RDAP, as described in § 550.53, during their current commitment.

# RDAP - Eligibility to Participate



- Drug program administered by BOP which can result in an early release – up to one year per 18 USC § 3621(e)(2)(B)
- Eligibility to participate:
  - Sufficient time remaining on sentence (ordinarily 24 months)
  - Documentation verifying abuse of drugs, incl. alcohol (can be found in PSR or medical records prior to incarceration)
  - Verification to establish a pattern of abuse or dependence
  - Inmate is able to complete all phases of the program, including community transition treatment
  - Inmates with disqualifying convictions but documented substance abuse disorders may still participate in the program, but will not receive an early release benefit

# Inmates Not Eligible for RDAP Early Release



- Immigration and Customs Enforcement detainees
- Pretrial inmates
- Contractual boarders (ex: State or military inmates)

# Inmates Not Eligible for RDAP Early Release



- Inmates who have a prior felony or misdemeanor conviction for:
  - Homicide (including deaths caused by recklessness, but not including deaths caused by negligence or justifiable homicide);
  - Forcible rape;
  - Robbery;
  - Aggravated assault;
  - Arson;
  - Kidnaping; or
  - An offense that by its nature or conduct involves sexual abuse offenses committed upon minors.

# Inmates Not Eligible for RDAP Early Release



- Inmates who have a current felony conviction for:
  - An offense that has as an element, the actual, attempted, or threatened use of physical force against the person or property of another;
  - An offense that involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device);
  - An offense that, by its nature or conduct, presents a serious potential risk of physical force against the person or property of another; or
  - An offense that, by its nature or conduct, involves sexual abuse offenses committed upon minors.

# Inmates Not Eligible for RDAP Early Release



- Inmates who have been convicted of an attempt, conspiracy, or other offense which involved an underlying offense listed in . . . this section; or
- Inmates who previously received an early release under 18 U.S.C. § 3621(e).



# Proposed Change to RDAP



- The BOP is proposing to revise RDAP to allow greater inmate participation in the program and positively impact recidivism rates. Specifically, the BOP proposes to:
  - Remove the regulatory requirement for RDAP written testing because it is more appropriate to assess an inmate's progress through clinical evaluation of behavior change (the written test is no longer used in practice)
  - Remove existing regulatory provisions which automatically expel inmates who have committed certain acts (e.g., abuse of drugs or alcohol, violence, attempted escape)
  - Limit the time frame for review of prior offenses for early release eligibility purposes to ten years before the date of federal imprisonment
  - Lessen restrictions relating to early release eligibility

# Sex Offender Treatment



NUMBER OF SEX OFFENDERS IN BOP –  
**21,523 (10.4% OF POPULATION)**

# Sex Offender Treatment



- Sex offender treatment is provided as a program component of the Sex Offender Management Program (SOMP). All SOMP institutions are required to offer sex offender treatment services.
- SOMP is correctional management.
  - Mandatory program assignment for inmates who have been assessed a Public Safety Factor of sex offender, and who require additional correctional supervision.
- SOMP locations:
  - FMC Carswell, FMC Devens, FCI Elkton, FCI Englewood, USP Marion, FCI Marianna, FCI Petersburg, FCI Seagoville, and USP Tucson.

# Sex Offender Treatment Programs



- Residential SOTP:
  - High intensity program designed for high risk sexual offenders (ordinarily, inmates with multiple sex offenses, or a history of contact sexual offenses).
  - Unit-based program with a cognitive behavioral emphasis. The co-housing of SOTP-R participants permits the implementation of a modified therapeutic community.
  - Offered at the FMC Devens and USP Marion.
  - Inmates need a minimum of 24-27 months remaining on their sentence to qualify for this program. The program is designed to be 12 to 18 months in duration.

# Sex Offender Treatment Programs



- **Non-residential SOTP:**
  - Moderate intensity program designed for low to moderate risk sexual offenders. Most of the inmates in the SOTP-NR are first-time offenders serving a sentence for an internet sex crime.
  - Shares the SOTP-R's treatment philosophy and program materials, but lacks the frequency of treatment groups and the program duration of the SOTP-R.
  - Participants reside in the general population, there is no modified therapeutic community.
  - All SOMP institutions offer the SOTP-NR.
  - The typical duration of the SOTP-NR is 9-12 months.

# Current Participation in SOTP



- Non-residential - 642
- Residential – 221
- Currently we are able to accommodate all inmates interested in participating in SOTP.

# Sex Offender Management Program



- 4 essential components:
  - assessment,
  - management,
  - treatment, and
  - release planning.
- Individual evaluations: a Correctional Management Plan (CMP) is developed for each inmate.
- CMPs impose restrictions on mail and telephone communication, visiting privileges, and personal property.

# SOMP



- Community release planning is a major part of the program. Prior to release from either the SOTP or the SOMP, staff prepare a comprehensive discharge packet for the USPO, with specific recommendations regarding expected intensity of community supervision and monitoring.

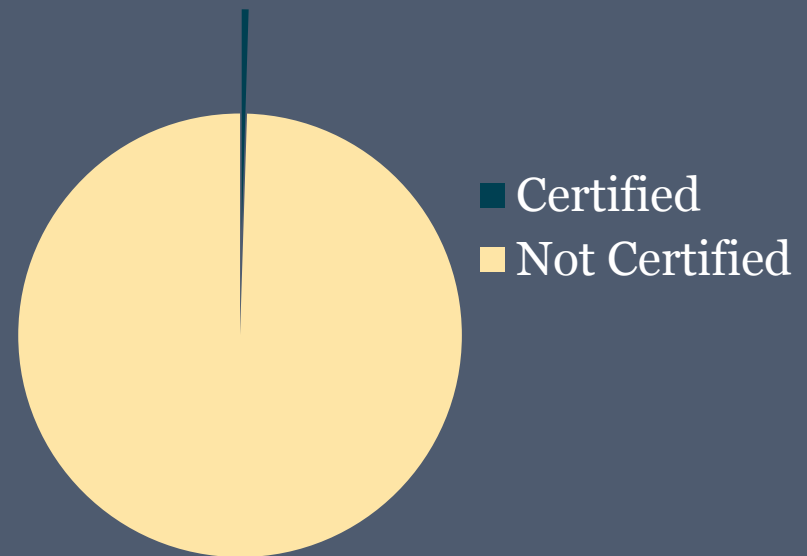


# 4248 Adam Walsh Act



## Inmates Reviewed as of August 23, 2015:

- **54,043** inmates have been referred for review for potential certification as sexually dangerous persons;
- **27,026** of those inmates were determined to have, or likely have, qualifying conduct (i.e., engaged or attempted to engage in sexually violent conduct or child molestation) and, therefore, require formal review.
- **163** inmates have been certified as sexually dangerous persons, which represents a certification rate of less than one percent (about 0.3%).
- **65** inmates have been committed as sexually dangerous persons.



# BOP Programs



- In the Bureau, reentry begins on the first day and continues throughout the inmate's term of incarceration.
- The Bureau is proud that presently 80% of offenders do not return to Bureau custody within three years of release.
- Our reentry model ensures that we provide effective, evidence based, cost-efficient treatment plans for inmates.

# Programs Con't.



- The Bureau of Prisons' Educational Programs, ranging from basic literacy to high school level classes to post-secondary occupational courses are effective in reducing recidivism.
- All institutions offer literacy classes (GED), English as a Second Language, parenting classes, recreation activities, wellness education, adult continuing education, and library services.
- In FY 2014, **6,598 GEDs** were earned, and **4,892 GEDs** were earned through July 2015.
- Occupational and vocational training programs are provided at institutions based on the needs of the inmates, general labor market conditions, and institution labor force needs.

# Programs Con't.



## *UNICOR*

- Federal Prison Industries (FPI). FPI, or UNICOR, provides job skills training and work experience to 12,121 inmates in 81 factories around the country as of July 31, 2015.

# Mental Health Services



- **Challenge**

- Penitentiary program with the mission of providing treatment for inmates with drug abuse and/or mental disorders. Consists of a core program and two specialized treatment tracks for drug abuse and mental illness. Program is a minimum of 9 months.
- Challenge is available at almost all high security institutions.

- **Resolve**

- Trauma treatment program that consists of two primary components: psycho-education workshop and nonresidential program for trauma-related disorders. Available at female institutions and FCI Danbury for male inmates.

# Mental Health Services Con't.



- **BRAVE (Bureau Rehabilitation and Values Enhancement )**
  - Intensive, cognitive-behavioral, residential rehabilitation program for medium security inmates. Inmates must be 32 years or younger, first time federal offender, and have a sentence of 60 months or more. Program is 6 months and available at FCI Beckley and FCI Victorville.
- **Step Down**
  - Treatment for inmates with chronic mental illness. Available at USP Atlanta and FCI Butner.
- **STAGES (Steps Toward Awareness, Growth, and Emotional Strength )**
  - Treatment for inmates with personality disorders, currently only available at FCI Terre Haute.
- **Skills**
  - Treatment for cognitively impaired offenders available at FCI Coleman and FCI Danbury.

# Compassionate Release/ Reduction in Sentence (RIS)



# RIS Consideration



## Eligible

- Old Law Inmates  
(18 U.S.C. § 4205(g))
- New Law Inmates  
(18 U.S.C. § 3582(c)(1)(A))
- D.C. Code Offenders  
(under D.C. Code)

## Not Eligible

- State Boarders
- Military prisoners have applicable military code provisions



# RIS Criteria: Medical



RIS requests may be granted to:

- inmates who have been diagnosed with a terminal, incurable disease whose life expectancy is eighteen (18) months or less.
- inmates who have an incurable, progressive illness or who have suffered a debilitating injury from which they will not recover. For inmates in this category, the Bureau will consider a compassionate release if the inmate is either completely disabled, meaning he or she cannot carry on any self-care and is totally confined to bed or chair, or is capable of only limited self-care and is confined to a bed or chair more than 50% of waking hours.

# RIS Criteria: Non-medical



RIS requests may be granted to:

- elderly inmates meeting certain criteria regarding age, and length of time served, and in some cases, medical impairments relating to age;
- inmates who have experienced circumstances in which there has been the death or incapacitation of the family member caregiver of an inmate's child; and
- inmates who have experienced circumstances in which the spouse or registered partner of an inmate has become incapacitated.

# Non-Exclusive Factors to Consider



- Nature & circumstance of offense.
- Criminal history.
- Victims.
- Detainers.
- Supervised release violations.
- Institutional adjustment/Disciplinary infractions.
- Personal history (PSR).
- Length of sentence & amount of time served (proximity to RRC/home confinement/release date).
- Current age, age at time of offense, and sentencing.
- Inmate's release plans (medical, financial, employment).
- Would release pose risk to community? Likelihood of reoffending?

# Numbers



- **29 RIS approvals for calendar year 2011.**
- **39 RIS approvals for calendar year 2012.**
- **61 RIS approvals for calendar year 2013.**
- **101 RIS approvals for calendar year 2014.**
- **58 RIS approvals from January 1, 2015, to August , 2015.**

# REENTRY & Community Confinement



- Residential Reentry Centers (RRC)
  - 18 U.S.C. § 3621(b): “Any order, recommendation, or request by a sentencing court that a convicted person serve a term of imprisonment in a community corrections facility shall have no binding effect on the authority of the Bureau under this section to determine or change the place of imprisonment of that person.”
  - 18 U.S.C. § 3624(c)(1): “The Director of the Bureau shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. Such conditions may include a community correctional facility.”
  - ***Approximately 178 RRCs and 180 intergovernmental agreements for work release centers.***
- Home Confinement (HC) - 18 U.S.C. § 3624(c)(2)
  - “The authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months.”
- As of July 2015, there are 10,533 inmates in RRCs (includes the work release inmates), and 4,135 inmates in home confinement.

# Clemency



- In May 2014, the inmate population was notified of the procedures for the Clemency Initiative, and they were provided with an electronic survey via TRULINCS. As September 1, 2015, inmates have submitted 40,417 electronic surveys.
  - The BOP will be providing the electronic survey responses to the outside groups assisting with this initiative on a periodic basis.
- A paper version of the survey has also been provided to inmates that do not have access to TRULINCS and to inmates in private facilities. Inmates may mail the survey to the outside groups at a P.O. Box set up for that purpose.
- To be eligible for consideration, inmates must:
  - Be currently serving a federal sentence in prison and, by operation of law, likely would have received a substantially lower sentence if convicted of the same offense(s) today;
  - Are non-violent, low-level offenders without significant ties to large-scale criminal organizations, gangs, or cartels;
  - Have served at least 10 years of their sentence;
  - Do not have a significant criminal history;
  - Have demonstrated good conduct in prison; and
  - Have no history of violence prior to or during their current term of imprisonment.

# Clemency Con't.



- Clemency Project 2014 is a working group composed of lawyers and advocates including the Federal Defenders, the American Civil Liberties Union, Families Against Mandatory Minimums, the American Bar Association, and the National Association of Criminal Defense Lawyers, who provide pro bono assistance to federal prisoners under the Clemency Initiative.
- The BOP is assisting Clemency Project 2014 counsel by providing them with the inmate's Progress Reports, Sentencing Information, Disciplinary Information, Education Information and Financial Information. Also, the BOP will provide Clemency Project 2014 counsel with the inmate's Pre-Sentence Reports and Statement of Reasons when authorized by the Sentencing Judge.

# Retroactivity/Drug Reduction





# Retroactivity/Drug Reduction



- In April 2014, the U.S. Sentencing Commission Conference (USSC) voted to amend the guidelines to lower base offense levels in the Drug Quantity Table by two levels.
- In July 2014, the USSC voted to allow delayed retroactive reduction in drug trafficking sentences.
- On October 30, 2015, inmates will begin to be released under these reductions.

# Impact of Retroactivity/Drug Reduction



- Approximately **30,000** inmates eligible for sentence reduction.
- On October 30, 2015, **4,324** inmates will be released from BOP custody.
  - Approximately **268** of these inmates are non-U.S. citizens who will release to ICE custody.

# Steps Taken By BOP



BOP has undertaken several steps to ensure resentenced offenders are released timely and have access to community-based placements to support their successful reentry:

- As with any amended sentence, when institution staff receive the information they begin the process for making a referral for community placement where appropriate (non-U.S. citizens and those with detainers typically are not eligible).
- All detainer information is reviewed to ensure releasing inmates are appropriately transferred to detaining authorities.
- Institution staff also ensure that required release notifications are made (sex offender, victim-witness, and VCCLEA) and DNA samples are collected from the inmates.
- Adam Walsh Civil Commitment Reviews are completed by the Correctional Programs Division (CPD), Sex Offender Certification Review Branch (SOCRB) prior to the release of the inmate.
- In anticipation of this initiative, SOCRB received a list of potentially eligible inmates and completed reviews all those requiring a commitment review.
- Additionally, SOCRB staff continues to monitor amended release dates to ensure any additional inmates requiring a commitment review receive one prior to release.

# RRC Impact



## Residential Reentry Centers (RRC)

- Staff are processing RRC referrals in a timely fashion. BOP is prepared to authorize overtime to expedite the processing of referrals should the need arise.
- The BOP continues to emphasize the appropriate use of Home Confinement for low risk offenders with limited reentry needs and reserve RRC beds for inmates who have the greatest need for services.
- Additionally, inmates are transferred to Home Confinement from the RRC once they obtain the needed services and resources.

# RRC Impact Con't.



- Due to the high demand for RRC services and the limited availability, we anticipate any referrals for offenders releasing after October 30, will be more difficult to place and lengths of stay will be reduced.
- To accommodate future releases – beyond November 2015, the BOP posted a Request for Information (RFI) for Day Reporting Centers. The RFI focused on locations where RRCs have been difficult to site. The intent is to identify one Day Reporting Center in each of the BOP's three Sectors to determine the effectiveness of this type of program.

# BOP Collaboration



- The BOP and the Administrative Office of the US Courts have identified the Judicial Districts most impacted by resentencing. They are:
  - Florida – Middle and Southern; North Carolina – Eastern; Puerto Rico; Texas – Eastern, Northern, Southern, and Western; Virginia – Eastern; South Carolina; and California – All Districts
- In many of these high impact Judicial Districts, the BOP has asked the Administrative Office of the US Courts to encourage their staff to limit the use of Public Law Placements.
- To help meet the need for RRC services, the BOP worked with the Administrative Office of the US Courts to identify 25 work release facilities in high impact Judicial Districts. These facilities were not under an agreement to provide services to the BOP. A letter was sent to each of these facilities to inquire about their interest in entering into an Inter-Governmental Agreement to house BOP Pre-Release Placements. To date, three facilities have expressed an interest: two in the Southern District of Texas and one in the Eastern District of Virginia. The BOP is presently working to determine if these facilities would meet our needs.

## BOP Collaboration Con't.



### U.S. Immigration and Customs Enforcement (ICE)

- BOP and ICE have been working to prepare for the release of non-US citizens.
- BOP provides rosters identifying non-US citizens that received amended sentences to ICE Participate in meetings with USPO and ICE to discuss immigration cases releasing on October 30, 2015.