

PostEverything

With one decision, Obama and Lynch could reshape the criminal justice system

The President needs to appoint a new, visionary Bureau of Prisons head.

By Robert Ferguson, Judith Resnik and Margo Schlanger August 3

About the authors 

Over the last several weeks, President Barack Obama has pushed criminal justice reform to the top of the domestic policy agenda. In a passionate speech to the NAACP on July 14, the president called for reducing mandatory minimum sentences, ending prison rape and reviewing overuse of solitary confinement. Two days later, President Obama paid the first ever presidential visit to a federal prison in El Reno, Okla. That same week, he also commuted the sentences of 46 non-violent offenders, saying their long punishments didn't fit their crimes.

But the president has a chance to do much more. He has a key opportunity to reshape the future of the entire federal prison system, affecting tens of thousands of prisoners and their families.

The current director of the Federal Bureau of Prisons recently announced his retirement. The job is not Senate-confirmed (though Congress can play a role; on Tuesday, the Senate Committee on Homeland Security and Governmental Affairs will be holding a hearing on the issue). Instead, Obama's Attorney General Loretta Lynch will choose the BOP's ninth head since its founding in 1930.

The decision matters a lot. The BOP's director runs one of the critical bureaucracies of the federal government. It houses more than 200,000 prisoners in more than 120 facilities across the United States. Under the leadership of some of its directors — such as James Bennett, who served from the late 1930s to the 1960s — the BOP set the nation's benchmark for smart criminal justice administration. Bennett promoted the Youth Corrections Act and vocational and education training, he became president of the American Correctional Association and he led the U.S. delegation to the UN Crime Commission. Bennett

led the BOP to the forefront of efforts to help prisoners gain skills to return to their communities and to treat juveniles differently than adults.

Since Bennett's era, the BOP's leadership role has eroded. The BOP has imposed unduly harsh conditions on prisoners, failed to prevent sexual abuse, and refused to exercise discretion to house prisoners in community facilities close to their homes. The largest prison system in America needs to do better.

Instead of functioning as a progressive corrections innovator, the BOP in the 1980s pioneered stand-alone prisons, now known as supermax, that impose extreme isolation on prisoners. Both in supermax and in other prisons, BOP policies continue to expose far too many prisoners, including many who suffer from serious mental illness, to solitary confinement — even though alternatives would be less expensive and more humane. The isolation in solitary is profound; prisoners are confined to cells the size of a parking space for 23 hours a day with little to no programming. Long-term solitary is physically and mentally damaging for all prisoners and devastating for many.

Even as the profound mental harm done isolated prisoners has become more apparent, and other prison systems have reduced their use of solitary confinement, the BOP has refused to alter course. An independent audit, conducted in 2014 and released to the public this past spring, detailed that BOP policies rely too heavily on isolation and fail to provide diagnosis and treatment of mental health needs. On a broader scale, rehabilitative programs are far too scarce even for prisoners who are not isolated.

The BOP has also failed to mount a serious fight against sexual violence and abuse in its prisons. Instead, the BOP has only slowly and reluctantly implemented the 2003 Prison Rape Elimination Act and its regulations, which include a comprehensive set of rules, training requirements and audit and public disclosure mandates to improve safety. The need for a truly excellent federal model in this area is especially urgent because the regulations are advisory rather than binding for non-federal prisons and jails.

Federal women prisoners have faced particular — and easily avoidable — problems. For example, in 2013 the BOP decided to close its lone minimum prison facility in the Northeast for women, which had housed 1,100 prisoners, and use the space for men instead. The BOP planned to disperse women from the Northeast to other prisons, including a new facility in Alabama. After protests from 11 Senators from the Northeast and 12 chief judges of federal trial courts, the BOP backed down, promising to open a new women's prison in Connecticut. But the new space, for only a couple of hundred women, has yet to be built. And in the meantime many women from the Northeast have been warehoused at a federal jail in

Brooklyn with few or no programs and no residential drug treatment programs, which are central to eligibility for sentence reductions.

The BOP also has many available tools and a good deal of discretion to lower its prison population, but it has used those opportunities far too sparingly. The BOP does not place all eligible prisoners in residential treatment centers (halfway houses) at the earliest available dates, nor does the BOP use compassionate release — when the prisoner or a member of his or her family is dying — and other aspects of the 2007 Second Chance Act as much as it could. Using halfway houses more would put prisoners closer to home, where they can maintain ties to their families and communities and can gain avenues to employment. Given endemic racial and other disparities in our criminal justice system, these lost opportunities have a particularly harmful impact on poor minority urban communities.

The result of these many decisions, along with unduly harsh federal sentences which Congress is currently considering fixing, has been severe overcrowding. The BOP is 30 percent over capacity, which makes keeping staff and prisoners safe significantly more difficult. With congestion comes risks of violence, and less access to services such as jobs and programs. And as prison populations age, the costs of medical care go up.

We know the BOP can do better, because many state correctional systems are making a variety of improvements in their approaches. State prison systems have reduced the population of those in isolation, created “gender-responsive” programming to suit the histories and challenges of women and men in prison, offered new work programs and improved mental health services. For example, Colorado, Maine and Washington have used careful analyses to substantially reduce the number of prisoners in solitary and shifted the treatment of those who remain, putting them back into structured and regular contact with other people.

When searching for the BOP’s ninth director, the president and attorney general can look to a field of experienced innovators with demonstrated commitments to reform — decarceration, improved conditions of confinement, racial justice and gender equity. The president holds the prison door keys for federal prisoners whose sentences he commutes. His administration’s choice for the new head of the BOP is critical to reform for those remaining inside.