September 3, 2019

Hon. William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Hon. Kathleen Hawk Sawyer
Director
Federal Bureau of Prisons
320 First Street, NW
Washington, D.C. 20534

David B. Muhlhausen
Director
National Institute of Justice
810 Seventh Street NW
Washington, DC 20531

Comments in Response to the Department of Justice Report
“The First Step Act of 2018 Risk and Needs Assessment System”

Dear Attorney General Barr, Director Sawyer, and Director Muhlhausen:

The Justice Action Network submits these comments in response to the National Institute of Justice’s request for feedback on the Risk and Needs Assessment System1 (“RNAS Report”) released on July 19, 2019 in accordance with the First Step Act of 2018.2

The Justice Action Network (JAN) is the country’s largest bipartisan organization dedicated to criminal justice reform. JAN brings together progressive and conservative partner groups, and collaborates with law enforcement, business leaders, and civil rights, victims’ rights, and faith-based groups to advance reform. Our coalition works to pass life-changing legislation in Washington and in state houses to make our criminal justice system more fair, efficient, and effective.

JAN and its coalition partners were integral to the passage of the First Step Act. We file these comments today because appropriate, swift, and full implementation of the prison reform provisions of the First Step Act is critical to the success of the Act. The Act cannot achieve its stated goals of decreasing the federal prison population, reducing federal recidivism rates, and protecting public safety without the full cooperation and partnership of the Justice Department. The Department also critically needs the full amount of funding authorized by the Act, $75 million per year over the next 5 years,3 to achieve these goals. Anything short of the Department’s full commitment to implementation and securing the authorized funding will limit the efficacy of the law, lowering the likelihood that individuals are properly prepared for reentry and putting public safety at risk.

In reviewing the RNAS Report outlining the new Prisoner Assessment Tool Targeting Estimated Risks and Needs (“PATTERN”), JAN provides four non-exhaustive points of feedback. Specifically, we encourage the Justice Department to: (1) appropriately identify and implement dynamic factors into the RNAS to assess risk over time; (2) incorporate a robust needs assessment system; (3) eradicate and reduce any racial disparities within the RNAS; and (4) ensure transparency and training for staff during implementation. These concerns are enumerated below.
First, the RNAS states that PATTERN includes a number of static and dynamic risk factors that will help officials assess a prisoner’s risk of recidivism. Static factors do not change over time, whereas dynamic factors do. However, upon review of the factors in PATTERN, it appears that only a prisoner’s education level (GED or high school degree) can truly be considered a dynamic risk factor. The other listed measures—such as infraction convictions while incarcerated, completed technical or vocational courses, or drug treatment—are in fact static because PATTERN does not examine whether additional programming or treatment is needed but rather whether or not the measure in question has been completed, which cannot be changed. This raises serious concerns with PATTERN as research shows the use of dynamic factors is integral to ensuring individuals are accurately assessed over time. JAN recommends that additional dynamic factors are incorporated into PATTERN to better assess and more effectively monitor changes in prisoners’ risks and needs throughout their sentences. Research from Arnold Ventures, National Center for State Courts, Urban Institute, Vera Institute, and others can assist with identifying appropriate dynamic factors.

Second, the RNAs Report released on July 19th does not contain an assessment of prisoners’ needs, but rather only of the risks they pose. The tool appears to conflate the assessment of the unique needs of each prisoner to be successful and advance while in prison and beyond, with the assessment of the specific risk-reducing programming that will lower the chances of criminal activity. A needs assessment system is critical to reducing recidivism, as it identifies the specific programming and treatment needed to ensure successful reentry. We recognize that the RNAs Report states that you will further refine this system. In that process, we strongly encourage you to ensure that a robust needs assessment system (which is not conflated with risk) is included in the RNAs.

Next, PATTERN has not been tested for predictive bias. As with any risk assessment system, if it is not properly developed, the system could result in biases that disproportionately discriminate against specific groups of people, especially on the basis of race, ethnic background, socioeconomic status, or gender. The RNAs Report notes that the tool has been tested for AUC values by racial group. However, comparisons of AUC values alone (without tests of statistical significance comparing AUC values) does not conclusively mean there is no predictive bias in PATTERN. This raises concerns that harmful biases, though in some cases unintentional, might pervade the tool. In order to ensure fairness in the application of PATTERN, JAN recommends that the tool be tested for predictive bias.

Finally, JAN recommends that the Department and Bureau of Prisons swiftly and fully implement the RNAs and other provisions of the First Step Act. Thousands of prisoners languish behind bars waiting for release that they are due under the law. During this process, we recommend transparency and an opportunity for advocacy groups and affected communities to provide feedback. We also recommend that the Bureau ensure appropriate training and guidelines for staff who will implement the RNAs and the law more broadly.

The Department’s full and timely cooperation is necessary to realize the goals of the First Step Act. The “biggest criminal justice reform in a generation” will not hold up to its characterization without your full cooperation. We very much hope you will take these comments into consideration as you finalize the RNAs and make other changes to implement the First Step Act.

Respectfully,

Inimai Chettiar
Legislative and Policy Director
3 Id.
4 James Bonta & D.A. Andrews, Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation 4-5 (Public Safety Canada 2007-06).
6 Bonta, supra note 4.