



**Statement of Sarah Anderson**

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**U.S. Department of Justice Listening Session**

**Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN) Listening  
Session**

**Wednesday, September 11, 2019**

On behalf of FreedomWorks' community of more than 5 million grassroots activists, thank you to the Department of Justice for holding these listening sessions. As you all are well aware, advocacy groups like FreedomWorks and key players in Congress, along with President Trump, are committed to seeing the success of the First Step Act. To better public safety and ensure that the good promised from the First Step Act comes to fruition, it is essential that the process led by you is transparent and open such that stakeholders may offer our input. So again, thank you for that opportunity.

Before getting into the specifics of PATTERN, I want to reemphasize how critical it is for full funding to be given to the Bureau of Prisons to implement the First Step Act. Yesterday, more than a dozen groups sent a letter to the Chairman and Ranking Member of the Senate Subcommittee on Commerce, Justice, Science, and Related Agencies urging just this. The full amount as written in the text of the First Step Act — \$75 million annually over the next five years — we understand to be critical to your ability to faithfully implement the law as passed by Congress.

Clearly, as per the report released on the National Institute of Justice website on July 19th, much hard work has already gone into developing the PATTERN assessment. Assurance of funding into the future is necessary to make sure that some of the changes going forward that we believe need to be made to PATTERN are able to be made. Because, unfortunately, PATTERN as currently written evidently fails in a few critical ways to the mission of the First Step Act.

First and foremost, this is the incorporation of dynamic factors into the risk assessment. As stated explicitly three separate times in the text of the First Step Act, it is of utmost importance that the assessment crafted is “based on factors including indicators of progress and of regression, that are dynamic and that can reasonably be expected to change while in prison.”

In the July 19th report, it is made clear that the Department of Justice understands that dynamic factors are critical to the assessment. However, we believe that PATTERN mistakenly treats some factors as “dynamic” that, although they can reasonably be expected to change while in prison, are not truly dynamic in nature.

For some, like infraction convictions while incarcerated, this is because they are not treated, under PATTERN, as “indicators of progress and of regression,” but only as indicators of the latter. For others, like completed technical and vocational courses or drug treatment, this is because they are simply based on completion, and not based on the potential further needs of a particular inmate. This disables the inmate from being able to further change his or her score on these certain factors, making them effectively static.

This is of particular concern because, while the July 19th report seems to be certain that PATTERN does a sufficient job of incorporating the correct amount and type of dynamic factors into its assessment, it in fact does not, with education level appearing to be the only true dynamic factor included. Therefore, we would recommend that the Department of Justice seek further counsel from existing research, that we would be happy to direct you toward, that identifies more appropriate dynamic factors to be incorporated into PATTERN.

Additionally, the point assignments outlined in PATTERN seem to place too much emphasis on scores from static factors and not enough emphasis on dynamic factors. For example, males and females aged between 18 and 25 years old receive 30 and 15 points respectively simply for the static factor of his or her age. Completing ten or more recidivism reduction programs, however, only enables an inmate to lower his or her score by 12 and 8 points, respectively, through that means, with ten programs being the absolute maximum for which the score can still change. Therefore, we also recommend reworking some of the point weights on various factors, especially as new factors are hopefully incorporated that are more truly dynamic.

Without doing these things, it is unclear how, as stated in the July 19th report, “99 percent of offenders have the ability to become eligible for early release.” While that is a bold and many would say laudable number to strive for in terms of how many inmates may be able to benefit from the First Step Act, it is difficult to imagine it true given the way that PATTERN is currently written.

This leads to the next chief concern that FreedomWorks has with PATTERN, which is the lack of emphasis on “needs.” Of course, it is intended to be a “risk and needs assessment,” as outlined in the First Step Act. Although the July 19th report refers to PATTERN as “risk and needs assessment,” there is unfortunately little present in the report that mentions how the unique needs of each inmate will be met with the newly implemented assessment.

Of course, it is apparent that each inmate has certain needs to help him or her succeed in rehabilitation. This should not — and must not — be glossed over. Largely, the July 19th report mentions “risk and needs” often throughout it, but in its explanation of PATTERN, focuses only on the “risk” side of the equation, offering little to nothing on the way in which needs will be assessed.

Throughout the process of the First Step Act being drafted, amended, passed, and signed into law, it was critical to proponents and to those voting for the legislation that each prisoner be able to participate in recidivism reduction programming that fits his or her unique needs. It should be obvious why such a policy is critical to the success of the First Step Act, which is that

programming will only be effective in reducing recidivism — and enhancing public safety — if it is beneficial specifically to that individual.

We at FreedomWorks see these issues to be the most pressing in terms of the immediate state of play regarding PATTERN. There are other concerns including predictive bias and the potential for disparities to be created by PATTERN, but other partners in this space are more intricately interested and able to address those. I have heard them addressed today. Of course, it is also imperative that the Department of Justice continue to see that the other provisions of the First Step Act are carried out as well, from the sentencing reforms in Title IV to the various changes made in Title VI. Fortunately, many of these reforms have already proven successful.

As we expressed during the last listening session held here, “We have confidence that, with the language in the First Step Act, the intent of the risk and needs assessment is clear. It is the task of the Department of Justice to faithfully implement the laws that Congress passes within its jurisdiction.” This still remains true. We are thankful for the opportunity to continue to offer input on this important issue and hope that the Department will take into consideration the recommendations of FreedomWorks and of our various allies alongside me here today.