

Discretionary Passback Guidelines

December 20

2010

The attached document provides 2012 funding recommendations for the Department of Justice. All appeals of this recommendation are due to OMB by noon on December 23rd, 2010.

2012 Funding
Recommendations
for the Department
of Justice

2012 OMB Budget Recommendations
Department of Justice
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Department of Justice

The fiscal year 2012 program funding level for the Department of Justice (DOJ) is \$27.8 billion, which is \$82 million below the anticipated full year Continuing Resolution. The recommendation builds on the review of spending that the Department undertook, which identified more than \$206 million in programmatic offsets. However, additional difficult choices are necessary to achieve the Administration's funding targets, including: a two-year pay freeze, an additional \$644 million in savings from lower priority programs, and savings of \$135 million from a targeted hiring freeze. The table below provides an overview of the passback funding level as well as a comparison to the Department's request.

DOJ 2012 Request vs. RMO Recommendation (\$ in Millions)

	2012 Request	2012 Passback
FY 2011 Total Discretionary BA	29,190	27,890
Requested Increases		
Adjustments to Base	1,149	715
Annualization of Prior Year Supplementals	170	100
Enhancements	356	326
Subtotal, Requested Increases	1,675	1,141
Reductions		
Non-Recurring 2011 Requests	-412	-132
Program Offsets	-138	-644
Additional OJP Reductions	-68	---
Targeted Hiring Freeze	---	-135
Pay Raise Freeze	---	-312
Subtotal, Reductions	-618	-1,223
Passback Total, Discretionary BA	30,247	27,808
Changes in Mandatory Programs Offsets	-6,502	-7,212
Passback Total, Net Discretionary BA	23,795	20,596

The passback funding level represents an attempt by OMB to address the highest priorities of the Administration within tight fiscal constraints. The passback level also is based on an analytic model of the Federal criminal justice system. OMB conducted extensive research and worked with groups internal and external to OMB to construct a model that can inform budget

recommendations. The approach, while providing a wealth of data beyond what is normally employed in the budget formulation process, is also intended to be a “proof of concept” that demonstrates the potential for a more systematic approach. The 2012 Budget passback is the first step in what we hope will be a sustained engagement with a community of interest in the Federal criminal justice system, including White House policy councils, DOJ, Members of Congress, and external interest groups.

The following are highlights of the 2012 Budget:

- National Security: Supports critical national security programs in the FBI. These programs include expanding cyber investigative capacity and providing funding for render safe programming. (Funding totals are included in the wrap up of investigative components. Additional details on National Intelligence Program-funded activities will be provided under separate cover.)
- Investigation: Provides \$160 million in new funding to improve the capabilities of existing agents and -\$439 million in offsets from lower priority programs. This recommendation is based on the aforesaid analysis that suggests an imbalance of resources in the Department which may be limiting the effectiveness of recent increases.
- Prosecution: Significantly improves the Department’s ability to prosecute violent and other crimes and to engage in litigation by providing \$83 million. The increases, in part, reflect enhancements for program increases proposed in the 2011budget.
- Detention and Incarceration: Provides \$56 million in new funding and -\$157 million in offsets from lower priority programs and implementation of changes in incarceration policies. This recommendation attempts to stabilize the prison population through sentencing reform legislation and by adopting fiscally sound, data-driven administrative procedures such as expanded use of alternatives to incarceration at the front end and expanded re-entry policies at the back end of the incarceration cycle. The guidance also addresses prison overcrowding by funding the activation of a prison at Aliceville, AL.
- State and Local Criminal Justice Assistance: Continues the Administration’s strong support for State and local law enforcement with \$3.25 billion in assistance, including \$600 million to hire and enhance the effectiveness of police officers (COPS). The guidance is \$114 million below the 2011 request, and recognizes that states and localities are still in a state of fiscal distress. DOJ should target resources for state and local governments in more effective ways, as explained in more detail for the various programs below.

Bulk Cash Smuggling: We understand that DEA and ICE have reached agreement on bulk cash smuggling operations. Under this agreement, ICE will lead realigned bulk cash Intake & Analysis Section (formally EPIC Cash Desk) at EPIC. The I&A Section will report through the EPIC chain of command in the same manner as other co-located programs currently operating at EPIC. The I&A Section will be staffed with new ICE personnel in addition to existing staff and interagency representatives and stakeholders in bulk cash activity at EPIC. ICE will also provide contract support to enable the I&A Section to operate on a 24x7 basis. This guidance, provided concurrently to DHS and ICE, assumes that ICE will begin to realign its intake and analysis to EPIC in 2011.

Federal Drug Budget Restructuring. The Administration is considering including a restructured accounting of federal drug control programs in the FY 2012 President's budget, as proposed by the Office of National Drug Control Policy (ONDCP). The new reporting structure would include DOJ's Asset Forfeiture Fund, Criminal Division, Office of Federal Detention Trustee, U.S. Attorneys, U.S. Marshals Service, Bureau of Prisons, and drug-related expenses for Judicial and Courthouse Security, Fugitive Apprehension and Prisoner Security and Transportation programs and list funding totals for FY 2010, FY 2011 and FY 2012. There would also be a narrative explanation accompanying the restructured chapter which would provide context for the change. Agencies and programs proposed for inclusion in the restructured federal drug control budget would be subject to the same authorities as existing programs, including budget certification by ONDCP, submission and approval of reprogrammings and transfers by ONDCP, the completion of financial and performance plans to ONDCP, and Agency Inspector General attested accounting reports. OMB is seeking your input and feedback on including these new programs in the FY 2012 budget. Please provide any comments, questions or concerns regarding the inclusion of these programs in the restructured federal drug control program budget to Kim Newman at KNewman@omb.eop.gov.

Appeals and Key Budget Dates

The agency appeal of this discretionary passback is due to OMB in writing and signed by the Attorney General no later than noon December 23, 2010. Appeals should address both 2012 and outyear implications, within the guidelines described in this passback. In determining appeals, DOJ should make adjustments within the overall top line to address specific priorities (i.e., programs can be increased with offsetting decreases). The Department should avoid reducing Administration priorities to achieve funding targets.

If appealed, each offset proposed in the funding recommendations should be accompanied by a short description of the reduction and the policy rationale for doing so. Any requests for discretionary increases should be listed in priority order and be offset by proposals for discretionary budget authority within the agency's funding total. The Department's appeal should address both 2012 and outyear BA and outlay levels, within the guidelines described in this passback. Please ensure that any national intelligence-related appeal is coordinated with the Office of the Director of National Intelligence.

FY 2011 Estimate. At the time of Passback, there is no final action on any of the FY 2011 appropriations bills. While the FY 2012 Passback levels assume FY 2011 funding at levels consistent with the House FY 2011 full-year CR, further action may result in these FY 2012 levels being reduced or reallocated to other programs after Passback.

Adjustments to Base

\$715 million is provided as adjustments to the base to fund inflationary increases. As appropriate, one time expenditures requested in FY 2011 have not been continued and the funding has been redirected to meet other priorities. These include expenditures for assets with lifecycles extending multiple years, such as new IT and construction. Generally, the entire amount for construction and other physical enhancements has been non-recurred, such as EPIC renovation and physical improvements to the FBI's regional computer forensic laboratories. The

guidance assumes that prison activations and other BOP specific adjustments will be funded from amounts in BOP salaries and expenses and construction accounts.

Funding Level by Bureau

The table on the following page provides the funding by bureau and other select programs.

Baseline, Pay, and Non-Pay Assumptions

The guidance assumes that pay is frozen in 2011 and 2012. Non-pay benefits assume a baseline through 2020 that inflates 2011 enacted or likely enacted for non-pay inflation factors based on the December 2010 economic assumptions.

Imbalance in the Criminal Justice System

When examining DOJ's request, OMB took into account the role of DOJ in the broader Federal criminal justice system. In taking this perspective, we noted that the Federal criminal justice system is a primarily "closed" system, of which DOJ makes up the backbone by providing the investigative, prosecutorial, and detention and incarceration capacity. Based on this observation, we constructed a model to assess, both qualitatively and quantitatively, the impact of resource allocations and policy decisions on the Department as a whole. This analysis resulted in the following conclusions about DOJ's budget request and informed the passback recommendations.

Budgeting by initiative but executing by actual threats – DOJ's FY 2012 budget request continues a trend of requests for increases across a broad spectrum of DOJ programs often justified to address emerging issues. In practice, DOJ components are continually evaluating new threats and addressing new priorities by reallocating existing resources rather than waiting for additional resources. Because of time lags in both the Federal budgeting process and the criminal

threats and addressing new priorities by reallocating existing resources rather than waiting for additional resources. Because of time lags in both the Federal budgeting process and the criminal justice system, budget requests quickly become outdated and may only serve as placeholders for the eventual shifting of resources from lower priority programs.

Resource discrepancies between segments – Traditionally, DOJ has implemented a bottom-up budget formulation process where specific requests are developed at the component level and later integrated at the departmental level. This bottom-up process for budget formulation may not wholly account for interdependencies between components and, over the long term, may lead to resource discrepancies between components. OMB mapped out the interdependencies between the different DOJ components by using publicly available historical data published by the Bureau of Justice Statistics (BJS). Analyzing workload indicators and the flow of workload through the system, we determined that the disproportionate growth in DOJ’s investigative components – without corresponding increases in the prosecutorial components – may be limiting the effectiveness of field agents. As a result, OMB proposes a re-balancing of resources from the investigative components toward the prosecution components. The table below outlines the shifting of resources between the components in different segments of the criminal justice system. The rationale for the realignments are discussed throughout.

DOJ Request vs. Passback by System Segment (\$ in millions)						
	Investigative		Prosecution		Detention and Incarceration	
	Enhancements	Offsets	Enhancements	Offsets	Enhancements	Offsets
DOJ Request	237	-64	16	-5	128	-8
Passback	160	-439	83	-5	56	-157
Net Rec.	-279		+78		-101	

Policy decisions can achieve outcomes but may have unintended impacts – DOJ’s request appears to understate the impact that policy decisions can have on the resource requirements for the Department. We note that DOJ operates in a decentralized manner, providing a great deal of discretion to the agents and attorneys serving in field offices throughout the country. However, a review of past policy changes and nationwide initiatives suggests that national-level policies could be an effective tool for the Department to set priorities and ensure the optimal allocation of scarce resources.

The conclusions above, as well as additional quantitative analysis of DOJ workload and resource data, informed the funding recommendations; specifically, resources were reallocated to maximize efficiency within the overall Federal criminal justice system based on the results of this system-wide overview. OMB analysis centered on the major segments of the criminal justice system: investigation, prosecution, and detention/incarceration. Again, within these components, resources previously allocated to investigative components were redirected to prosecutorial components given diminishing returns for additional investigative staff without corresponding increases in prosecutorial staff.

Investigative Components

As the front end to the Federal criminal justice system, DOJ’s investigative components are the primary workload drivers across the system. The number, type, and quality of cases that result from the Department’s investigative work has a direct impact on everything else in DOJ, from the number of prosecutors needed to address case referrals to the number of prison beds needed in different security levels based on the seriousness of defendants that are referred for prosecution. The investigative components also have experienced the greatest growth over the past decade, making it appropriate to examine the allocation of these resources and ensure that they are used effectively and addressing the highest priorities of the Administration.

Traditional approaches to budget formulation do not always reflect the operational needs driving components’ resource allocations. The Federal budget process is inherently slow, and it takes time to execute a budget request and for a case to move its way through the criminal justice system. For instance, in some cases it can take up to five years for a budget request to have an impact. Second, criminal threats are dynamic in nature. As outlined in meetings with DOJ, investigative components routinely reprioritize and shift resources to account for emerging threats without waiting for additional resources from budget requests. These two factors – time lags in the system and flexibilities in allocation - suggest that incremental additions for more agents targeting a specific threat provides, at best, a delayed response to a problem that may be dissipating by the time the cohort is ready to produce new incarcerations.

	2005	2006	2007	2008
Drug offenses	41.2%	41.5%	42.6%	42.5%
Immigration offenses	0.6%	0.5%	0.3%	0.3%
Property offenses	15.4%	15.9%	15.2%	14.5%
Public order offenses	16.4%	15.9%	16.6%	17.1%
Unknown/ indeterm offns	0.4%	0.7%	0.1%	0.3%
Violent offenses	6.4%	6.4%	6.9%	7.0%
Weapon offenses	19.6%	19.1%	18.2%	18.3%
Total	100.0%	100.0%	100.0%	100.0%

Rather than analyzing DOJ’s budget based on requests for incremental increases, OMB focused on DOJ’s overall investigative capacity. Our analysis suggests that DOJ investigative components have a tendency to revert to “business as usual” despite increases targeted to specific problems. As the table above suggests, the distribution of law enforcement referrals among the different offense categories changed very little from 2005-2008 despite an increase in personnel. In fact, when coupled with the fact that the highest priority investigations will be addressed through an internal reallocation of resources, it becomes apparent that increasing resources based on chasing “headline issues” will more likely result in restoration of lower priority investigations.

To assess investigative capacity, OMB examined criminal justice outcomes used by DOJ, such as the number of agent referrals, referrals achieving a favorable outcome, and so on. For example, the number of immediate declinations (i.e., referrals declined in less than one hour) by U.S. Attorneys has increased dramatically, from 12,635 in 2000 to 22,359 in 2008. During this same time period, total declinations (including immediate declinations) increased 6 percent, from 54 percent of all referrals to 60 percent.

This analysis resulted in the following funding recommendations.

Key enhancements include:

- \$57 million for FBI national security programs (details will be provided under separate cover).
- \$15 million across FBI, ATF, DEA, and USMS for the Department's Going Dark initiative to prevent obsolescence of law enforcement wireless intercept capabilities.
- \$40 million for the FBI's Render Safe program.
- \$7 million for FBI's cyber investigative capacity.
- \$6 million to expand the capacity of the Terrorist Screening Center to address anticipated workload increases from post 12-25-09 policy and technological changes.
- \$20 million to expand the DEA's Special Operations Division facility.

Offsets include:

- -\$216 million in the FBI, including the secure work environment, attrition of non-critical positions, reductions in IT development, administrative efficiencies, and a reduction in FBI operated task forces.
- -\$104 million in DEA, including the elimination of DEA's MET teams, cancellation of unobligated balances, and a reduction in DEA operated task forces.
- -\$73 million in ATF, including reductions to the arson and explosive programs, state and local training, the relocation program, and ATF operated task forces.
- -\$46 million in USMS, including reductions in courthouse construction funding, attrition of non-critical positions, IT efficiencies, and a reduction in USMS operated task forces.

Prosecution and Litigation

Analysis of the Federal criminal justice system suggests that the U.S. Attorneys may be the point in the Federal criminal justice system (outside of legislative changes) with the most potential for policy impact, given both prosecutorial discretion and apparent responsiveness to policy direction. However, an examination of resource allocation suggests that effectiveness may be hampered because of a mismatch between prosecutorial and investigative resources as well as deployments to the areas of highest crime. In addition, the Department – through the U.S. Attorneys – could do more, to address the “front-end” impact of prosecutorial decisions on the prison population through increased use of pre-trial alternatives to incarceration, as states are doing. Better nationwide performance measures for the U.S. Attorneys, designed to be outcome-oriented, can help drive these changes.

Based on our analysis, our recommendations focus on addressing: (1) resource imbalances in the system between the investigative agencies and the prosecutors, and an apparent lack of coordination among the different investigative components and the Federal prosecutors; (2) the role of departmental attorneys in diverting cases from traditional prosecution and incarceration; (3) the need to develop better performance measures linked to the impact on crime; and finally,

(4) the capacity to handle high-priority litigation within GLA and, with respect to crime in particular, assist the U.S. Attorneys especially on planning and policy matters.

OMB guidance provides support for the highest priorities, including improving the Department's prosecutorial capacity. Key enhancements include:

- \$50 million to General Administration to implement proven and cost-effective crime reduction strategies and to build capacity within the prosecutorial components;
- \$4 million for the Criminal Division for intellectual property attorneys to combat international IP crime;
- \$424,000 for additional capacity in the Office of the Solicitor General; and
- \$20 million increase for rebalancing Districts and functions as well as to implement other program improvements in the US Attorneys.
- \$40 million from Asset Forfeiture Fund super surplus amounts for distribution to operational components to rebalance the criminal justice system based on workload data.

Additional enhancements related specifically to the Deepwater Horizon oil spill are not included. Reprioritizing should occur to maintain these efforts as the workload on other major cases recedes, such as with the recent settlements and reduced workload with large cases like *Cobell*.

Detention and Incarceration Components

The BOP's current capacity issues are largely a result of past policy decisions that were made with limited consideration of the impacts on the downstream components. The resulting inmate population growth, and the new dollars annually necessary to maintain these inmates, continues to burden the system and the Department's budget.

The DOJ submission to OMB highlighted the difficulty in attempting to continue to address crowding through additional construction and contracting. Rather, as has been acknowledged by the Department, the most feasible and impactful mechanism for stabilizing the population and reducing crowding is through making better use of available inmate sentence reduction credits. Increasing these available credits can be achieved through new legislation, including additional credit for good conduct and participation in recidivism-reducing programming, and also by maximizing available authorities specifically by ensuring that all legally eligible citizen and non-citizen inmates receive the full one-year RDAP credit.

Additionally, the BOP should continue to utilize its available space in the most optimal manner possible. Specifically, the BOP should activate FCI Aliceville as a male, not female, facility. Crowding at the medium security male population level poses a far greater threat of violence than crowding in the female population. Expanding existing facilities presents a more practical means of alleviating secure female inmate crowding.

BOP's should continue to revise its population forecasting techniques and methodologies. BOP should work with OMB to refine these forecasts to factor in information from other justice system cohorts, which should lead to improved information for the budget process and BOP's budget requests.

Key enhancements include:

- \$22 million to activate the newly completed prison in Aliceville, AL as a medium security male institution;
- \$15 million to expand the RDAP program and to begin allowing non-citizens to earn sentence credits; and
- \$19 million to fund increased costs associated with a growing inmate population.

Offsetting reductions include:

- \$41 million resulting by changing the good time calculation;
- \$13 million achieved by re-competing expiring private contracts;
- \$37 million by attrition of non-critical positions, excluding correctional officers, administrators, and medical personnel; and
- \$46 million in unobligated construction balances.

In addition to the enhancements and offsets listed above, the passback proposes to use Asset Forfeiture Fund super surplus balances as a contingency for the detention trustee and bureau of prisons account. While the OMB's passback recommendations for these accounts are built upon an analysis of the current state of these two agencies, the OMB recognizes the variability in the resource requirements because of challenges with outyear population estimates. Therefore, the passback level assumes that \$73 million in super surplus balances is available, as necessary, to address potential shortfalls in these accounts.

Finally, while the passback level does assume an offset based on the Department's proposal for changing how "good time" credit is calculated for Federal inmates, the OMB recognizes that this offset requires legislation and may not be executable at the start of FY 2012. As such, the passback proposes to hold \$41 million in super surplus balances available as a contingency in case the savings from this proposal do not materialize at the level assumed in the passback.

Additional details on this proposal can be found in the appendix. If either of these contingencies are not required, the super surplus balances will be available for use by the Department consistent with the authorizing statute for the Asset Forfeiture Fund and after notification of the appropriate entities.

State and Local Assistance

In the following distribution of state and local assistance funding, the Administration is attempting to address a number of vulnerabilities, including the fiscal challenges faced by the state and local criminal justice system, as well as the need for improved innovation and better evidence-based strategies. In total, \$3.25 billion is provided for the discretionary programs of the Office of Justice Programs (OJP), Office of Community Oriented Policing Services (COPS), and Office on Violence Against Women (OVW). Highlights include:

- **COPS Hiring Grants**. Passback includes \$600 million in FY 2012 for this Administration priority, with a non-Federal match 25 percent and a salary cap of \$110,000. Of this amount, \$50 million is provided for hiring of civilians to permit officer redeployment to street duty.

In addition, \$20 million is included as college loan repayment assistance to make police careers more attractive to college graduates. (It is assumed that the funding provided in FY 2012 will support hiring or retention of more than 3,800 officers, which includes the newly hired officers who receive loan repayment but no salary subsidy.)

- Byrne Justice Assistance Grant (JAG) Program. \$519 million is provided for the Byrne JAG Program, also an Administration priority. Within this amount, \$30 million is set-aside for officer safety equipment and training, including bulletproof vests. Appropriations language will be included in the FY 2012 Budget to incentivize States and communities participating in the program to submit *comprehensive criminal justice plans*. Of the total funds available, two percent will be set aside to increase formula allocations to those states and communities submitting approved plans. To ensure that the planning requirement is not just a compliance exercise for the grantees, OJP will need to provide technical assistance to the grantees to help develop the capacity for meaningful and successful planning. Ideally, plans should be multi-year and system-improvement focused, providing strategic direction for changes to the criminal justice system at the state and local level. Plans should adopt a community-based focus, with city or county plans proceeding from neighborhood-based efforts, and state plans deriving from these. Plans should involve all segments of the state/local criminal justice system, including law enforcement, prosecutors and public defenders, corrections, probation/parole, and community corrections/reentry service providers. Plans also will need to give ample consideration to evidence-based principles concerning strategies and practices known to work, or those showing considerable promise. OJP also may want to consider whether there are particular criminal justice system needs that plans also should be required to prioritize or address, including:
 - ✓ Employment of diversion strategies, including adoption of drug, mental health and problem solving courts, administrative sanctions, alternative dispute resolution, community corrections, and other alternatives to criminal sanction or incarceration;
 - ✓ Adoption of comprehensive offender reentry programming and services; and
 - ✓ Implementation of risk-based approaches for dealing with offenders at the policing, prosecution, incarceration, and parole/probation stages of the criminal justice system.

In implementing strategic planning, care should be taken to ensure that plans developed are meaningful and lend value to criminal justice decision-making and the state and local level, and are not merely a report generating requirement. In addition, OJP should continue efforts to improve grantee reporting on use of funds, especially to enable identification of strategies supported (e.g., drug courts, drug task forces, prisoner reentry, etc.).

- Prisoner Entry and Jail Diversion Programs. The funding provided for these programs is \$207 million, including \$100 million for the Second Chance Act, \$30 million for Residential Substance Abuse Training, \$10 million for the SMART Probation program, and \$67 million for Drug, Mental Health and Problem-Solving Courts. Inmate Reentry Evaluation is funded at \$2.6 million, of which \$1.3 million is for transfer to BOP for evaluation of Federal inmate reentry programs. Within the Second Chance Act funding, \$10 million is provided for the Prosecution Alternatives to Drug Treatment program, \$5 million is reserved for an adult

reentry court initiative, and \$4 million is reserved for reentry programs for juvenile drug offenders.

- Tribal Criminal Justice Assistance. Funding of \$268 million is mostly provided as set-asides from other programs, including \$42.8 million from OVW programs (existing set-asides), \$128.1 million from OJP programs (7% of non-PSOB discretionary), and \$42 million from COPS Hiring Grants. Also included are \$25 million for the COPS Tribal Law Enforcement Program (will only fund non-personnel expenses), \$500,000 for OVW’s Tribal Sexual Assault Clearinghouse, \$1 million for Research on Violence Against Indian Women, and \$15 million in mandatory funds from the Crime Victims Fund.
- Violence Against Women Programs. Passback includes \$648 million for violence against women programs, including \$135 million in additional mandatory Crime Victims Fund spending for related assistance to be coordinated by OJP with OVW (of which \$15 million will be a tribal set-aside). For programs administered by OVW, \$461.1 million is provided, including increased funding for consolidated youth programs and sexual assault services programs. A total of \$9 million is provided for a Homicide Reduction Pilot, of which \$6.75 million is funded as a set-aside within the Grants to Encourage Arrest Policies Program and \$2.25 million within the Transitional Housing Program. In addition, within funds provided for OJP’s DNA Initiative, \$15 million is set-aside for Law Enforcement Training on DNA, with an aim of improving the submission of rape kit evidence for DNA testing, and \$15 million is set-aside for the Sexual Assault Nurse Examiners Grant Program. DNA Initiative funding provided to forensic crime labs will be conditioned on a requirement that MOU’s be established with the law enforcement agencies they service to effect protocols for the prompt submission of DNA rape kits for testing. Further, \$5 million is provided for the Sexual Assault Problem-Solving Initiative (to be jointly coordinated by OVW and OJP), which builds on the lessons of the Memphis Strategic Approaches to Community Safety Initiative, to establish targeted, data-driven efforts to improve law enforcement, prevention, and victim-services in five cities with rates of reported rape well above the national average.
- Juvenile Justice and Child Safety Programs. \$508 million is provided for juvenile justice and child safety programs, including \$150 million for a new program that consolidates grants targeting juvenile system improvements into a single “Race to the Top”-style Juvenile Justice System Incentive Grant. The goal of the new program is to create a competitive program that rewards or incentivizes states for progress against key progress indicators for the juvenile justice system, including:

Key Competitive Factors for Juvenile Justice System Incentive Grants

- Engagement in community-based juvenile justice system strategic planning (involving all segments of the state/local juvenile justice system);
- Implementation of evidence-based strategies and practices, including risk assessment to reduce unnecessary prosecution and incarceration;
- Employment of diversion strategies, including adoption of family problem solving courts, administrative sanctions, alternative dispute resolution, community-based responses, and other alternatives for low level offending;
- Reduction of disproportionate minority contact with the juvenile justice system;
- Reduction of juvenile prosecution/ incarceration under the adult justice system;
- Institution of a permanent juvenile justice system advisory commission to make periodic recommendations for justice system reforms and improvements, including steps to mitigate the effects of wrongful conviction.

Funding also is included for Title V Delinquency Prevention Grants (\$62 million), the Missing and Exploited Children's Program (\$60 million), Juvenile Mentoring Grants (\$50 million), the Attorney General's Children Exposed to Violence Initiative (\$37 million), the Adam Walsh Act (\$35 million), Community-based Violence Prevention Initiatives (\$25 million), the National Forum on Youth Violence Prevention – to expand the initiative from six to 18 cities (\$6 million), and other needs.

Evidence-Based Practice in Federal Mentoring Programs. The Administration is interested in encouraging discussion and coordination among Federal agencies with substantive mentoring programs about evidence-based practices. Within the next few weeks, OMB and DPC will convene a meeting for all agencies with substantive mentoring programs, as well as mentoring experts and researchers, to discuss the evidence base for mentoring. In preparation, OJP should prepare a list of its programs that use mentoring as a substantial program component. OJP should provide a description of each program and the role that mentoring plays within the program, and transmit the list to OMB by January 15th. After the meeting with OMB and DPC, the affected agencies will then be asked to develop a plan, by March 31st, to implement evidence-based practices within their programs in coordination with mentoring programs at other agencies. The Federal Mentoring Council, which promotes the effective and efficient coordination of Federal investments in mentoring activities, could play a central role in facilitating these ongoing conversations.

- Place-based, Fairness and Innovation Programs. The passback includes \$121 million for a variety of programs intended to foster innovation, fairness and a place-based focus in criminal justice initiatives, including: \$40 million for the Byrne Criminal Justice Innovation Program to support the Administration's Neighborhood Revitalization Initiative, \$20.5 million for Community Policing Development, \$15 million for Police Integrity Grants, \$13 million for the Ensuring Fairness and Justice in the Criminal Justice System Initiative, \$10 million for Smart Policing, \$10 million as a set-aside within NIJ for Stopping Crime Block-by-Block Field Experiments, \$6 million for Hate Crimes Investigation and Prosecution, \$6 million for the State & Local Help Desk and Diagnostic Center, \$5.5 million for the Capital Litigation Improvement Grant Program, and \$5 million for Prison Rape Prevention. In addition to the funds identified above, appropriations language will be included in the Budget that permits OJP to set aside up to \$5 million for transfer to HUD in support of the Administration's Neighborhood Revitalization Initiative.
- Research, Evaluation and Statistics. Funding of \$60.1 million is provided for NIJ, while no continuation funding is provided for the NLECTC system. This funding level includes \$10 million for Stopping Violence Block-by-Block Field Experiments, \$10 million for the Arrestee Drug Abuse Monitoring (ADAM) Program, \$3.8 million for the Sexual Assault Problem Solving Initiative (an outgrowth of the Memphis SACSI initiative), and \$1 million for an internet-based clearinghouse providing information on evidence-based criminal justice strategies. Funding of \$60.5 million is provided for the Bureau of Justice Statistics, including \$26 million for the continuation of the National Crime Victimization Survey (NCVS) and \$15 million for NCVS redesign. In addition, \$51.5 million is provided to OJP as a 3 percent set-aside from OJP programs. The set-aside will be used to augment research, evaluation and statistics, especially in the following areas:

- ✓ Maximizing the value of forensic evidence (\$10 million);
 - ✓ Establishing the effectiveness of criminal justice diversion methods and strategies (\$10 million);
 - ✓ Eliminating rape kit backlogs – pilots (\$5 million);
 - ✓ Indian Country crime and victimization research (\$3.5 million);
 - ✓ Reduction of law enforcement deaths associated with vehicular accidents (\$3 million);
 - ✓ Improving prescription drug monitoring – pilots and evaluation (\$3 million);
 - ✓ Improving inmate re-entry (\$2.6 million – \$1.3 million is to be transferred to BOP);
 - ✓ Measuring crime harms, improving risk-based decision-making in the criminal justice system, and reducing costs (\$2 million);
 - ✓ Establishing a better understanding of the risk-based factors that may lead to domestic radicalization, and related acts of violence/terrorism (\$2 million);
 - ✓ Development of an internet-based data analysis tool, based on FJSRC data, that can be used by researchers, policy-makers, and the Department to model the interdependent effects of resource changes at the various stages of the Federal criminal justice system (\$1 million); and
 - ✓ Improving Indian Country statistics (\$0.5 million).
- State Criminal Alien Assistance Program (SCAAP). The passback provides \$200 million for SCAAP, which is approximately the amount reimbursed to states and localities in the FY 2010 in costs associated with known, or verified illegal aliens. No funding is provided for reimbursement for “unknowns” – inmates with an undetermined status after review by ICE, as the citizenship and residency status of such inmates is unclear. In line with other ICE priorities, ICE continues to emphasize removal of criminal aliens through programs such as Secure Communities.
 - Crime Victims Fund. An obligation limitation of \$850 million is provided for crime victims programs, an increase of \$50 million over the FY 2011 President’s Budget. The obligation limitation includes \$135 million for violence against women-related assistance, including: \$100 million for domestic abuse shelter, transitional housing, and other services, and \$35 million for sexual assault services. In addition, within the \$135 million set-aside, \$15 million is to be made available as tribal assistance.
 - Domestic Radicalization. Of the funding available to COPS for training and technical assistance, \$2.5 million will be set-aside to support efforts to work with disaffected and disengaged communities to respond more effectively to factors that may contribute to extremism, violence, and terrorism. OJP is allocated \$2.5 million for the same purpose. From the funding that supports OJP’s juvenile mentoring programs, \$5 million will be set-aside for grants targeting disaffected youth in such communities. Also, \$2 million is set-aside from research and evaluation funds (see above) for research to establish a better understanding of risk factors.
 - Salaries and Expenses: \$268.8 million is provided for salaries and expenses of OJP, COPS, and OVW.

- Rescission of Unobligated Balances. The passback assumes -\$52.2 million in rescissions of unobligated balances, including -\$42 million from OJP and -\$10.2 million from COPS.

en Programs rom other programs)	421.5	441.0	450.0	474.1
	421.5	541.0	450.0	647.9
Women Grants	418.5	438.0	447.0	471.1
Violence Reduction Pgm (OJP)	3.0	3.0	3.0	3.0
	0.0	0.0	0.0	[5.0]
ving Initiative (SAPI)	0.0	0.0	0.0	[3.8]
n DNA	0.0	0.0	0.0	[15.0]
iners Grant Program	0.0	0.0	0.0	[15.0]
le	0.0	[100.0]	0.0	[135.0]
nd Safety	555.6	460.8	468.3	508.0
rovement Grants (new)	n/a	n/a	n/a	150.0
ams (OJJDP)	123.6	239.8	282.3	175.0
cn's Program	70.0	60.0	60.0	60.0
	0.0	20.0	35.0	35.0
ation/Sex Offender Mgmt	12.0	18.0	18.0	18.0
	0.0	5.0	5.0	5.5
	16.0	14.0	14.0	14.0
olence Initiative	0.0	37.0	37.0	37.0
	22.0	17.0	17.0	13.5
& Innovation Programs rom other programs)	52.5	110.5	118.5	121.0
	52.5	121.5	129.5	132.0
ation Program	0.0	40.0	40.0	40.0
	20.0	0.0	0.0	0.0
	0.0	10.0	10.0	10.0
ock Field Experiments	0.0	[10.0]	[10.0]	[10.0]
What Works)	0.0	[1.0]	[1.0]	[1.0]
lp Desk & Diagnostic Center	0.0	6.0	6.0	6.0
ment (T&TA)	12.0	18.0	18.0	20.5
	0.0	15.0	15.0	15.0
in the Criminal Justice System	0.0	5.0	13.0	13.0
ent Grant Program	5.5	5.5	5.5	5.5
Response	15.0	5.0	5.0	5.0
Prosecution	0.0	6.0	6.0	6.0
is (direct funding) rom other programs)	91.0	25.0	35.0	35.0
	132.8	255.6	257.8	268.4
Grant Program	0.0	0.0	10.0	10.0
tribal Grant (7%)	0.0	[139.5]	[136.0]	[128.1]
ctaside	0.0	[42.0]	[42.0]	[42.0]
	[40.8]	[42.9]	[43.5]	[42.8]
ent Grants	40.0	25.0	25.0	25.0
	50.0	0.0	0.0	0.0
le	n/a	n/a	n/a	[15.0]
	1.0	0.0	0.0	0.0
	[1.0]	[6.2]	[2.0]	[5.5]
	1,170.0	620.3	511.8	448.8
nce Program (SCAAP)	330.0	330.0	200.0	200.0
	161.0	150.0	150.0	125.0
g System (RISS)	45.0	9.0	[25.0]	25.0

The following table depicts funding for major categories of state and local assistance, as well as line item guidance for key programs. Additional detail will be provided separately.

Passback Offsets
(\$ in millions)

Component	Proposed Offset	Passback
Investigation		
ATF		T 0
	ech Refresh	
ATF		U -2
	FMS Efficiency	
ATF		A -3
	dmin Efficiencies	
ATF		A -10
	ttrition of Non-Crit Positions	
ATF		T -4
	ask Force Reduction	
ATF		A -1
	lcohol and Tobacco Program Reduction	
ATF		A -30
	rson & Explosives Program Reduction	
ATF		N -10
	ational Integrated Ballistic Information Network Reduction (NIBIN)	
ATF		R -9
	eduction in Relocation Program	
ATF		S -4
	tate and Local Training Reduction	
ATF		R 0
	educe Physical footprint	
DEA		A -15
	ttrition of Non-Crit Positions	
DEA		U -7
	FMS Efficiency	
DEA		A -2
	dmin Efficiencies	
DEA		C -4
	losure of Foreign Offices	
DEA		T -6
	ask Force Reduction	
DEA		M -39
	obile Enforcement Teams	
DEA		P -30
	rior Year Deobligations	
DEA		T -1
	ech Refresh	
DEA		R 0
	educe Physical footprint	
FBI		A -1
	djust FBI Cost Mod	
FBI		A -39

	Attrition of Non-Crit Positions	
FBI	Task Forces	T -16
FBI	Admin Efficiencies	A -35
FBI	Lookout	L -3
FBI	Dex	N -5
FBI	Network Intrusion Analysis	N -6
FBI	WAs	R -10
FBI	Relocation	R -6
FBI	Contractor conversion	C -24
FBI	Next Generation Identification - Iris Pilot Cancellation	N -11
FBI	National Gang Intelligence Center	N -8
FBI	Resident Agency Closures	R -3
FBI	Sentinel	S -15
FBI	Tech Refresh	T -6
FBI	Secret connectivity	S -2
FBI	WE	S -26
USMS	FMS Efficiency	U -7
USMS	Task Forces Consolidation	T -12
USMS	Construction Account Reduction	C -11
USMS	Attrition of Non-Crit Positions	A -7
USMS	Prisoner Security and Transportation Carryover Balances and Recoveries	P -7
USMS	Reduce Physical Footprint	R 0
USMS	Tech Refresh	T -1
USMS	Admin Efficiencies	A -1
Subtotal, Investigation Offsets		-439

Prosecution			
GLA			A -1
	Admin Efficiencies		
GLA			T -1
	Tech Refresh		
USA			T -1
	Tech Refresh		
USA			5 -2
	% Reduction in Non-personnel overhead		
Subtotal, Prosecution Offsets			-5
Prisons and Detention			
OFDT			A 0
	Admin Efficiencies		
OFDT			T 0
	Tech Refresh		
BOP			A -18
	Admin Efficiencies		
BOP			A -37
	Attrition of Non-Crit Positions		
BOP			T -2
	Tech Refresh		
BOP			C -13
	Contract Bed Contract Re compete		
BOP			U -46
	Unobligated Construction Balances		
BOP			G -41
	Good Conduct Time		
Subtotal, Prisons and Detention Offsets			-157
Other			
JIST			L -12
	Litigation Case Management System		
JIST			U -18
	Unified Financial Management System		
IWN			N -105
	10 New Radios		
NDIC			R -17
	Repurpose National Drug Intelligence Center		
WCF			C -40
	Cancellation of Unobligated Balances		
Subtotal, Other			-192
Total, Offsets			-793

DOJ Enhancements
(\$ in millions)

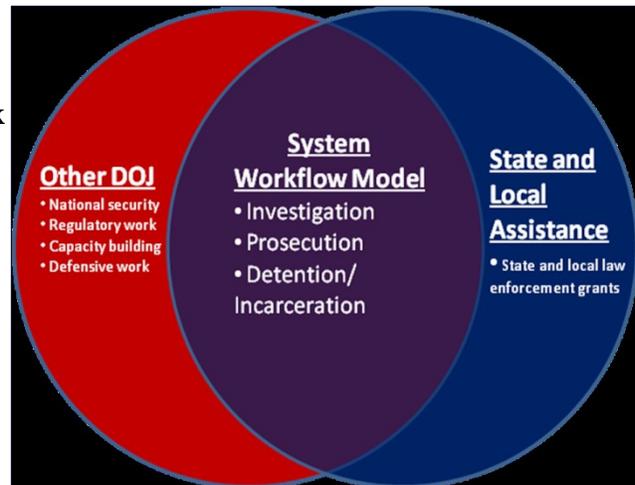
Component	Enhancements	DOJ Request	RMO Recommendation
Investigation			
ATF	Emergency Support Coordination Function (ESF-13)	E 17	0
ATF	oming Dark - Communications Intercept	G 2	2
FBI	omputer Intrusions	C 33	7
FBI	oming Dark - Communications Intercept	G 15	0
FBI	oming Dark Initiative - Data Communications Center	G 10	10
FBI	ational Security	N 81	64
FBI	analyst Training and Evidence Backlog	A 19	3
FBI	errorist Screening Center	T 0	6
FBI	Weapons of Mass Destruction - Render Safe Program	W16	40
FBI	UBs	H 0	3
USMS	oming Dark - Communications Intercept	G 5	2
USMS	Internet Crimes Against Children Deconfliction System	I 2	0
DEA	El Paso Intelligence Center Expansion	E 6	0
DEA	oming Dark - Communications Intercept	G 2	2
DEA	pecial Operations Division - Relocation and Expansion	S 20	20
NSD	SD Prosecution, Investigation, and Policy Support	N 1	1
Subtotal, Investigation Enhancements		237	160

Prosecution			
GLA		D 8	0
	Deepwater Horizon oil spill		
GLA		D 3	0
	Deepwater Horizon fraud investigation		
GLA		D 4	0
	Deepwater Horizon oil spill		
GLA		F 0	0
	Federal Appellate Activity		
GLA		I 1	3
	Intellectual Property Enforcement		
GLA		F 0	6
	FY 2011 CRT Enhancements		
GLA		J 0	4
	Justice Reinvestment Pilot Projects		
USA		J 0	20
	Justice Reinvestment Pilot Projects		
GA		J 0	50
	Justice Reinvestment Pilot Projects		
Subtotal, Prosecution Enhancements		16	83
Prisons and Detention			
BOP		A 45	22
	Activations		
BOP		P 19	19
	Pop Adjustment		
BOP		R 0	15
	DAP Expansion		
OFDT		D 54	0
	Detention Population Adjustment		
Subtotal, Prisons and Detention Enhancements		118	56
Other			
CRS		H 1	1
	State Crime Prevention		
EOIR		E 0	4
	Expand Legal Orientation Program		
EOIR		F 0	11
	FY 2011 EOIR Enhancements		
UST		D 5	0
	Debtor Audit Contracting Requirements		
UST		D 1	0
	Debtor Audit Position Requirements		
IWN		A 0	10
	Iterative Design, Test, and Analysis		
OIG		I 1	0
	Inspector General Oversight		

GA		O 1	1
	Office of Legal Policy/Office of Intellectual Property		
Subtotal, Other		9	27
Total, Enhancements		380	326

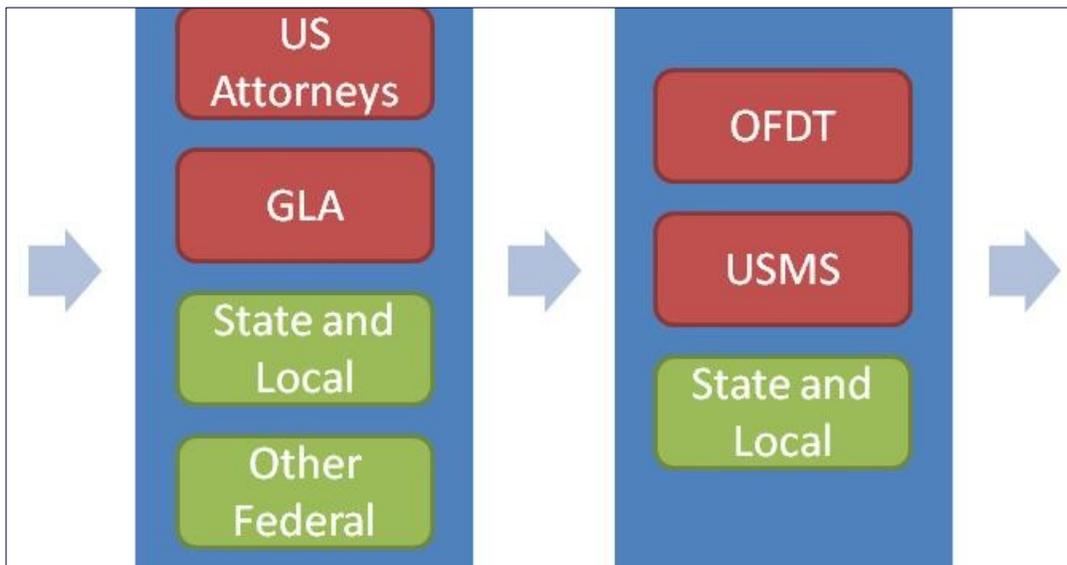
System Workload Model

To help inform the development of 2012 budget guidance, OMB developed a workload model that attempts to capture the majority of the work that DOJ performs. However, some missions fell outside of the scope of the analysis because of a lack of data or clear workload connections to other DOJ components. The graphic to the right illustrates the portions of DOJ's mission space that are included in the model and those that are separately. While DOJ functions excluded from the model account for a significant portion of DOJ's funding, the model is extremely useful for examining DOJ's "traditional" law enforcement missions. In fact, since the beginning of this Administration, these traditional missions have been the focal point for additional resources requested by the Attorney General.



As the graphic below highlights, workload flows linearly through the Federal criminal justice system. This workflow generally can be categorized into three distinct processes or system segments: Investigation, Prosecution, and Detention/Incarceration.

Overview of the Federal Criminal Justice System Model and the Related DOJ Components



OMB conducted an analysis of DOJ's workload for these segments in three phases. The first phase examined historical data to define the relationships between different system segments. The second assessed the current state of the system based on existing staffing levels and recently

requested increases. Lastly, the third evaluated budget and policy options for the 2012 Budget and beyond:

Historical Analysis (1999-2009)

To understand and measure the workflow between the different segments, OMB examined historical data to define relationships between system components, demonstrate the impact of policy decisions, and identify points of policy impact.

System Efficiency – In the simplest of terms, law enforcement agencies undertake investigations that lead to cases, produce convictions, and result in incarcerations. The rate at which investigations flow through the system can provide insight into inefficiencies and resource disparities between the different segments of the system. The chart to the right illustrates the efficiency of the Federal criminal justice system by measuring the likelihood, on average over a ten-year period, that a referral to DOJ attorneys will make it to each subsequent point in the system. Based on this measure, only 54.1% of all referrals result in a criminal case being opened.

Step in the Criminal Justice System	Average
Matter Closed	91.9%
Case Opened by USAttorney	54.1%
Case Closed by USAttorney	49.1%
Case Commenced in Federal Court	46.4%
Case Terminated in Federal Court	47.0%
Sentenced	36.9%
Admitted to Federal Prison	25.8%

Differences over time also can be symptoms of system-wide changes. For example, from 1994 to 2005, the likelihood that a referral would lead to a case being opened by a U.S. Attorney increased 7%. However, over this same period, the likelihood that a referral would result in a suspect/defendant being admitted into Federal prison remained constant at 26%. This suggests that new cases were often lesser offenses that did not warrant prison sentences. Analysis of the overall referral data shows that this trend coincides with the moderate growth in immigration referrals and prosecutions, which often lead to little or no time in the Federal prison system.

Time Lags and Resource Staging – The interdependency of the system segments (and the corresponding DOJ components) suggests a better need for coordination of budget requests. For example, investigations initiatives need to consider the downstream requirements for prosecution and incarceration. Similarly, prosecution initiatives need to consider both upstream linkages to budgeted investigations activity downstream requirements for incarceration. Finally, incarceration budgets need to consider as their starting the upstream activity that feeds this segment of the justice system. Historically, budgets have failed adequately to acknowledge this interdependency. OMB considered the temporal staging of resources to account more accurately for the downstream impacts of system activity beginning

	2000	2005	% Change
Violent Offense	16.42	8.7	-47.0%
Property Offense	17.52	6.75	-61.5%
Drug Offense	13.78	8.08	-41.4%
Public Order Offense	14.65	5.45	-62.8%
Weapon Offense	16.85	9.7	-42.4%
Immigration Offense	7.97	3.64	-54.3%
Overall	13.87	5.56	-59.9%

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point
has

with investigative work. By tracking annual cohorts of entrants into the Federal system, we have estimated the time it takes to move through the system for different offense types.

As demonstrated in the table above, DOJ has made significant improvements in the amount of time it takes to move a defendant from arrest to commitment in a Federal prison. The majority of this change can be attributed to improvements in coordination between investigative agencies and prosecutors, IT systems that automate labor-intensive procedures such as bookings and designations, and increased capacity in the Judiciary. Yet, while the reduced time does suggest improvement, the decrease in processing time for some offense categories may simply reflect changes in the types of cases being worked. As suggested in the FBI's 2012 budget request, the average case processing time prior to sentencing can be indicative of the complexity of the case. As such, the apparent reduction in processing time for property offenses and public order offenses may simply represent a shift toward less complex cases, and may not be the best use of Federal resources.

The time lag needed to move a defendant through the system also can help with the staging of resource increases. While increased investigative resources require additional prosecutors and incarcerations to be effective, these downstream resources are not necessarily needed immediately – but in subsequent fiscal years. OMB has measured the impact of time by tracking cohorts of individual cases as they move through the system. The table below shows the results of this analysis by showing the percentage of referrals at each stage in the process within a given year.

Referral Status by Year from Referral					
	Referral Year	Referral Year +1	Referral Year +2	Referral Year +3	Referral Year +4
Arrested	76.6%	15.8%	3.3%	1.8%	2.5%
Arrested by US Attorney	64.6%	21.8%	7.6%	3.4%	3.8%
Admitted in Federal Court	32.8%	47.2%	12.4%	4.0%	3.6%
Admitted into Federal Prison	21.1%	45.6%	14.8%	6.8%	11.7%

As illustrated above, an increase in referrals will have an almost immediate impact on the prosecutorial workload, but the surge in the Federal prison system will be delayed by at least a year. Further, about 20% of the people that enter the Federal prison system will not do so until three years after their case was initially referred to the U.S. Attorneys. Because of delays in the Federal budget system, the time to hire new personnel, and the time for an investigative agency to complete an investigation and make a referral, new budget resources will not result in increased incarcerations until three or more years later.

Policy Analysis – By conducting a comprehensive analysis of the Federal criminal justice system, it is possible to measure and assess the impact that policy decisions have on system performance. OMB selected three substantive policy changes to measure their impact on the system: the implementation of the Project Safe Neighborhoods (PSN) anti-gun crime initiative in 2001, Attorney General Ashcroft's memo from 2003 that directed all U.S. Attorneys to pursue the most serious offense in all cases, and the implementation of zero tolerance immigration policies in the Western District of Texas.

Project Safe Neighborhoods (PSN) – DOJ announced the PSN initiative in May 2001 to combat violent gun crime throughout the country. The initiative gave every U.S. Attorney the authority to charge state and local offenders under Federal law if these offenders used a firearm while committing a crime. The immediate impact of this policy was a 25% increase in weapons referrals in both 2002 and 2003. A time series analysis reveals that not only did the policy change increase the number of referrals, but it also limited prosecutorial discretion. Prior to this initiative, approximately 8% of all weapons referrals received by the U.S. Attorneys were charged as a different offense. These offenses often had lower average prison time, which suggests that the implementation of the PSN initiative would have led to downstream impact on the Federal prison system by increasing sentences. Further examination of the data suggests that while prosecutor discretion was limited, the Federal judiciary apparently exercised more discretion as there was an increase in the number of cases that began with weapons charges but were terminated with different charges. Therefore, it is not clear that PSN resulted in longer Federal sentences. (Unfortunately, it is difficult to determine what, if any, impact this had on the Federal judiciary.)

Ashcroft's 2003 Memo – In 2003, then Attorney General Ashcroft distributed a memo to all U.S. Attorneys directing them to pursue the most serious offense in all Federal cases. Implemented in January 2004, this policy did not have a measurable impact on the overall conviction rate (roughly 92% before and after), but it did change the composition of the guilty verdicts. Among the offenses to experience a significant growth in the rate of conviction were several violent crime offenses, including murder, kidnapping, and narcotics related offenses. The average sentences for violent crime offenses are longer than those for other offenses, suggesting that this policy change would have had a significant downstream impact on the Federal prison system.

Immigration – Immigration offenses have grown more than any other offense during the past 15 years. In fact, immigration accounts for 100% of the increase in referrals since 1998 (non-immigration referrals in 1998 were 101,578 compared to 99,584 in 2008) and has supplanted every other offense category in the allocation of additional attorney resources. However, despite the growing number of immigration referrals, it has been a problem largely confined to the prosecutorial segment, having little impact on the investigative or incarceration components of DOJ. The majority of these referrals stem from the activity of non-DOJ components, principally DHS. Most of these referrals also plead before trial.

Current State Analysis (2010-2011)

DOJ has experienced significant budgetary growth during in recent years. Unfortunately, the growth in some segments has occurred without proper recognition of the interconnectivity of the different components of the Department. Therefore, OMB assessed the current state of the Federal criminal justice system, including the effect of recent budget increases. The table below breaks down the recent budget growth and, using the results of the historical analysis, provides resource recommendations to “level out” the system by ensuring that current workload ratios can be maintained in downstream components.

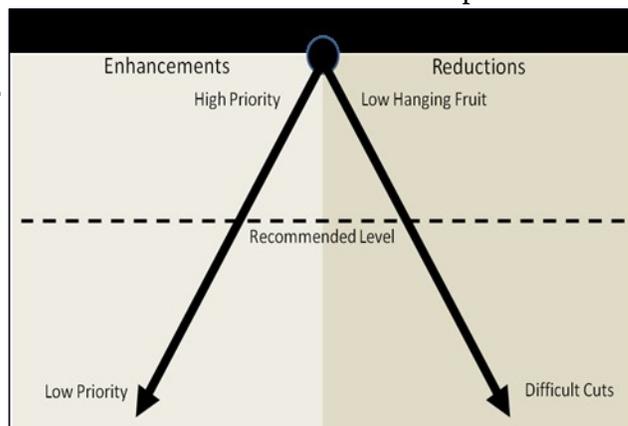
Projected Capacity of Attorneys to Meet New Referrals					
From Recent Appropriations					
New Agent & Attorney Positions					
	Total New Agents & Attorneys			Projected Workload Impact (# of referrals)	
	FY10	FY11	FY10 Supp		
ATF	34	28	77	139	744
DEA	79	0	35	114	429
USMS	528	12	101	641	468
FEI	104	165	44	313	876
Total Number of Projected Referrals from New Agents					2,517
USA	35	88	26	149	1,480
Unaddressed attorney referral workload from new agent positions					(1,056)
Number of add'l attorneys required to meet referral workload					108

2012 and Long Term Budget Analysis (2012-2016)

The guidance recommendations attempt to ensure that priorities are reflected across the Department, regardless of component, and that initiatives are funded with an “end-to-end” view that considers cross-Department impacts. These recommendations, derived in large part from the above analysis, are aimed at a more efficient utilization of the Department’s resources. OMB has, where possible, examined resource allocations over a multi-year time horizon. This process acknowledges the likelihood of constrained resource environments in the future and will contribute to measured and sustainable growth in DOJ’s budget despite increasing challenges.

Building on the considerable tradeoffs that DOJ has already proposed, OMB identified additional lower priority programs and proposes additional tradeoffs both within and between components to reflect the Department’s and Administration priorities. The diagram to the right outlines the methodology used. This analysis was conducted for each of the main segments of the Federal criminal justice system: Investigation, Prosecution, and Detention and Incarceration.

Beginning with a current services funding level, offsets were identified within each component.



Each offset was rated across the following three criteria and the ratings were normalized for consistency:

- **Basis for Proposal** – this category looked at the underlying reason for the offset, from having solid independent support like a GAO or IG report (which would rate a 5) to cases where there might be some degree of technical uncertainty for the idea (which would rate a 1).
- **Implementation Concerns** (5=easy and 1=very difficult).
- **Stakeholder Reactions** (5=solid support from agency, while 1=solid opposition).

Similarly, enhancement requests were prioritized using four standard criteria and placed into categories representative of the system segments identified above. The categories for evaluating the enhancements (generally, with 3=yes or good, and 1=no or poor) were:

- **Presidential/AG priority**
- **Mission Critical**
- **Performance**
- **Outyear implications/effects**

Tradeoffs were made between the highest priority enhancements and the lowest priority offsets. This process was repeated until equilibrium was reached where the next enhancement would have provided less desirable benefit than the proposed offset. Though qualitative, the assessment of tradeoffs helped to demonstrate the relative value of both requested increases and proposed reductions. The result is a budget that appropriately shifts resources from lower priority to higher priority initiatives. Each of the offset proposals is discussed in greater detail in an appendix to this guidance.

The analysis suggested program changes as reflected below for investigations, prosecution, and detention and incarceration. In some cases, programs are proposed for consolidation/elimination, while in others increases are recommended to address imbalances.

Law Enforcement

As noted, the traditional approach to budget development may not always be reflective of the operational needs driving components' resource allocations. Two factors underscore this observation. One is time; the Federal budget process is inherently slow, and it takes time for a case to move its way through the criminal justice system (as described earlier). Components are formulating their budget plans two years before the request is actually appropriated. It takes five years between budget formulation and the hiring and training of newly appropriated agents. This also is the approximate time needed to build a case, refer it for prosecution, and achieve an incarceration.

Second, criminal threats are dynamic in nature, and DOJ components are afforded discretion in field allocations. For example, the FBI and ATF have discussed with OMB their resource allocation models. Their models provide a useful basis for informing decisions to allocate base resources during the year of budget execution. Components use models like these regularly to reprioritize and quickly shift resources to account for real threats as they emerge. The FBI presents two notable examples of this. The first came in direct response to the challenge of terrorism in the aftermath of the 9/11 terrorist attacks. FBI conducted an immediate redirection of approximately 1,500 agents and resources from their criminal to their national security programs.

A more recent example is the response to the mortgage fraud crisis. When the crisis emerged in 2007, the FBI had approximately 1,200 agents assigned to white collar crime. The FBI realigned existing personnel to address higher rates (and arguably higher risks) of white collar crime. While the Administration’s budget requests for 2009 through 2011 included additional agents to combat white collar crimes, these resources would not become available until much later.

These two factors – time lags in system and flexibilities in resource allocation – suggest that incremental addition of agents targeting a specific threat through budget process provides, at best, significantly delayed response to problem that may be dissipating the time the Department is ready to produce new incarcerations.

	2005	2006	2007	2008
Drug offenses	41.2%	41.5%	42.6%	42.5%
Immigration offenses	0.6%	0.5%	0.3%	0.3%
Property offenses	15.4%	15.9%	15.2%	14.5%
Public order offenses	16.4%	15.9%	16.6%	17.1%
Unknown/ indeterm offns	0.4%	0.7%	0.1%	0.3%
Violent offenses	6.4%	6.4%	6.9%	7.0%
Weapon offenses	19.6%	19.1%	18.2%	18.3%
Total	100.0%	100.0%	100.0%	100.0%

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Rather than focus on incremental increases, OMB evaluated overall investigative capacity. Our analysis suggests that DOJ programs generally revert to “business as usual” despite increases targeted to specific problems. As the table above suggests, the distribution of law enforcement referrals among the different offense categories changed very little from 2005-2008 despite an increase in personnel. In fact, when coupled with the fact that the highest priority investigations are addressed through an internal reallocation of resources, it becomes apparent that increasing resources based on chasing “headline issues” will more likely result in restoration of lower priority investigations.

In order to assess investigative capacity, OMB examined criminal justice outcomes. We found that a significant increase in law enforcement referrals without an appropriate number of attorneys to review the referrals and bring them to trial may result in wasted effort on the part of the law enforcement agents. For example, the number of immediate declinations (i.e., declined in less than one hour) by U.S. Attorneys has increased dramatically, from 12,635 in 2000 to 22,359 in 2008. This increase represents investigative inefficiency – agents are more frequently referring cases that are not being prosecuted. During the same period, total declinations (including immediate ones) increased 6 percent, from 54 percent of all referrals to 60 percent. These findings suggest discrepancies between the resource levels of investigative and prosecutorial components are limiting the effectiveness of DOJ’s law enforcement agents.

When examining referrals by offense type, it appears that adding more agents does not increase the number of favorable outcomes. For example, between 2000 and 2008, drug cases remained the most prevalent offense referred by DOJ agents to U.S. attorneys. Yet, the percentage of drug cases that were declined for prosecution increased 8 percent (from 51 percent to 59 percent of all drug referrals), and the percent of drug referrals favorably resolved (i.e., resulting in guilty plea or verdict) decreased 6 percent (from 43 percent to 37 percent). Similarly, the average length of sentence for convicted drug traffickers decreased slightly, from 83 months in 1996 to 78 months in 2009.

These findings are mostly consistent for referrals to U.S. attorneys by DOJ agents for other categories of offenses (i.e., violent, property, and weapons offenses). Declination rates for these offenses have increased. The percent of total referrals favorably resolved decreased 4.5 percent. Average sentence length for fraud has remained relatively short (22 months) while average sentences for firearms convictions have increased only slightly from 1996 (by 13 percent, to 85 months). Among these trends are a few noticeable improvements. For example, the average length of sentence for sexually-oriented criminals has risen dramatically.

It is not clear why these trends are occurring. Perhaps attorneys and juries demand higher quality evidence. Perhaps successful referrals reflect more significant and complex criminal activity and case work. The RMO looks forward to pursuing additional discussions with DOJ to examine these questions and better inform resource planning and execution. These data help illustrate, however, that it is not clear how budget plans adding more agents improve performance, as measured by referrals, sentences, declinations, etc.

Budget formulation should focus on overall system capacity issues. As a result, budget planning should consider more accurate and up-to-date tracking of program allocations during the year of execution. Improved execution reporting can serve as a control mechanism that allows for the redirection of resources to Administration priorities without having an operational impact or limiting the discretion of agents and prosecutors.

Task Forces

DOJ relies to a great extent on task-forces for conducting investigations, and believes that these task forces leverage state and local efforts and increase the effectiveness of Federal agents. An examination of the data leads to a less certain conclusion. As the table below illustrates, the vast majority of referrals continue to come from direct Federal law enforcement investigations. For example, approximately 20 percent of the FBI's criminal agents were assigned to violent crime task forces in 2008. However, these task forces account for only 4 percent of the overall FBI referrals for that year, suggesting task forces are not an efficient way for to combat priority Federal crimes.

DOJ Referrals by Task Forces				
	2005	2006	2007	2008
Non-Task Force Referrals	91.9%	92.8%	92.5%	92.0%
Alcohol, Tobacco, Firearms and Explosives	20.3%	20.9%	20.8%	20.8%
Drug Enforcement Admin	30.6%	30.3%	30.0%	28.6%
Fed Bureau of Investigatn	38.2%	38.8%	38.4%	39.1%
U.S Marshals Service	2.8%	2.8%	3.3%	3.5%
Task Force Referrals	8.1%	7.2%	7.5%	8.0%
Joint Alcohol, Tobacco, Firearms, Explosives/ State or Local Task Force	3.1%	2.6%	2.6%	3.2%
Joint DEA/ State -Local Task Force	3.5%	3.1%	3.2%	3.0%
Joint FBI/ State -Local Task Force	1.4%	1.4%	1.5%	1.7%
Joint Marshals	0.1%	0.1%	0.1%	0.1%
Total	100.0%	100.0%	100.0%	100.0%

As show by data located here: <http://www.ucrdatatool.gov/>, and posted at the bottom of this page, the impacts task forces have on local crime rates is unclear. More task forces in one jurisdiction does not equate to greater reductions in crime rates, as compared against other jurisdictions enjoying equivalent crime rate reductions with fewer task forces or none at all.

Year	Population	Crime	Investigation	Rate	Property	Violence	Crime	Property	Violence
2008	427,740	1,334.70	14.7	9.8	564.6	745.5	5,189.60	1,155.10	3,177.40
2009	419,205	1,188.70	14.1	15.5	499.5	659.6	4,956.50	1,158.40	3,193.20
CHANGE		-146.00	-0.60	5.70	-65.10	-85.90	-233.10	3.30	15.80
2008	604,465	1,104.40	10.3	39.2	396.7	658.3	3,710.60	577.9	2,734.80
2009	624,222	992	8	43.1	364.8	576.1	3,324.00	473.4	2,484.20
CHANGE		-112.40	-2.30	3.90	-31.90	-82.20	-386.60	-104.50	-250.60
2008	598,077	576.3	4.8	21.1	269.5	280.9	5,487.60	1,087.30	3,785.80
2009	602,531	640.8	3.7	16.9	297.4	322.8	5,823.80	1,113.50	4,164.90
CHANGE		64.5	-1.1	-4.2	27.9	41.9	336.2	26.2	379.1
2008	3,850,920	689.5	10	24.6	348.5	306.4	2,618.10	512.2	1,518.40
2009	3,848,776	625.4	8.1	23.5	317.4	276.4	2,448.60	479	1,491.70
CHANGE		-64.1	-1.9	-1.1	-31.1	-30	-169.5	-33.2	-26.7
2008	281,440	1,019.40	63.6	23.1	385.5	547.2	5,287.10	1,631.30	2,516.00
2009	336,425	777	51.7	29.1	277	419.1	3,846.30	1,135.80	1,934.20
CHANGE		-242.40	-11.90	6.00	-108.50	-128.10	-1,440.80	-495.50	-581.80
2008	378,403	525.9	6.3	88	136.9	294.7	4,245.20	899	3,049.70
2009	401,626	490	3.7	85.7	130.7	269.9	3,665.80	822.9	2,578.80
CHANGE		-35.9	-2.6	-2.3	-6.2	-24.8	-579.4	-76.1	-470.9
2008	171,611	1,093.80	11.1	36.1	297.8	748.8	7,540.90	1,660.10	5,246.70
2009	172,536	1,038.60	9.9	30.7	310.1	688	7,447.10	1,731.20	5,186.70
CHANGE		-55.20	-1.20	-5.40	12.30	-60.80	-93.80	71.10	-60.00
2008	60,400	433.8	5	71.2	101	256.6	5,569.50	677.2	4,746.70
2009	61,072	461.8	6.5	70.4	86.8	298	5,105.40	496.1	4,461.90
CHANGE		28	1.5	-0.8	-14.2	41.4	-464.1	-181.1	-284.8
2008	59,988	256.7	3.3	26.7	16.7	210	2,730.50	355.1	2,217.10
2009	60,923	257.7	3.3	27.9	19.7	206.8	2,598.40	334.8	2,096.10
CHANGE		1	0	1.2	3	-3.2	-132.1	-20.3	-121
2008	115,148	264.9	0	27.8	58.2	178.9	2,723.50	542.8	2,056.50
2009	114,367	236.1	0.9	25.4	55.1	154.8	2,579.40	532.5	1,937.60
CHANGE		-28.8	0.9	-2.4	-3.1	-24.1	-144.1	-10.3	-118.9

Nevertheless, the preceding table illustrates the viability of using available crime data to assess the impact of specific task-forces. The number of violent crime task forces within the FBI, ATF, DEA, and USMS has increased from 343 in 2007 to 457 at the end of 2010. This increase has occurred despite concerns identified by the DOJ Inspector General about duplication of effort and, in some cases, unsafe operating conditions as a result of overlapping task forces. The IG's report also found that overlapping task forces often created unnecessary competition between law enforcement components for more state and local participation. These task forces also drove a tripling in funds paid out of DOJ's Asset Forfeiture Fund – a fund that has very few restrictions for state and local recipients, and one for which DOJ is unable to provide a complete breakdown of the number of task force participants who are funded.

In light of these findings, the guidance reduces funding for task forces. While OMB appreciates the efforts of the Department to examine the effectiveness of the existing task forces and, where appropriate, consolidate or eliminate these task forces the body of evidence suggests that more can be done. The guidance proposes the reduction of an additional 133 task forces across ATF, DEA, FBI, and USMS by eliminating task forces from areas that have one or more of the same type of task force. In addition, the guidance eliminates the full overhead costs of the task forces, including payments to state and locals. Additional details on the methodology for these reductions can be found later in the passback document.

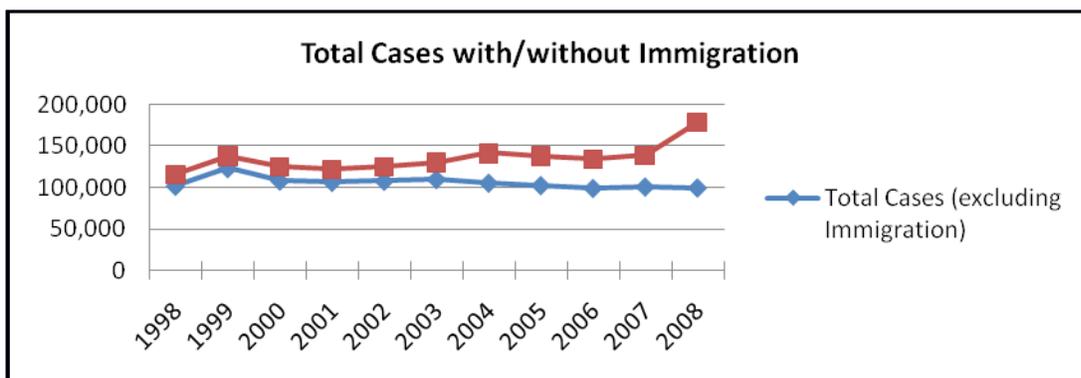
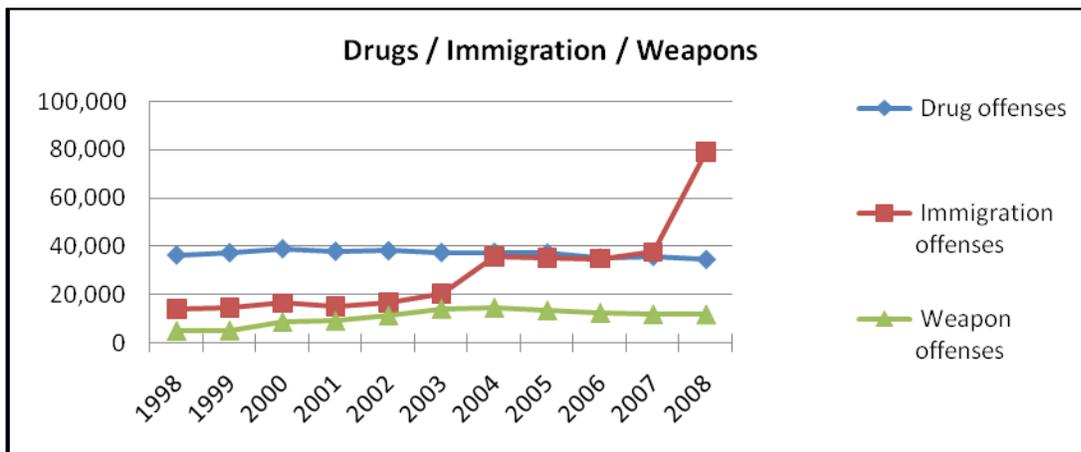
Prosecution

OMB understands that DOJ is developing more meaningful performance measures to determine the impact of its programs on the reduction of violent crime. However, it may also be possible to improve performance through more effective use of prosecutorial resources. An analysis of policies articulated and implemented by the Department suggests that the U.S. Attorneys may be the point in the Federal criminal justice system (outside of legislative changes) with the most potential for affecting outcomes, given both prosecutorial discretion and apparent responsiveness to policy direction. Yet, an examination of resource allocation suggests that effectiveness may be hampered because of a mismatch between prosecutorial and investigative resources as well as deployments to the areas of highest crime. In addition, the Department – through the U.S. Attorneys – should do more, to address the “front-end” impact of prosecutorial decisions on the prison population through increased use of pre-trial alternatives to incarceration, as states are doing. Better nationwide performance measures for the U.S. Attorneys, designed to be outcome-oriented, can help drive these changes.

The guidance recommendation focuses on addressing: (1) resource imbalances in the system between the investigative agencies and the prosecutors, and improved coordination between investigative components and Federal prosecutors; (2) resource imbalances between U.S. Attorney districts; (3) the role of Departmental attorneys in diverting cases from traditional prosecution and incarceration; (4) the need to develop better performance measures linked to the impact on crime; and finally, (5) the capacity to handle significant case referrals by the U.S. Attorneys and high-priority litigation within GLA.

(1) Resource Imbalance between the Investigative Agencies and Prosecutors: In spite of adding more than 2,000 agents between 2002 and 2008, the number of non-immigration prosecution referrals has declined. During the same period, the U.S. Attorneys also increased significantly the number of non-immigration related declinations. The large number of non-immigration related declinations suggests that there are disconnects between investigative and prosecutorial priorities or resources.

The reasons given for declinations further suggest that investigative agencies may be bringing weak or ill-conceived cases. For example, about 15 percent of all referrals are declined for lack of evidence or other shortcomings in the evidence such as lack of criminal intent or no Federal crime. To minimize declinations and better address violent crime, DOJ should expand use of prosecutor-led investigative strategies, such as those used by OCEDTF. The U.S. Attorneys, given their discretion in considering the full range of factors that inform charging and disposition decisions are critical to the success of this effort, while the Criminal Division with its national perspective can help develop and coordinate national strategies.



The DOJ effort should focus on developing and implementing proven and cost-effective crime reduction strategies. The recommended additional funding is intended to support additional analytic capacity within the Executive Office of U.S. Attorneys (EOUSA) and at the District level, as well as within the Criminal Division.

(2) Possible Resource Imbalances between U.S. Attorney Districts: OMB examined U.S. Attorney staffing across the country and compared the staffing allocations to crime rates. The data suggest that in some places those resources appear out of balance. Some states with high crime rates have the same number of U.S. Attorney staff, or fewer, compared to states with relatively low incidents of violent crime. For example, South Carolina and Nevada both reported incidents of crime at more than 700 per 100,000, which is nearly double the national average. However, both had relatively few U.S. Attorney staff (44 and 43, respectively). In comparison, most states with much lower crime rates have more U.S. Attorney staff. OMB noted some areas in which the number of task forces and the number of U.S. Attorneys appeared to be out of sync. We also examined cases pending at the end of the year as a proxy for relative workload. Again, we noted several districts in which there appears to be a mismatch between workload and staffing. The Department could use the same analysis to allocate its resources in a more effective manner and consider Uniform Crime Reports (UCR) data over time to assess the impact of its anti-crime strategies.

(3) Exploring Alternative Strategies, such as Diversion Programs: OMB understands that DOJ is working to evaluate strategies (currently underway in several states) that apply fiscally sound, data-driven methods to improve the utilization of scarce prosecutorial resources, as well as support offender re-entry efforts, in ways that are consistent with the need to protect public safety. Unlike the states, the Federal criminal justice system offers few alternatives for dealing with nonviolent offenders – especially those charged with drug crimes.

State	U.S. Attorney Staff	Incidents of Violent Crime per 100,000
Wisconsin	52	274
Connecticut	50	298
Oregon	50	257
Mississippi	49	285
Minnesota	48	263
W. Virginia	45	274
S. Carolina	44	730
Nevada	43	724
Iowa	41	284
Utah	40	222
United States Average		427

	Number of contractors supporting financial systems and other	Cost per contractor	Cost Savings (in millions)
ATF			

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