

How Today's Prison Crisis is Shaping Tomorrow's Federal Criminal Justice System

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In addressing this [prison overcrowding] crisis—whether through legislation; executive action, such as clemency; or policy changes, such as amending the Sentencing Guidelines—policy-makers must not create a new public safety crisis in our communities by simply transferring the risks and costs from the prisons to the caseloads of already strained probation officers and the full dockets of the courts. Instead, lasting and meaningful solutions can be attained only if the branches work together to ensure that the correct cases are brought into the federal system, just sentences are imposed, and offenders are appropriately placed in prison or under supervision in the community.¹

Introduction

In an attempt to alleviate overcrowding in the Federal Bureau of Prisons (BOP) and thereby conserve scarce resources for other federal criminal justice priorities, efforts are underway in each branch of government to reform federal sentencing and corrections practices. These reforms will have a significant impact on the resources of the courts and on the

probation and pretrial services system in particular.² This article highlights several of the initiatives being pursued and describes how they could impact the resources and workload of the courts and responsibilities of judges and probation and pretrial services officers (officers).³ We also identify the proposals about which the Judicial Conference has expressed views,⁴ and discusses some of the unresolved questions that would need to be answered in order for these proposals to be effectively implemented.

² The federal probation and pretrial services system is responsible for four primary functions in the criminal justice system: (1) preparing pretrial services reports for the courts; (2) supervising defendants released to the community pending trial, sentencing, sentence execution, or appeal; (3) preparing presentence investigation reports for the courts; and (4) supervising offenders serving a period of post-conviction supervision.

³ The term “workload” refers to the number of investigatory reports or the number of persons on community supervision. Any increase in the number of investigatory reports or persons on supervision has an effect on the resources of the courts and the probation and pretrial services system.

⁴ The Judicial Conference of the United States was created by Congress in 1922. Its fundamental purpose is to make policy for the administration of the United States courts, including the probation and pretrial services system. While the Judicial Conference approves national policies to guide the courts and probation offices in the individual districts, many districts also have local written

Potential Workload Drivers

As of December 2014, the BOP housed 214,149 inmates, which is roughly 28 percent over its rated capacity. For the past several years, the Department of Justice (DOJ) has identified prison overcrowding as a significant management issue. In a July 2013 letter to the Sentencing Commission, the DOJ noted that “[n]ow with the sequester, the challenges for federal criminal justice have increased dramatically and the choices we all face—Congress, the Judiciary, the Executive Branch—are that much clearer and more stark: control federal prison spending or see significant reductions in the resources available for all non-prison

policies that substantially supplement national policies. The Conference operates through a network of committees. One of the committees, the Criminal Law Committee, oversees the federal probation and pretrial services system and reviews legislation and other issues relating to the administration of the criminal law. This general mission is achieved by providing oversight of the implementation of sentencing guidelines; making recommendations to the Judicial Conference with regard to proposed amendments to the guidelines; and proposing policies and procedures on issues affecting the probation system, pretrial services, presentence investigation procedures, disclosure of presentence reports, sentencing and sentencing guidelines, and supervision of offenders released on probation and parole and on supervised release.

¹ “Agency Perspectives”: *Hearing before the Over-Criminalization Task Force of 2014 of the H. Comm. on the Judiciary* (July 11, 2014) (statement of Hon. Irene M. Keeley, Chair, Committee on Criminal Law, Judicial Conference of the United States).

criminal justice areas.⁵ In an August 2013 speech before the American Bar Association, the Attorney General stated that “although incarceration has a significant role to play in our justice system—widespread incarceration at the federal, state, and local levels is both ineffective and unsustainable.”⁶ In December 2013, the DOJ’s Office of the Inspector General issued a report on the top 10 management challenges for the department, placing “Addressing the Growing Crisis in the Federal Prison System” at the top of the list.⁷

Other government agencies have raised awareness about the prison overcrowding problem as well. In April 2014, the Congressional Research Service prepared a report that noted the “historically unprecedented increase in the federal prison population” since the 1980s that has “made it increasingly more expensive to operate and maintain the federal prison system.”⁸ The report suggested that “policy makers might consider whether they want to revise some of the policy changes that have been made over the past three decades that have contributed to the steadily increasing number of offenders being incarcerated.”⁹ It suggested that policy makers consider options such as (1) modifying mandatory minimum penalties, (2) expanding the use of Residential Reentry Centers, (3) placing more offenders on probation, (4) reinstating parole for federal inmates, (5) expanding the amount of good time credit an inmate can earn, and (6) repealing federal criminal statutes for some offenses.¹⁰ Finally, in June 2015, the General Accountability Office issued a report noting the eightfold increase in the federal inmate population since 1980 and the increase in operating costs (obligations) over time.¹¹ The report noted that in fiscal year 2014, the BOP’s obligations amounted to more than \$7 billion,

or 19 percent of DOJ’s total obligations.¹² Due in part to these and many other attempts to raise awareness about prison overcrowding, there are efforts in all three branches of government designed to address the problem.

Legislative Actions

There are several bills that have been introduced in the 114th Congress that would have an impact on the federal criminal justice system. Congress is considering legislation that would affect both “front-end” sentencing issues, such as lowering or eliminating mandatory minimums and expanding the safety valve, and “back-end” legislation, which would accelerate the release of inmates or otherwise shorten the amount of time that an inmate serves in custody.

On the front end, the “Smarter Sentencing Act of 2015” would expand the safety valve (18 U.S.C. § 3553(f)) to authorize more defendants to be sentenced below an applicable mandatory minimum penalty, lower mandatory minimum penalties in certain drug offenses, and make the “Fair Sentencing Act of 2010” (which reduced the disparity in penalties for offenses involving crack and powder cocaine) applicable to inmates who were sentenced before the Act was passed. Similarly, the “Justice Safety Valve Act of 2015” would expand the safety valve by allowing a judge to impose a sentence below a statutory minimum “if the court finds that it is necessary to do so in order to avoid violating the requirements of [18 U.S.C. § 3553(a)].”¹³ While the Judicial Conference supports many of these front-end reforms, it is mindful that additional resources will be

¹² *Id.*

¹³ Under 18 U.S.C. § 3553(a), the court is required to impose a sentence that is sufficient, but not greater than necessary, to comply with the sentencing purposes of: (1) reflecting the seriousness of the offense, promoting respect for the law, and providing just punishment for the offense; (2) affording adequate deterrence to criminal conduct; (3) protecting the public from further crimes of the defendant; and (4) providing the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. The court, in determining the particular sentence to be imposed, is also required to consider other factors such as: (1) the nature and circumstances of the offense; (2) the history and characteristics of the defendant; (3) the kinds of sentences available; (4) the kinds of sentence and the sentencing range as set forth in the sentencing guidelines; (5) pertinent policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense.

needed to keep pace with the new workload. For example, making the “Fair Sentencing Act of 2010” retroactive would result in thousands of additional inmates petitioning the courts for sentence reduction hearings. Moreover, shorter sentences will result in inmates commencing terms of supervised release sooner than originally forecast, which would have an effect on resources required.

One of the leading back-end bills is the “CORRECTIONS Act of 2015.” This bill would require the BOP to develop a dynamic risk/needs assessment and create a system of earned credits that inmates could use to shorten the amount of time they must serve in prison. Inmates who are released early would be placed in home confinement or on a newly created term of “community supervision” and remain in the custody of the BOP but be supervised by probation officers. Although the probation officers already supervise some BOP inmates who have been released through the Federal Location Monitoring Program,¹⁴ the scale envisioned by this bill goes far beyond the current supervision infrastructure. Accordingly, new procedures would need to be developed to ensure effective strategies for community supervision and approaches to address behavior not in compliance with the conditions of supervision. Estimating the impact of the “CORRECTIONS Act of 2015” on the number of offenders that would require community supervision is difficult because the system of early release is premised on a dynamic risk/needs assessment that the BOP has not yet developed. One recent article, however, suggested that the bill “would allow as many as 34,000 currently incarcerated inmates—more than 15 percent of the federal correctional population—to leave prison early, provided they successfully complete rehabilitation programs first.”¹⁵

The “CORRECTIONS Act of 2015” also includes provisions requiring the Administrative Office of the U.S. Courts (AO)

⁵ Letter from Jonathan J. Wroblewski, U.S. Dep’t. Of Justice, to Hon. Patti B. Saris, Chair, U.S. Set. Comm. (July 11, 2013).

⁶ Attorney General Eric Holder, Remarks at the Annual Meeting of the American Bar Association’s House of Delegates (Aug. 12, 2013).

⁷ Office of the Inspector General, U.S. Dep’t of Justice, Top Management and Performance Issues Facing the Department of Justice (2013).

⁸ Congressional Research Service, The Federal Prison Population Buildup: Overview, Policy Changes, Issues, and Options (2014).

⁹ *Id.*

¹⁰ *Id.*

¹¹ General Accountability Office, Federal Prison System: Justice Could Better Measure Progress Addressing Incarceration Challenges (2015).

¹⁴ Under the Federal Location Monitoring (FLM) program, the BOP may request U.S. probation offices to accept inmates directly onto supervision on some form of home confinement during the final 10 percent of the term of imprisonment, not to exceed 6 months (whichever is less). Typically, inmates referred to the FLM program bypass the traditional Residential Reentry Center (RRC) placement, or are placed on FLM after a brief stay in an RRC.

¹⁵ John Gramlich, *The Prison Debate, Freshly Unlocked*, CQ Weekly, March 31, 2014, at p. 496 (available at: http://cdn1.cq.com/emailed/5tAUGYelpHhS186XDdbCLeZm1_GY/weekly-report-4449190.html).

and the DOJ to collaborate on two pilot projects. The first would require several districts to use evidence-based practices during an offender's reentry and for the AO to submit a report to Congress on the results of the study. The second pilot program would require several districts to adopt a system of swift responses to offender noncompliance and include notification to the court within 24 hours of whenever an offender violates any condition of supervision; it would also require the courts to hold hearings on such violations within one week. These practices would certainly increase the frequency of reporting violations and increase the number of hearings, consuming more time from judges, chambers, officers, clerks staff, and attorneys. The AO would be required to submit a separate report to Congress on the outcomes of this pilot.

Another back-end sentencing bill is the "Recidivism Risk Reduction Act." While it is similar in many ways to the "CORRECTIONS Act of 2015," there are several notable differences. For example, the "Recidivism Risk Reduction Act" would require the wardens to notify the sentencing court whenever an inmate has earned sufficient credits to be placed in prerelease custody (i.e., residential reentry centers or home confinement). The judge would have the opportunity to block the inmate's transfer to prerelease custody based on the inmate's post-conviction conduct, such as institutional behavior. The Judicial Conference considered and opposed a similar provision at its September 2014 session based on a recommendation of the Criminal Law Committee. The Committee noted that such decisions are in the nature of parole and more appropriately made by the executive branch, which has direct contact with the inmates and the most accurate and up-to-date information about their conduct and condition. The Committee also expressed concern that the legislation could erode determinate sentencing and otherwise undermine the "Sentencing Reform Act of 1984." It therefore recommended that the Judicial Conference "oppose . . . legislation that would require Article III judges to exercise powers that traditionally have been exercised by parole officials in the executive branch in deciding whether an inmate may be allowed to serve a portion of his or her prison sentence in the community."¹⁶

¹⁶ This "judicial parole" authority is different from the court's authority in 18 U.S.C. § 3582(c) to resentence an inmate. Although resentencing is a judicial function, determining where an inmate serves a sentence is an executive function.

One bill from the 114th Congress contains several front-end and back-end proposals and may be the most wide-ranging sentencing reform bill under consideration. The "Sensenbrenner-Scott SAFE Justice Reinvestment Act of 2015" (the "SAFE Act") touches on issues such as over-criminalization, over-federalization, and evidence-based sentencing and corrections. Among other things, the bill would (1) create a presumption in favor of probation for many first-time, non-violent defendants, (2) explicitly authorize the creation of specialty court programs, (3) expand eligibility for the safety valve, (4) focus mandatory minimum penalties on organizers, leaders, managers, and supervisors of drug-trafficking organizations of five or more participants, (5) make the "Fair Sentencing Act of 2010" retroactive, (6) expand compassionate release,¹⁷ (7) eliminate the "stacking" of penalties for multiple convictions of 18 U.S.C. § 924(c) and limit the enhanced penalty provisions to cases in which a prior conviction has become final, (7) require the BOP to develop a risk and needs assessment system and offer earned sentence reduction credits, (8) promote greater use of graduated sanctions for supervision violations, and (9) require the DOJ to reduce overcrowding of pretrial detention facilities and reduce the cost of pretrial detention.

It is unclear whether these bills will advance in the 114th Congress, but if any are enacted, it could greatly change the way in which the judiciary sentences and supervises defendants and offenders for years to come.

Sentencing Commission Actions

The sentencing guidelines and policy statements promulgated by the U.S. Sentencing Commission (Commission) can substantially impact the size of the BOP's population. Moreover, its research and analysis of federal sentencing data can greatly influence how stakeholders in all branches of government attempt to solve the problem of prison overcrowding.

On January 17, 2014, the Commission published for comment several proposed amendments to the Sentencing Guidelines Manual, including one that would lower the offense levels in the Drug Quantity Table.¹⁸

¹⁷ Under 18 U.S.C. § 3582(c)(1)(A), the court, upon motion of the BOP Director, may reduce the term of imprisonment based in part on the inmate's old age or other extraordinary and compelling reasons.

¹⁸ U.S. Sentencing Commission, Request for Public Comment, 79 Fed. Reg. 3279 (Jan. 17, 2014).

At least one of the factors motivating the amendment was overcrowding in the BOP. The Commission noted that "[p]ursuant to 28 U.S.C. § 994(g), [it] intends to consider the issue of reducing costs of incarceration and overcapacity of prisons, to the extent it is relevant to any identified priority."¹⁹ At its April 10, 2014, public hearing, the Commission voted to approve the amendment, which became effective on November 1, 2014. The Commission projected that the lower offense levels impact 70 percent of all drug cases and reduce sentences by an average of 11 months.

Although the prospective application of the amended guidelines would have a modest impact on probation officers' workload, the retroactive application of the amendment creates substantial workload for the courts. The Commission has estimated that more than 46,000 inmates could be eligible for a sentence reduction based on the retroactive amendment. Reviewing each case consumes the resources of judges, clerks office staff, federal public defenders, and probation officers. If a reduction in the sentence is granted, BOP staff and probation officers must begin the process of developing and implementing a release plan. In its extensive deliberations about whether to support the retroactive application of the proposed amendment, the Criminal Law Committee carefully considered whether the courts and the probation and pretrial services system could effectively manage the increased workload that would result while ensuring effective reintegration into the community and protecting public safety. The Committee determined that the only way to mitigate the extremely serious administrative problems would be to delay the date that inmates can be released, but to authorize the courts to begin accepting and granting petitions on November 1, 2014. This delay in releasing inmates would allow the courts and probation offices across the country first to manage the influx of petitions and then, once the surge of petitions has been addressed, to pivot available resources to deal with the increase in the number of offenders received for supervision.

The Commission adopted the Committee's recommendation and delayed until November 1, 2015, the release of any inmate whose sentence was reduced. Almost 8,000 inmates could be released from BOP custody on that day (compared to a typical day in which 150 inmates are received for supervision).

¹⁹ U.S. Sentencing Commission, Notice of Final Priorities, 78 Fed. Reg. 51820 (Aug. 21, 2013).

Thousands of additional inmates will be eligible for early release over the subsequent months, and those inmates will remain on supervision for several years. This surge in offenders received for supervision will require additional resources in the next few years, after which the number of cases received for supervision will return to historic levels.

In addition to its work in promulgating guidelines, the Commission impacts federal sentencing policy through its release of data and reports. In its list of priorities for the 2014-2015 amendment cycle,²⁰ the Commission noted that, among other things, it intended to continue its studies on recidivism and federal sentencing practices pertaining to imposition and violations of conditions of probation and supervised release. The results of these studies can greatly influence how Congress and others address the problem of prison overcrowding.

Executive Branch Actions

As part of the Attorney General's "Smart on Crime" initiative, the DOJ has announced several policy changes that will impact the workload of probation and pretrial services offices. One of the key initiatives is a new policy on charging offenses that carry mandatory minimum penalties when the defendant is viewed as a low-level, non-violent offender. The policy encourages an assistant U.S. attorney prosecuting a drug case to review the defendant's prior record and role in the offense, and if the defendant is deemed to be low risk, the indictment or information should not allege a specific drug quantity, thereby triggering no mandatory minimum. In fiscal year 2014, the DOJ charged a mandatory minimum in roughly half of the drug cases prosecuted, about 10 percent less often than in FY 2011. The result of fewer mandatory minimums, coupled with the lower guideline sentences, will be inmates released to supervision sooner than historically forecast, which of course affects the resources required for effective supervision.

The BOP has released a new policy on compassionate release cases. Under the new regulations, inmates with terminal medical conditions may be eligible for compassionate release if their life expectancy is 18 months or less (previously it was 12 months). Also eligible are: (1) inmates who have incurable progressive illnesses or debilitating conditions from which they will not recover, (2) inmates

who are completely disabled and incapable of self-care, and (3) inmates capable of limited self-care but confined to a bed or chair 50 percent of waking hours. Under the revised regulations, inmates will also be considered for compassionate release when there are extraordinary or compelling circumstances that could not have been foreseen at sentencing, such as the death or incapacitation of the sole caregiver of an inmate's minor children.

In fiscal year 2012, the BOP recommended compassionate release in 39 cases. That number increased to 61 in fiscal year 2013, and 90 in fiscal year 2014. While those numbers are not staggering, it is clear that the BOP intends to use compassionate release to shift certain inmates from the prisons back into the communities and under the supervision of probation officers. The BOP has already revised the eligibility criteria for compassionate release, adding new factors related to the loss of the caretaker of the inmate's dependent children. Continued growth in the number of compassionate release cases is expected. What is noteworthy is that these cases require expedited review by a probation officer and often present unique complexities. For example, officers must assess whether it is in the best interest of the inmates' children to approve the inmates' prerelease plan. To make determinations correctly, officers will need specialized training, similar to that received by caseworkers who handle child protection matters. In addition, officers will need to collaborate extensively with state and local government child protection authorities.

Although many inmates who have been compassionately released would make good candidates for early termination of supervision, 18 U.S.C. § 3583 requires that they complete at least a year of supervision and specifies that early termination may occur only when "warranted by the conduct of the defendant released and the interest of justice." Since the supervision program is designed to deal with criminogenic risk and need, and not general medical or geriatric care, it makes little policy or financial sense to keep such offenders under supervision. Accordingly, the Judicial Conference has approved seeking legislation that permits the early termination of supervision terms, without regard to the limitations in section 3583(e)(1) of title 18, U.S. Code, for an inmate who is compassionately released from prison under section 3582(c) of that title. If enacted, the court would have the discretion to terminate a term of supervised release of an inmate who is compassionately released.

Another "Smart on Crime" initiative involves expanded use of alternatives to incarceration. In particular, the DOJ is promoting the implementation of federal pretrial diversion and reentry court programs. At the request of the Criminal Law Committee, the Judicial Conference authorized a study of the efficacy and cost-effectiveness of federal reentry court programs, whose results would be used in deciding whether any national models should be developed. Following consultation with the Criminal Law Committee and the Administrative Office of the U.S. Courts, the FJC proposed a comprehensive two-pronged study. The first prong is a multi-year evaluation of new (or relatively new) reentry programs that utilizes an experimental design with random assignment. This experimental study began in September 2011 and is now under way in five districts. The results of the randomized-experimental study are still pending, but preliminary reports from the research team and the districts involved in the study suggest that running these programs is significantly more expensive than standard supervision. The additional costs stem from the time needed by the court, probation officers, and attorneys to prepare for and conduct status hearings and respond to issues that arise. There are additional costs associated with the intense treatment that most program participants must complete. The DOJ's desire to expand these specialty court programs will certainly require more staffing and treatment resources for probation and pretrial services offices.

The second prong of the study is a retrospective process-descriptive assessment of selected judge-involved supervision programs that have been in operation for at least 24 months. The study was completed in 2013.²¹ The process-descriptive assessment does not focus on reentry programs per se, but examines the broader range of judge-involved supervision programs.²² It does not evaluate judge-involved supervision programs in general—or any one program in particular—but describes the population served by the

²¹ Federal Judicial Center, *Process-Descriptive Study of Judge-Involved Supervision Programs in the Federal System* (2013).

²² These programs employ the authority of the court to impose graduated sanctions and positive reinforcements while using a team approach to marshal the resources necessary to support an offender's reintegration, sobriety, and law-abiding behavior. The team, by definition, always involves a judge, and in the federal system, it also involves representatives of the probation office. Depending on the program, prosecutors, defenders, or service providers may also participate as team members. *Id.*

²⁰ U.S. Sentencing Commission, *Notice of Final Priorities*, available at: http://www.ussc.gov/sites/default/files/pdf/amendment-process/federal-register-notices/20140814_FR_Final_Priorities.pdf.

programs, the services provided, and how the participants fared.²³ Furthermore, it probes for relationships between outcomes and program characteristics, and it compares the services and outcomes of program participants with those of a group of offenders whose expectations of success at the start of supervision were similar but who did not participate in a judge-involved supervision program.²⁴

Last, the DOJ announced that it was expanding the use of clemency petitions as a way to remove certain low-risk inmates from BOP custody who have already served at least 10 years of their sentence.²⁵ To facilitate inmates with their petitions, a non-government affiliated group called Clemency Project 2014 was created and has agreed to provide legal assistance to inmates interested in submitting a petition. The Clemency Project has received approximately 30,000 requests from inmates to have their cases reviewed. Inmates who meet the new eligibility criteria will have a volunteer attorney assigned to help draft the petition and submit it to the Office of the Pardon Attorney.

While the DOJ may be inclined to review more petitions and recommend clemency in more cases, it is clear that they do not intend to completely pardon these inmates, and that the DOJ expects supervised release to remain in place when an inmate's prison sentence is commuted. As such, officers can expect to receive these cases for supervision sooner than their projected release dates.

Conclusion

There has been increased interest in federal criminal justice reforms from all branches of government. This interest is driven by several factors, including overcrowding in the BOP, ongoing fiscal austerity, and emerging research on effective criminal justice practices. The Judicial Conference supports many of the initiatives that have been proposed; however, there are concerns about the resulting workload increases for the courts and the need for more resources, particularly for probation

and pretrial services offices. There are also concerns that unless these efforts are better coordinated—so that the best information is available to decision-makers—the efficacy of the federal criminal justice system, and ultimately public safety, could be compromised.

Although the probation system alone cannot solve the BOP's overcrowding problem, it can play a role, whether by assuming responsibility for inmates released early under a new statute or serving as a more primary sentencing option in lieu of imprisonment. Supervision and court costs are just a fraction of prison costs. Therefore, it would be possible to use a portion of the savings generated by reducing the inmate population to pay for the judiciary's expanded activities in supervising offenders in the community. Such strategic resourcing is essential to the success of any justice reinvestment initiative. As former Attorney General Eric Holder noted when speaking on justice reinvestment, "In recent years, no fewer than 17 states—supported by the department, and led by governors and legislators of both parties—have directed funding away from prison construction and toward evidence-based programs and services, like treatment and supervision, that are designed to reduce recidivism."²⁶

The success of the federal supervision program makes it an attractive option for policy-makers to consider. The federal system's recidivism rate has been half that of many states. The three-year felony rearrest rate for persons under federal supervision has been measured at 24 percent.²⁷ The percent of federal cases closed by revocation annually is approximately 30 percent.²⁸ In contrast, a Bureau of Justice Statistics (BJS) study looking at 15 state parole systems found a recidivism

rate of 67.5 percent.²⁹ Similarly, while supervision violators constituted 33 percent of all new prison admissions in the states in 2011, violators constitute only 8 percent of the new admissions in federal prisons, according to another BJS report.³⁰ Also, an Urban Institute study found that the percentage of inmates in Federal Bureau of Prisons custody on revocation charges has been declining, going from 5.3 percent in 1998 to 3.4 percent in 2010.³¹

With adequate resources to retain and hire quality probation and pretrial services staff, provide needed rehabilitative treatment programs for offenders, and successfully implement evidence-based practices, the reforms under consideration have a great chance of success. Without such resources, however, the efficacy of these reforms could be diminished and the historically positive outcomes in the federal system could be jeopardized. Any discussions about strategies to reduce the federal prison population should also include strategies to ensure that the judiciary has the resources needed to absorb the additional workload. These should include the DOJ's continued support for the Judiciary's appropriations requests, closer coordination between the courts and the DOJ on new policy initiatives that may impact the operations or workload of the courts, and the expansion of existing interagency reimbursable agreements that result in savings to the DOJ and cover the costs incurred by the Judiciary.

²³ *Id.*

²⁴ *Id.*

²⁵ Deputy Attorney General James Cole, Announcing the New Clemency Initiative (April 23, 2014) (available at: <http://www.justice.gov/pardon/new-clemency-initiative>).

²⁶ Attorney General Eric Holder, Remarks at the Annual Meeting of the American Bar Association's House of Delegates (Aug. 12, 2013) (available at: <http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html>).

²⁷ L. Baber, "Results-based Framework for Post-conviction Supervision Recidivism Analysis," *Federal Probation*, 74, no. 3 (2010).

²⁸ Judicial Business of the U.S. Courts, Table E-7A, available at: <http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2012/appendices/E7ASep12.pdf>; W. Rhodes, C. Dyou, R. Kling, D. Hunt, and J. Luallen, *Recidivism of Offenders on Federal Community Supervision*. Cambridge, Massachusetts: Abt Associates, 2012.

²⁹ P. Langan, D. Levin, *Recidivism of Prisoners Released in 1994*. Washington, DC: Bureau of Justice Statistics, 2002.

³⁰ E. Carson, W. Sabol, *Prisoners in 2011*. Washington, DC: Bureau of Justice Statistics, 2012.

³¹ Mallik-Kane, K., B. Parthasarathy, and W. Adams. *Examining Growth in the Federal Prison Population, 1998 to 2010*, at 5. Washington, DC: Urban Institute, 2012.