



June 2015

FEDERAL PRISON SYSTEM

Justice Could Better Measure Progress Addressing Incarceration Challenges

GAO Highlights

Highlights of [GAO-15-454](#), a report to congressional committees

Why GAO Did This Study

The federal inmate population has increased more than eight-fold since 1980, and DOJ has identified prison crowding as a critical issue since 2006. BOP's rising costs and offender recidivism present incarceration challenges to both DOJ and the nation. For example, BOP's operating costs (obligations) have increased over time, and in fiscal year 2014 amounted to more than \$7 billion, or 19 percent of DOJ's total obligations. In recent years, DOJ has implemented targeted initiatives in response, and Senate Report 113-78 included a provision for GAO to review these efforts.

This report discusses (1) DOJ's initiatives to address federal incarceration challenges, (2) the extent to which DOJ is measuring its efforts, and (3) the extent to which DOJ is coordinating across its components to implement the Smart on Crime Initiative. GAO reviewed DOJ documentation, interviewed DOJ officials, and compared DOJ efforts with performance measurement and coordination best practices GAO has previously identified.

What GAO Recommends

GAO recommends that DOJ explore additional data collection opportunities and modify its Smart on Crime indicators, track and address delays in the sentence commutation process, and modify its current evaluation plan to prioritize evaluations among all 18 of BOP's national reentry programs. DOJ partially concurred with GAO's recommendation that it modify its Smart on Crime indicators and agreed with the other two. GAO continues to believe the Smart on Crime recommendation is valid, as discussed in the report.

View [GAO-15-454](#). For more information, contact David C. Maurer, 202-512-9627, maurerd@gao.gov.

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What GAO Found

The Department of Justice (DOJ) has implemented three key initiatives to address the federal incarceration challenges of overcrowding, rising costs, and offender recidivism, which includes the return of offenders to prison after release. The Smart on Crime Initiative involves multiple DOJ components and has five key goals, one of which involves prioritizing the prosecution of the most serious cases. The Clemency Initiative is intended to encourage federal inmates who meet criteria that DOJ established to petition to have their sentences commuted, or reduced, by the President. DOJ is now more focused on prioritizing its review of these petitions, which have increased from about 1,600 in 2011 to about 6,600 in 2014. Finally, DOJ's Bureau of Prisons (BOP) recently established a Reentry Services Division (RSD) to facilitate a more centralized approach to overseeing reentry programs and better assisting offenders in their reentry to society.

DOJ has several early efforts under way to measure the success of these initiatives, but its current approach could be enhanced. In particular:

Smart on Crime Initiative: GAO found that DOJ's 16 recently established Smart on Crime indicators were well linked to the effort's overall goals. However, in many cases, the indicators lacked other key elements of successful performance measurement systems GAO has previously identified, such as clarity and context. For example, 7 of the 16 indicators are confusing or do not represent the information the indicator name implies, and 13 of the 16 indicators lack contextual information needed to appropriately interpret their results. DOJ officials said they focused their initial indicators on data already available rather than developing new indicators. Although measuring performance can be a challenge for prosecutorial agencies such as DOJ, research indicates that improved data collection and clearly defined goals and progress measures can help agencies develop effective performance measurement systems. By exploring such options, DOJ would be better positioned to more effectively measure its efforts through the Smart on Crime Initiative.

Clemency Initiative: DOJ tracks some statistics related to its Clemency Initiative, such as the number of petitions received and the disposition of each, but it does not track how long, on average, it takes for petitions to clear each step in its review process. Such tracking would help DOJ identify processes that might be contributing to any delays. Without this tracking, DOJ cannot be sure about the extent to which the additional resources it is dedicating to this effort are helping to identify and expedite the review of inmate petitions.

Reentry programs: BOP has recently developed a plan to conduct evaluations of some of its reentry programs related to psychology treatment services, but it does not have a plan to prioritize evaluations among all 18 of the programs it lists in its national reentry directory. Modifying its current evaluation plan to consider all of these programs would better position DOJ to know the extent to which its investments in programs intended to reduce recidivism are effective.

DOJ's early efforts to implement the Smart on Crime Initiative are consistent with GAO's key collaboration best practices, such as establishing mutually reinforcing strategies. For example, DOJ directed its law enforcement components and United States Attorneys' Offices to coordinate on establishing prosecution priorities and antiviolence strategies nationwide.

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Abbreviations

ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
BJA	Bureau of Justice Assistance
BJS	Bureau of Justice Statistics
BOP	Federal Bureau of Prisons
CRM	Criminal Division
DEA	Drug Enforcement Administration
DOJ	Department of Justice
EOUSA	Executive Office of the United States Attorneys
FBI	Federal Bureau of Investigation
FTE	full-time equivalent
OCDETF	Organized Crime Drug Enforcement Task Forces
ODAG	Office of the Deputy Attorney General
OPA	Office of the Pardon Attorney
RAC	Reentry Affairs Coordinator
RDAP	Residential Drug Abuse Program
RSD	Reentry Services Division
SCA	Second Chance Act
USMS	United States Marshals Service
USSC	United States Sentencing Commission

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July 19, 2015

Congressional Committees

The number of federal inmates under the Department of Justice’s (DOJ) management has presented long-standing incarceration challenges in terms of prison crowding, rising costs, and recidivism—the return of inmates to prison or criminal activity after release. As of February 2015, DOJ’s Federal Bureau of Prisons (BOP) was responsible for managing the confinement of about 210,000 inmates in 121 institutions, which is more than eight times larger than the inmate population was in 1980.¹ BOP is not responsible for controlling the flow of inmates into the federal prison system, as convicted offenders are placed directly in BOP’s custody and care, but it is responsible for confining these inmates safely and securely. As we reported in September 2012, this responsibility can be challenging with perpetual federal prison overcrowding.² In fact, despite a decline of about 8,500 inmates since the end of fiscal year 2013—the first decline in decades—BOP reports that its institutions remain about 30 percent overcrowded, housing considerably more inmates than they were designed to hold. DOJ has identified prison overcrowding as a material weakness in annual reports every year since 2006 and noted its reduction as a high priority in 2013 and 2014. Moreover, DOJ’s Inspector General has identified detention and incarceration among DOJ’s top 10 management and performance challenges every year since 2004.³

¹BOP also confines inmates in secure privately managed or community-based facilities and local jails.

²GAO, *Bureau of Prisons: Growing Inmate Crowding Negatively Affects Inmates, Staff, and Infrastructure*, [GAO-12-743](#) (Washington, D.C.: Sept. 12, 2012). In particular, we found that crowding has negatively affected inmates housed in BOP institutions, institutional staff, and the infrastructure of BOP facilities, and has contributed to inmate misconduct, which affects staff and inmate security and safety.

³Office of the Inspector General, Department of Justice: *Top Management and Performance Challenges Facing the Department of Justice, 2014*, <http://www.justice.gov/oig/challenges/2014.htm>.

Further, BOP's operating costs (obligations) have increased over time,⁴ and in fiscal year 2014 BOP accounted for about 19 percent of DOJ's total obligations.⁵ In fiscal year 2014, BOP obligated about \$7.3 billion (an increase of \$2.3 billion from fiscal year 2004), and BOP estimates future obligations of about \$7.3 billion and \$7.8 billion in fiscal years 2015 and 2016, respectively.⁶ To ensure that BOP is effectively controlling its operating costs and reducing expenses where practical, we previously recommended that BOP systematically address the deficiencies that its internal reviewers have repeatedly identified, and BOP is working on corrective actions.⁷ The prison system involves costs for both incarceration as well as detention—the housing and related security and transportation of persons from the time they are brought into federal custody until they are acquitted or incarcerated. Operating costs for DOJ's United States Marshals Service (USMS), which is responsible for such detention services, were approximately \$1.7 billion in fiscal year 2014, and USMS estimates future obligations of about \$1.7 billion and \$1.6 billion in fiscal years 2015 and 2016, respectively.⁸

In addition to crowding and rising costs, the rate at which previous offenders return to BOP prisons, or recidivate, compounds the incarceration challenges DOJ and BOP face. In fact, 20 percent of federal

⁴BOP officials said that any cost savings from the recent prison population decline (and potential future declines) would be relatively small because BOP prisons are still overcrowded by about 30 percent. As a result of this overcrowding, BOP is not in a position to close any facilities in the foreseeable future, and it needs to increase staffing levels to make prisons safer.

⁵This percentage is derived from DOJ's fiscal year 2014 agency financial report. DOJ, *FY 2014 Agency Financial Report* (November 2014). As listed in that report, total obligations for BOP reflect obligations for (1) salaries and expenses, (2) buildings and facilities, and (3) the Federal Prison Commissary Fund, which is a self-sustaining trust that allows inmates to purchase additional products and services above the necessities provided by appropriated federal funds. Since DOJ's annual financial report includes the Commissary Fund in BOP's total obligations, we include it here as well, even though it is not a direct appropriation.

⁶Actual and future estimated obligations are from the President's budgets for fiscal years 2006 and 2016. They include the same categories of obligations for BOP as those included in DOJ's annual financial report, cited above.

⁷GAO, *Bureau of Prisons: Information on Efforts and Potential Options to Save Costs*, [GAO-14-821](#), (Washington, D.C.: September 2014).

⁸These actual and estimated obligations, from the President's fiscal year 2016 budget, include costs for federal prisoner detention as well as related security and transportation.

offenders released from BOP in fiscal year 2010 returned to BOP facilities within 3 years. The return of offenders to the prison system exacerbates existing crowding concerns and contributes to escalating housing costs. We have previously reported that high rates of recidivism mean more crime, more victims, and more pressure on an already overburdened and overcrowded criminal justice system.⁹

We previously reported that BOP's population size is in large measure driven by factors outside of BOP's control, such as law enforcement policies and sentencing laws.¹⁰ In the last few years, DOJ has implemented targeted initiatives, some of which jointly engage multiple components like the Offices of the United States Attorneys and law enforcement agencies to address the concerns of overcrowding, costs, and recidivism. Senate Report 113-78 included a provision for GAO to conduct a review of these recent efforts, given DOJ's department-wide approach.

This report addresses the following questions:

1. What are DOJ's initiatives to address federal incarceration challenges, such as overcrowding, rising costs, and recidivism?
2. To what extent is DOJ measuring its efforts to address federal incarceration challenges?
3. To what extent is DOJ coordinating across components to implement its Smart on Crime Initiative?

To identify DOJ's initiatives related to federal incarceration challenges, we reviewed DOJ's fiscal year 2014-2018 Strategic Plan and other relevant DOJ documentation. The three initiatives that DOJ is implementing are the Smart on Crime Initiative, the new Clemency Initiative, and BOP's newly established Reentry Services Division (RSD).¹¹ To address all three

⁹GAO, *Inmate Reentry Programs: Enhanced Information Sharing Could Further Strengthen Coordination and Grant Management*, [GAO-13-93](#) (Washington, D.C.: Dec. 14, 2012).

¹⁰[GAO-14-821](#).

¹¹There are two forms of executive clemency: (1) pardon, which is granted after release from prison and restores certain rights lost as a result of the pardoned offense (such as the right to vote or sit on a jury), and (2) commutation of sentence, which reduces a sentence—either totally or partially—that is then being served.

of our objectives and better understand these initiatives, we reviewed results from DOJ's comprehensive criminal justice review—a review of the criminal justice system intended to identify reforms that would ensure federal laws are enforced more fairly; department budget justifications for fiscal years 2015 and 2016, and Attorney General memoranda. We also reviewed data and documentation on DOJ standards for clemency and the processes by which DOJ evaluates clemency petitions. We interviewed DOJ officials from the Office of the Deputy Attorney General (ODAG), members of DOJ's criminal justice review working groups, and component officials to further understand the department's Smart on Crime Initiative priorities and determine how the clemency standards and the new criteria are used when reviewing clemency applications.¹²

To determine the extent to which DOJ is measuring its efforts to address incarceration challenges with the Smart on Crime Initiative, we reviewed an internal DOJ document outlining actions to measure the success of the initiative, including key indicators, and interviewed DOJ leaders. We also compared the indicators against three of nine attributes we previously identified for successful performance measures: linkage, clarity, and measurable targets.¹³ Additionally, we identified a criterion, based on our prior work, about providing adequate contextual information, and we assessed the indicators against the four criteria.¹⁴ For further information describing our selection of attributes, refer to appendix I.

¹²ODAG is responsible for advising and assisting the Attorney General in formulating and implementing department policies and programs and in providing overall supervision and direction to all of DOJ's components. The new criteria are six factors that DOJ will now use to prioritize clemency applications from inmates who meet all of the factors.

¹³We excluded six of the nine attributes because, while important, they are not foundational. These six attributes are objectivity, reliability, core program activities, limited overlap, balance, and government-wide priorities. Appendix 1 provides more information about our attribute selection.

¹⁴Our prior work establishes nine key attributes of successful performance measures. GAO, *Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures*, [GAO-03-143](#) (Washington, D.C.: November 2002). Our prior work also establishes nine key attributes associated with results-oriented management. GAO, *Information Sharing: DHS Could Better Define How It Plans to Meet Its State and Local Mission and Improve Performance Accountability*, [GAO-11-223](#) (Washington, D.C.: December 2010). For purposes of this report, we refer to these attributes as "key elements of successful performance measurement systems."

To determine the extent to which DOJ is measuring its efforts related to the new Clemency Initiative, we reviewed DOJ's publicly available data on the number of petitions for commutation (reduction) of sentence received and their disposition from October 2010 through February 2015, given the new Clemency Initiative began in April 2014. We assessed the reliability of these data by obtaining written responses to related questions about steps taken to ensure data quality from DOJ, and concluded that these data were sufficiently reliable for the purposes of our review. We also interviewed DOJ officials responsible for oversight of the initiative.

To determine the extent to which DOJ is measuring the efforts of BOP's new RSD, we reviewed BOP's *Directory of National Programs* to assess the extent to which BOP specified the studies that provided empirical support and the population studied. We also reviewed BOP population data from 1980 through 2015, and inmate characteristic data from 1997 and 2012 to compare inmate population totals and characteristics from those time periods to the present. We reviewed the methodology used by DOJ's Bureau of Justice Statistics to compile these statistics, and concluded that these data were sufficiently reliable for the purposes of our review. We also assessed the extent to which BOP had a plan for conducting and prioritizing future evaluations, in accordance with criteria from the American Evaluation Association.¹⁵ To determine the extent to which DOJ is coordinating across components to implement its initiatives to address federal incarceration challenges, we reviewed documentation and interviewed DOJ officials to identify the components involved in each initiative. We determined that DOJ's Smart on Crime Initiative was the only one that involved multiple components in various aspects of the initiative, so we focused our assessment on this initiative. We reviewed department-wide and component strategic plans and budget justification documents, where available. We compared DOJ's coordination efforts associated with the Smart on Crime Initiative against three of eight key collaboration practices we have previously identified.¹⁶ We did not include

¹⁵American Evaluation Association, *An Evaluation Roadmap for a More Effective Government*, (revised October 2013).

¹⁶GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005); *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms*, [GAO-12-1022](#) (Washington, D.C.: Sept. 27, 2012); and *Managing for Results: Implementation Approaches Used to Enhance Collaboration in Interagency Groups*, [GAO-14-220](#) (Washington, D.C.: Feb. 14, 2014.)

and compare DOJ's actions with the remaining five key practices because DOJ's collaborative efforts are largely internal to DOJ and its components, and its efforts are in the early stages. We also interviewed DOJ officials about oversight and implementation of the Smart on Crime Initiative. For more information on our scope and methodology, refer to appendix I.

We conducted this performance audit from July 2014 to June 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Description of the Criminal Justice System

Incarceration is one of multiple steps in the criminal justice process and many of DOJ's components have specific roles and responsibilities within and across these steps (see fig. 1).

Figure 1: Steps in the Federal Criminal Justice System Process



Source: GAO analysis of DOJ component roles and responsibilities. | GAO-15-454

^aAn alleged offender can also be placed under arrest after indictment (formal charge issued by a grand jury). After being arrested, a person may be detained (held in federal custody) by the U.S. Marshals Service until future proceedings or incarceration.

Investigation and Arrest

DOJ's law enforcement components, including the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); Drug Enforcement Administration (DEA); Federal Bureau of Investigation (FBI); and the U.S. Marshals Service (USMS), all share responsibility for investigating crimes, obtaining evidence, arresting offenders, and referring matters for prosecution. To do so, these agencies coordinate and collaborate at the federal, state, and local levels to develop law enforcement priorities, provide training resources, and share information and technology. ATF, DEA, FBI, and USMS are also part of the Organized Crime Drug Enforcement Task Forces (OCDETF), which is a nationwide effort to

pursue multijurisdictional investigations of major criminal organizations trafficking drugs and laundering the illegal proceeds.

Charging and Litigation

DOJ's Offices of the United States Attorneys are primarily responsible for federal criminal prosecution, meaning that they decide whether or not to pursue charges against alleged offenders and what charges to seek. To carry out this responsibility, the Offices of the United States Attorneys are to collaborate with federal, state, and local law enforcement partners in 94 judicial districts across the country to set district-specific priorities and thresholds that help them make these decisions.¹⁷

Sentencing

While judges ultimately determine convicted offenders' sentences, Offices of the United States Attorneys have an opportunity to influence their decisions by providing sentencing recommendations to judges.¹⁸ To do this, prosecutors are to consider the merits of each case, taking into account an individualized assessment of the defendant's conduct and criminal history, the circumstances of the case (including the impact of the crime on victims), and federal resources and priorities.

Incarceration

BOP is responsible for this step in the process. To carry out its responsibility for the custody and care of federal offenders, BOP currently houses inmates across six geographic regions in 121 federal institutions.¹⁹ After inmates begin their terms of incarceration, they may file a petition to have their sentences commuted (reduced).²⁰ DOJ's Office

¹⁷DOJ officials explained that a threshold is a limit that must be exceeded in order to pursue a case. For example, a district may decline to pursue financial fraud cases that do not exceed \$50,000, unless there are other compelling reasons to do so.

¹⁸DOJ officials said that judges also receive recommendations from probation officers and defense attorneys.

¹⁹In addition to these federal institutions, BOP also houses inmates in privately managed facilities and home detention. According to BOP officials, privately managed contract facilities are low security and primarily house non-U.S. citizens convicted of crimes while in this country legally or illegally. Home detention describes all circumstances under which an inmate is serving a portion of his or her sentence while residing in his or her home.

²⁰Commutation of sentence is one of two forms of executive clemency (the other form is pardon). Commutation of sentence may reduce a sentence—either totally or partially—that is then being served. Pardon restores certain rights lost as a result of the pardoned offense, and may be granted only after release from prison.

of the Pardon Attorney (OPA) has responsibility for overseeing the petition review process.

Reentry and Recidivism

BOP and the Offices of the United States Attorneys both have roles to help ensure that offenders properly transition into society and avoid a return to prison or criminal behavior (recidivism) after they have completed their terms of incarceration. Among other activities, BOP provides reentry services to inmates within federal prisons that include drug treatment programs, education and vocational training, and psychology services. BOP also facilitates the transfer of inmates into residential reentry centers, which provide assistance as inmates transition into communities, to include home detention.²¹ In its fiscal year 2016 congressional budget justification, BOP notes that approximately 246 residential reentry centers provide housing for nearly 10,000 offenders prior to release into their communities. Additionally, in recent years, the Offices of the United States Attorneys have prioritized reentry efforts and begun focusing on alternatives to prosecution and incarceration. These, as well as other efforts, are discussed later in the report.

Activities That Have Affected the Size of the Federal Inmate Population

Over time, the federal government has been involved in activities that have modified federal charging practices and sentencing guidelines, which have resulted in changes to the size of the federal prison population. For example, some efforts have resulted in stricter sentencing for offenders and less discretion for judges, while other, more recent efforts have resulted in greater discretion in the prosecution of offenders and more sentencing flexibility. Appendix II outlines examples of these key activities.

The Importance of Effective Coordination and Program Assessment

Many of the meaningful results that the federal government seeks to achieve, including criminal justice reform, require coordinated efforts among and within agencies. Federal agencies have used a variety of methods to implement collaborative efforts, which can be useful in policy

²¹ Residential reentry centers provide employment counseling and job placement assistance, financial management assistance, and substance abuse treatment or counseling as well as other services, which may vary by facility.

development and program implementation.²² In prior work, we have found that collaboration is enhanced when coordinating partners follow certain key practices, which can help clarify efforts and facilitate decision making, such as monitoring, evaluating, and reporting on results.²³ Coordinating agencies, such as the components within DOJ, bring different levels of resources and capacities to collaborative efforts. By assessing relative strengths and limitations, collaborating agencies can better leverage resources and operate more efficiently as they work across agency boundaries. Similarly, we have reported on the importance of performance measurement, which involves the ongoing monitoring and reporting of program accomplishments and provides agency managers with information to gauge progress toward preestablished goals.²⁴ Additionally, our prior work has discussed the benefits of conducting program evaluations, which are individual systematic studies conducted periodically or on an ad hoc basis to assess how well a program is working.²⁵ In conjunction, or when resources allow for one but not the other, these approaches can better position agencies, such as DOJ, to gauge their programs' effectiveness and improve their overall management and operations.

²²For the purpose of this report we use the term "collaboration" broadly to include interagency activities that others have variously defined as "cooperation," "coordination," "integration," or "networking." We have done so since there are no commonly accepted definitions for these terms and we are unable to make definitive distinctions among these different types of interagency activities.

²³GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005), and *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms*, [GAO-12-1022](#) (Washington, D.C.: Sept. 27, 2012).

²⁴GAO, *Managing for Results: Enhancing Agency Use of Performance Information for Management Decision Making*. [GAO-05-927](#) (Washington, D.C.: September 2005).

²⁵GAO, *Program Evaluation: Strategies to Facilitate Agencies' Use of Evaluation in Program Management and Policy Making*. [GAO-13-570](#) (Washington, D.C.: June 2013).

DOJ Implemented Three Key Initiatives to Address Federal Incarceration Challenges

DOJ has implemented three key initiatives to address federal incarceration challenges. Each of these—the Smart on Crime Initiative, the Clemency Initiative, and the newly created BOP Reentry Services Division (RSD)—is focused on better investing staff and budgetary resources to curb federal prison population growth, reduce costs, and stem the return of released offenders back into the federal system.

DOJ’s Smart on Crime Initiative Aims to Comprehensively Reform the Criminal Justice System

Of DOJ’s three initiatives to address incarceration challenges, the Smart on Crime Initiative is the most comprehensive—involving multiple components and addressing all steps in the federal criminal justice system. Table 1 illustrates who shares responsibility, the effort’s key goals, and its anticipated effect on incarceration challenges.

Table 1: Elements of the Department of Justice’s (DOJ) Smart on Crime Initiative

Implementation date and key components involved
<ul style="list-style-type: none"> Announced August 2013 Offices of the United States Attorneys; Bureau of Alcohol, Tobacco, Firearms and Explosives; Federal Bureau of Prisons; Criminal Division; Drug Enforcement Administration; Federal Bureau of Investigation; Organized Crime Drug Enforcement Task Forces; and the United States Marshals Service
Key goals
<ol style="list-style-type: none"> Prioritize prosecutions to focus on the most serious cases Reform sentencing to eliminate unfair disparities and reduce overburdened prisons Pursue alternative to incarceration for low-level nonviolent crimes Improve reentry to curb repeat offenses and re-victimization Surge resources to prevent violence and protecting most vulnerable populations
Anticipated effect on incarceration challenges
<ul style="list-style-type: none"> Reduce the federal prison population Reduce rising costs of operating federal prisons Improve reentry of federal offenders into society upon release Reduce return of federal offenders back into prison after release

Source: GAO analysis of DOJ documentation entitled “Smart on Crime: Reforming the Criminal Justice System for the 21st Century.” | GAO-15-454.

The Smart on Crime Initiative has several key features, including the following:

- Directing the Offices of the United States Attorneys to develop or update priorities for their districts and reassess their antiviolence strategies with law enforcement partners (federal, state, and local) to investigate and prosecute the worst offenders. This change in

prioritization shifts the emphasis away from prosecuting those associated with lower-level crimes who could then be directed toward alternatives to incarceration or referred for state prosecution, if warranted.

- Directing prosecutors in certain drug cases to (1) decline charging offenders with the quantity of drugs necessary to trigger a mandatory minimum sentence²⁶ if those offenders are low-level, nonviolent drug offenders and meet certain other criteria,²⁷ and (2) limit the enhancement of mandatory minimum sentences to those offenders involved in the most severe cases.²⁸
- Encouraging BOP to consider recommending sentence reductions or compassionate release under an expanded list of medical criteria for nonviolent offenders who have served portions of their sentences.²⁹ The Smart on Crime Initiative also encourages prosecutors to participate in inmate reentry programs and to use alternatives to incarceration when appropriate.

Many of the Smart on Crime Initiative's features reflect work performed and policies developed over the past several years. For instance, changes in charging practices stemmed from work that began in 2009 with the convening of DOJ's Sentencing and Corrections Working Group,

²⁶ Federal statutes set certain mandatory minimum sentences, such as five, ten, or twenty years, that must be served in accordance with law if certain factors such as drug quantity are charged and proven.

²⁷ According to memoranda issued by the Attorney General, the other criteria the defendant must meet are the defendant's relevant conduct does not involve the use of violence, the credible threat of violence, the possession of a weapon, the trafficking of drugs to or with minors, or the death or serious bodily injury of any person; the defendant is not an organizer, leader, manager, or supervisor of others within a criminal organization; the defendant does not have significant ties to large-scale drug-trafficking organizations, gangs, or cartels; and the defendant does not have a significant criminal history.

²⁸ When a defendant is involved in certain conduct, such as violence, or has significant ties to large-scale drug-trafficking organizations, gangs, or cartels, among others (21 U.S.C. § 851), prosecutors can file one or more notices of prior felony drug conviction, potentially enlarging a mandatory minimum sentence from 5 to 10 years or 10 to 20 years or life.

²⁹ Upon motion of the Director of BOP, the court may reduce a term of imprisonment after considering certain factors, if it finds that either (1) extraordinary and compelling reasons warrant such a reduction, or (2) the inmate is at least 70 years of age, has served at least 30 years in prison for the offense or offenses for which the inmate is imprisoned, and a determination has been made by the Director of BOP that the inmate is not a danger to the safety of any person or the community; and that such a reduction is consistent with applicable policy statements issued by United States Sentencing Commission. 18 U.S.C. § 4205(g), 18 U.S.C. § 3582(c)(1)(A).

an effort to assess the administration's agenda and priorities on criminal justice issues. Then, in May 2010, the Attorney General issued a memorandum that formalized prosecutors' use of individual assessments when considering charges, plea agreements, and advocacy at sentencing, and underscored the need for fairness and consistency in the administration of the federal criminal laws among offenders committing similar crimes and having similar culpability. Last, just prior to the launch of the Smart on Crime Initiative, in August 2013, DOJ completed an internal, comprehensive review of all steps in the criminal justice system—including charging, sentencing, incarceration, and reentry—to examine which practices are most successful in deterring crime and protecting the public.

DOJ's New Clemency Initiative Is an Effort to Expedite the Release of Qualifying Inmates

DOJ's new Clemency Initiative is intended to encourage qualified federal inmates to petition to have their sentences commuted, or reduced, by the President. Commutation of sentence has long been considered to be an extraordinary remedy that is rarely granted. According to DOJ, since December 2013, the President has expressed a desire to review more petitions from potentially qualified inmates, and DOJ has pledged to expedite the review of such petitions in order to provide them to the President for consideration. Appropriate grounds for considering an inmate as qualified for commutation have traditionally been, and will continue to include, disparity or undue severity of sentence and critical illness or old age, among other things. Under the new initiative, DOJ's OPA is prioritizing its review of petitions from inmates who meet all of the following factors: (1) currently serving a federal sentence in prison and, by operation of law, likely would have received a substantially lower sentence if convicted of the same offense(s) today; (2) nonviolent, low-level offenders without significant ties to large-scale criminal organizations, gangs, or cartels; (3) served at least 10 years of their prison sentence; (4) do not have a significant criminal history; (5) demonstrated good conduct in prison; and (6) do not have a history of violence prior to or during their current term of imprisonment.³⁰ The initiative is primarily designed to encourage nonviolent, low-level offenders to apply for commutation; expedite the review process in order

³⁰According to DOJ officials, apart from the addition of these new factors, the clemency review process has not changed.

to increase the amount of qualified petitions sent to the President for consideration; and address fairness in sentencing.

Table 2 illustrates the component responsible for the New Clemency Initiative, its key goals, and the anticipated effect on incarceration challenges.

Table 2: Elements of the Department of Justice’s (DOJ) New Clemency Initiative

Implementation date and key components involved
<ul style="list-style-type: none">• Implemented April 2014• Office of the Pardon Attorney
Key goals
<ol style="list-style-type: none">1. Expedite DOJ’s review of commutation petitions that may be especially meritorious to assist the President in exercising his executive clemency power2. Encourage and increase the number of petitions filed for commutation of sentence by low-level, nonviolent offenders
Anticipated effect on incarceration challenges
<ul style="list-style-type: none">• Address fairness in sentencing and reduce the federal prison population

Source: GAO analysis of DOJ documentation. | GAO-15-454

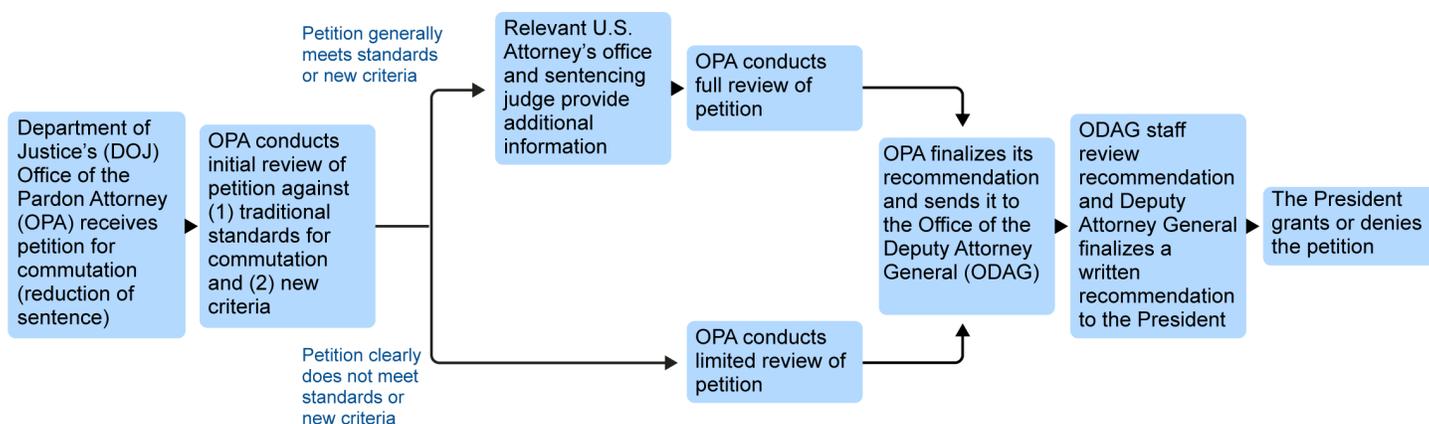
As part of the Clemency Initiative, the Deputy Attorney General directed BOP to

- notify inmates about the initiative and provide interested inmates with an electronic survey in order to help determine whether inmates meet the criteria under the new initiative,
- inform inmates of the availability of pro bono lawyers and other assistance through the Clemency Project 2014,³¹ and
- continue to assist inmates who are applying with the completion of their clemency petitions and submission of the appropriate paperwork to OPA.

³¹The Clemency Project 2014 is an external organization independent of DOJ that consists of the American Bar Association, the National Association of Criminal Defense Lawyers, the Federal Defenders, the American Civil Liberties Union, and Families Against Mandatory Minimums, as well as federal public defenders. It was organized in response to the Deputy Attorney General’s January 30, 2014, speech to the New York State Bar Association in which he called for assistance in identifying appropriate clemency petitions under this initiative. Its goal is to assist inmates with completing their clemency applications as well as provide pro bono, or free, legal representation.

Under this initiative, the Deputy Attorney General also directed the Offices of the United States Attorneys to assist in identifying meritorious candidates by offering their views on petitions that appear to meet the criteria after initial screening. Figure 2 highlights the basic steps of the clemency review process.

Figure 2: Department of Justice’s (DOJ) New Clemency Initiative Review Process



Source: GAO analysis of DOJ documents and interviews. | GAO-15-454

BOP Created RSD to Improve Reentry Outcomes and Reduce Recidivism

DOJ approved the consolidation of five branches within BOP into the new RSD in February 2013, and the division was created a year later.³² BOP’s Director reported that the creation of RSD was a critical step in enhancing BOP’s focus on reentry. Table 3 illustrates the effort’s key goal and its anticipated effect on incarceration challenges.

Table 3: Elements of the Department of Justice’s (DOJ) Bureau of Prisons’ (BOP) Reentry Services Division (RSD)

Implementation date and key components involved
<ul style="list-style-type: none"> Implemented February 2014 BOP
Key goal

³²These five branches were previously part of the Correctional Programs Division: National Reentry Affairs, Chaplaincy Services, Residential Reentry Management, Female Offenders, and Psychology Services.

-
- Enable BOP to take a more centralized approach to overseeing reentry initiatives and operations

Anticipated effect on incarceration challenges

- Reduce rising costs of operating federal prisons
 - Improve reentry of federal offenders into society upon release
 - Reduce return of federal offenders into prison after release
-

Source: GAO analysis of BOP information. | GAO-15-454

BOP's reentry strategy has several key features, including the following:

- Promoting continuity and consistency in reentry programs throughout all BOP institutions, which officials believe will improve reentry outcomes. For example, in May 2014, RSD officials prepared the *Directory of Bureau of Prisons' National Programs*, which highlights the standardized programs available to inmates in the areas of inmate treatment and education.³³
- Further developing specific targets and goals for Reentry Affairs Coordinators (RAC) to help identify available resources to ease inmates' transition to society upon their release.³⁴ BOP officials told us that each of its institutions now has a RAC in place, and BOP believes this effort will better prepare inmates for reentry and reduce recidivism, thus reducing prison cost growth.
- Enhancing data collection and analysis efforts to report on recidivism rates. BOP has a bureau-wide committee, chaired by RSD, called the Reentry Oversight Committee. Components of the committee are responsible for overseeing BOP's recidivism data collection efforts. Pursuant to a provision in the Second Chance Act (SCA), BOP is currently collecting criminal history data and plans to report in 2016 on the percentage of released BOP inmates who were arrested (by any

³³This directory does not represent all programs offered by BOP institutions. All federal institutions also offer vocational training (such as registered apprenticeships and trades) which are compiled annually in the *Inmate Occupational Training Directory*. Institutions also offer locally developed programs, such as religious services, recreation, education, and reintegration for inmates.

³⁴ Reentry Affairs Coordinators are primarily responsible for the evaluation, monitoring, and coordination of skill development and reentry initiatives, as well as volunteer program activities in BOP institutions.

law enforcement agency in the United States) or returned to BOP custody within the past 3 years.³⁵

DOJ's Initial Efforts to Measure Progress Addressing Federal Incarceration Challenges Have Limitations

DOJ has several early efforts under way to measure the success of the Smart on Crime Initiative, the new Clemency Initiative, and BOP's reentry programs, but its current approach has limitations. Specifically, DOJ has created key indicators intended to measure the success of the Smart on Crime Initiative; however, these indicators generally do not show whether or not DOJ is making progress toward the initiative's goals. With respect to the new Clemency Initiative, DOJ tracks data such as the number of petitions received and their ultimate disposition. However, DOJ is not currently tracking how long, on average, steps in the review process take, even though its goal is to expeditiously process petitions for commutation of sentence. Finally, BOP administers nearly 20 reentry programs to reduce recidivism and has begun to consider evaluations in some areas, but it does not have a comprehensive plan in place to prioritize evaluations across its full program catalog to gauge their success.

DOJ's Recently Developed Performance Metrics for the Smart on Crime Initiative Lack Key Elements of Successful Performance Measurement Systems

In April 2014, DOJ officials developed a plan to assess the implementation of the Smart on Crime Initiative. As part of this plan, DOJ referenced five previously established Smart on Crime Initiative goals and established 16 key quantitative indicators. DOJ reported that these metrics serve as proxies for assessing the effectiveness of the Smart on Crime Initiative's policies intended to achieve these goals. For example, several indicators seek to capture the number of defendants subject to mandatory minimum sentence lengths, while others aim to measure the number of hours spent on reentry or prevention efforts. They also noted that they review these metrics periodically and consider the overall approach to be a first step in what they anticipate will be an iterative design. See appendix III for a listing of these indicators and complete descriptions.

³⁵See 42 U.S.C. § 17541(d)(3). Under the SCA, at the end of each fiscal year, the BOP Director is required to submit a report to the House and Senate Committees on the Judiciary containing statistics demonstrating the relative reduction in recidivism for inmates released by BOP within that fiscal year and the 2 prior fiscal years, comparing inmates who participated in major inmate programs (including residential drug treatment, vocational training, and prison industries) with inmates who did not participate in such programs.

We reviewed DOJ's indicators to determine their effectiveness at measuring progress toward the Smart on Crime Initiative's goals and found them to be lacking across three of four key elements of successful performance measurement systems that we have reported on in the past. These four elements are (1) alignment, or linkage with program goals; (2) clarity; (3) measurable targets; and (4) the inclusion of appropriate contextual information, such as factors inside or outside the agency's control that might affect the measure.³⁶ Though our prior work includes additional elements, we specifically chose linkage, clarity, and measurable targets because these elements are foundational to establishing successful performance measurement systems regardless of a system's age or relative immaturity. We selected the fourth element, concerning contextual information, because, among other things, many of the indicators associated with the Smart on Crime Initiative are legal and complex in nature.³⁷

On the basis of our assessment of DOJ's Smart on Crime indicators against the four elements discussed, we found that all 16 of DOJ's indicators align with (or link to) one or more of the Smart on Crime Initiative's goals, which is a commendable first step in designing an effective performance measurement system. However, as table 4 shows, we found that 7 of DOJ's 16 indicators are not clear (e.g., are confusing or do not represent what the indicator name implies) and that no indicators have measurable targets. For example, DOJ lists 1 indicator with five additional elements, or subcategories, beneath it, but only two of these five subcategories actually relate to the main indicator above. We

³⁶GAO, *Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures*, [GAO-03-143](#) (Washington, D. C.: Nov. 22, 2002). In that report, we developed nine key attributes of successful performance measures based on previously established GAO criteria, consideration of key legislation, and review of performance management literature. We selected three of these nine criteria for our assessment of DOJ's Smart on Crime Initiative's measures: linkage, clarity, and measurable targets. In another report, GAO, *Information Sharing: DHS Could Better Define How It Plans to Meet Its State and Local Mission and Improve Performance Accountability*, [GAO-11-223](#) (Washington, D.C.: Dec. 16, 2010), we discussed a separate set of nine key attributes associated with results-oriented management based on a previous body of work on this topic. Of these nine attributes, we selected one that addressed the importance of performance measures providing contextual information. For purposes of our current assessment of DOJ's Smart on Crime Initiative's indicators, or performance metrics, we refer to linkage, clarity, measurable targets, and the contextual information as "key elements of successful performance measurement systems."

³⁷For more information about why we excluded certain key elements, see app. I.

also found that fewer than half—5 of 16—have an established direction (up or down) that indicates progress, and just 3 of 16 provide contextual information, such as factors inside or outside DOJ’s control, needed to appropriately interpret the results of the indicators. For instance, DOJ tracks the number of compassionate release decisions granted, but does not explain that the ultimate decision of whether to release an inmate is made by a sentencing judge and is out of DOJ’s control.³⁸ As a result, we determined that the indicators are insufficient to capture progress in achieving DOJ’s desired program goals. (For detailed information on how these indicators compare with the four elements we selected, see app. IV.)

Table 4: Key Findings from GAO’s Analysis of the Effectiveness of the Department of Justice’s (DOJ) Smart on Crime Key Indicators

Key elements of successful performance measurement systems	Summary of findings
<p>Linkage Measure is aligned with program goals.</p>	<p>All 16 indicators demonstrate alignment with one or more of the Smart on Crime Initiative’s key goals: 7 indicators align with more than one goal, and, taken together, the indicators align significantly more with two of the goals than with the other three. These two goals are:</p> <ul style="list-style-type: none"> 1—prioritize prosecutions to focus on the most serious crimes, and 2—reform sentencing to eliminate unfair disparities and reduce overburdened prisons.
<p>Clarity Measure should be clearly stated and the name and definition should be consistent with the methodology used to calculate it.</p>	<p>Seven of the 16 indicators are confusing or do not represent the information the indicator name implies. For example, the names, presentation, and descriptions of 6 of the indicators related to mandatory minimum sentences make it difficult to understand what each indicator is meant to represent individually and how each relates to the others.</p>
<p>Measurable target Measures should have a numerical goal. Numerical targets or other measurable values facilitate future assessments of whether overall goals and objectives were achieved because comparisons can be easily made between projected performance and actual results.</p>	<p>No indicators have targets, and DOJ has not established which direction indicates success (i.e., whether outcomes of measures should move up or down each year to show progress) for 11 of the 16 indicators.</p>

³⁸For more information on this and other indicators, see app. II.

Key elements of successful performance measurement systems**Provides contextual information**

Performance reporting systems should include information to help clarify aspects of performance that are difficult to quantify or to provide explanatory information, such as factors that were within or outside the control of the agency.

Summary of findings

Thirteen of the 16 indicators lack contextual information. For example, although clear (named and calculated appropriately), indicators that measure an upward trend in severe offenses (e.g., number of drug defendants with weapon involvement, and number of defendants with an aggravating role adjustment) may be influenced by other factors, such as an increase in prosecutors or prosecutors taking on more cases in general, among other things. Without appropriate context, indicators may be incomplete or misleading.

Source: GAO analysis of Smart on Crime key indicators. | GAO-15-454

DOJ believes its key indicators should be thought of differently from traditional performance metrics. The primary reason for this, officials stated, is that the Smart on Crime Initiative is largely aimed at changing prosecutors' behaviors and approaches, and therefore it is difficult to gauge progress quantitatively. Specifically, the Smart on Crime Initiative directs prosecutors to consider individual facts and circumstances of each defendant to a greater extent than in the past when making charging and other key decisions related to each case. As a result, officials said they are hesitant to set targets related to the indicators because targets may create incentives for prosecutors to engage in activities that do not lead to a just and fair outcome. For example, they would not want prosecutors to avoid pressing charges that would appropriately result in a mandatory minimum sentence because of a related target.

Additionally, officials said they are hesitant to establish a direction (up or down) that indicates progress for many indicators because, depending on a variety of factors, progress could be signified by movement in either direction.³⁹ For example, an increase in the number of mandatory minimum sentences could indicate progress by signaling that prosecutors are prioritizing the most serious cases; however, a decrease in this number could also indicate progress by signaling that prosecutors are applying the Attorney General's 2013 guidance to reserve such charges only for serious, high-level, or violent drug traffickers.

However, the establishment of a direction indicative of success is fundamental to performance measurement systems. Without it, systems

³⁹According to DOJ officials, some of these factors include, for instance, changes in criminal law and sentencing guidelines, changes in immigration policies, and changes in the number of federal prosecutors.

cannot reliably assess progress toward goals. Establishing indicators with clear directions may in some cases require identifying links between different indicators that, understood together, indicate progress. Additionally, by failing to set targets, it is possible that prosecutors may not be incentivized to change their practices—some of which the Attorney General has acknowledged have contributed, at times, to unduly harsh sentences. Thus, while DOJ officials are concerned that setting targets may create incentives for prosecutors that lead to unfair outcomes, DOJ may also want to consider the effect of not setting targets—particularly since one of the goals of the Smart on Crime Initiative includes eliminating unfair disparities in sentencing. We agree that it might not be appropriate in every case to create targets early in the development of a performance measurement system, but we underscore the benefits that DOJ could gain by carefully exploring this and other key elements of successful performance measurement systems.

Moreover, officials said that the development of indicators related to the Smart on Crime Initiative is an iterative process and they initially focused on measures and data already available rather than developing new measures that may have required a new data collection effort. This may have also contributed to the challenges they have encountered in creating meaningful performance measures. Nevertheless, DOJ officials said they are constantly exploring how to improve their indicators, including identifying new indicators. For example, in February 2015, the Attorney General issued a memo to United States Attorneys' Offices in which he mentioned five new metrics that drew on United States Sentencing Commission (USSC) data to illustrate the success of the Smart on Crime Initiative.⁴⁰ In this same memo, the Attorney General clearly identified directions (up or down) that indicated success. When we asked DOJ officials about these new measures, they confirmed that they are considering incorporating them into their existing set of 16 Smart on Crime indicators.⁴¹

⁴⁰The USSC is an independent agency in the judicial branch of government. It was created by the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1976. The sentencing guidelines established by the commission are designed to incorporate the purposes of sentencing (i.e., just punishment, deterrence, incapacitation, and rehabilitation).

⁴¹We did not evaluate the five new metrics against elements of successful performance measurement systems because they are not yet part of DOJ's official Smart on Crime indicators.

We acknowledge that measuring progress toward goals within a prosecutorial framework poses challenges in designing measures and collecting data, but research shows that it is possible. For example, in 2004, the American Prosecutors Research Institute published a framework for measuring prosecutors' progress toward achieving widely accepted goals and desired outcomes—such as ensuring safer communities.⁴² A follow-up study of the practical application of this framework in two prosecutors' offices provided some empirical support that performance measures may be a valid tool for assessing prosecutor performance relative to goals. However, this follow-up study also found that the prosecutors' offices studied had limited access to data for assessing performance—a challenge DOJ faced as well, according to officials.⁴³ According to a report published by DOJ's Community Oriented Policing Services, this challenge may be addressed by developing new measures and pursuing additional data collection beyond what is currently available.⁴⁴ Last, a 2011 report, published in partnership with DOJ's Bureau of Justice Assistance (BJA), notes the importance of improved data collection and analysis in assessing prosecutor office performance.⁴⁵

DOJ currently relies on data from the USSC to support 10 of its 16 indicators. However, as discussed above, a number of DOJ's indicators lack key elements of successful performance measures. DOJ officials we

⁴²American Prosecutors Research Institute (APRI), *Prosecution in the 21st Century: Goals, Objectives, and Performance Measures*, (February 2004). APRI no longer exists, but it was the nonprofit research, training, and technical assistance affiliate of the National District Attorneys Association (NDAA). NDAA representatives regularly meet with the Department of Justice, Members of Congress, and other national associations to represent the views of prosecutors to influence federal and national policies and programs that affect law enforcement and prosecution.

⁴³American Prosecutors Research Institute, *Exploring the Feasibility and Efficacy of Performance Measures in Prosecution and their Application to Community Prosecution* (2009).

⁴⁴Department of Justice, Office of Community Oriented Policing Services (COPS), *Law Enforcement Tech Guide for Creating Performance Measures that Work*, (Feb. 5, 2007). The COPS office within DOJ partners with law enforcement, businesses, and other federal agencies to enhance policing activities and outcomes.

⁴⁵Association of Prosecuting Attorneys, *A Framework for High Performance Prosecutorial Services*, 2011. DOJ's BJA provides leadership and services in grant administration and criminal justice policy development to support local, state, and tribal justice strategies to achieve safer communities.

met with said they are willing to engage in new data collection efforts— apart from what USSC’s information system provides—if they determine the benefits outweigh any associated difficulties, such as the costs or staff burdens associated with collecting and reviewing such data independently. By exploring opportunities to collect additional data, DOJ would be better positioned to ensure its indicators effectively measure progress.

Further, a recent report offers examples of what others have done to develop performance measures related to prosecution. Specifically, the Brennan Center for Justice provides examples of how performance measures may be used to track progress toward prosecutorial priorities and goals.⁴⁶ For instance, the Brennan Center suggests that Offices of the United States Attorneys could track the percentage of violent crime cases on their dockets, compared with the percentage from the previous year.⁴⁷ This approach lines up with the Smart on Crime Initiative’s goal of focusing resources on fewer but more significant cases. DOJ officials noted that the success measures suggested by the Brennan Center do not capture the full context and complexity needed to appropriately measure progress. While Brennan’s suggested measures may not provide an exact model for DOJ to follow, by considering this framework DOJ may be able to identify the elements it should consider as it continues its efforts to develop more effective performance measures to align with the characteristics of a successful performance management system. For instance, in developing success measures, the Brennan Center (1) defined specific goals for federal prosecution, (2) created

⁴⁶Brennan Center for Justice, *Federal Prosecution for the 21st Century*, (September 23, 2014). The Brennan Center for Justice at New York University School of Law is a nonpartisan law and policy institute that seeks to improve our systems of democracy and justice. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, Center for Program Evaluation and Performance Management, *Measures of Community Prosecution Performance*, accessed February 3, 2015, <https://www.bja.gov/evaluation/program-adjudication/comm-prosecution5.htm>. The Center for Program Evaluation and Performance Measurement maintains online evaluation and performance measurement resources designed to assist state and local criminal justice planners and practitioners, among others.

⁴⁷The Brennan Center notes that violent crime cases are resource intensive, and offices could therefore show fewer violent crime cases on their docket yet those cases may absorb a larger share of office resources. To better refine this measure, offices could collect data on the number of offices hours or percentage of budget spent on violent crime cases. Such a measure may be slightly more difficult to track, but would more accurately reflect whether resources were focused on violent cases.

related measures for both United States Attorneys' Offices and individual prosecutors, (3) ensured that the measures had clear direction (up or down) that indicates progress toward goals, and (4) provided helpful discussion related to each measure—frequently including prosecutorial incentives that the measures create and in some cases noting how the measures might be refined over time.

DOJ officials have acknowledged the department's currently limited analytical capacity for rigorous assessment of the Smart on Crime Initiative and in the last 2 years, have proposed funding for this function in its annual congressional budget justification. Specifically, in its fiscal year 2015 budget submission, DOJ requested \$1.7 million and 8 full-time equivalent (FTE) positions to expand the policy analysis function within the Office of Legal Policy. According to officials, DOJ did not receive a related increase for fiscal year 2015. In its fiscal year 2016 budget submission, DOJ requested \$1.5 million and 7 FTE positions for the same purpose. DOJ's budget requests for fiscal years 2015 and 2016 note that this unit could be used, among other things, to assess the Smart on Crime Initiative's effectiveness. Such a unit could help DOJ further refine its measures over time and better isolate the impact of Smart on Crime policies from other influences—such as changes in criminal law or sentencing guidelines.

New Clemency Initiative Measures Do Not Track Length of Adjudication

As discussed earlier in this report, under the new Clemency Initiative, DOJ officials developed six new criteria to help them prioritize and expedite the review of petitions for sentence commutation (reduction). Although DOJ tracks the number of petitions received, the status of each petition in the review process, and the disposition of each petition, it does not track how long it takes for petitions to clear each step in the review process before DOJ sends the petitions to the White House.⁴⁸ As a result,

⁴⁸Although DOJ does not track this information, DOJ's Office of the Inspector General (OIG) published a report in 2011 in which it analyzed data available from DOJ and reported on petition review time frames and associated challenges. For example, the OIG reported that from the beginning of fiscal year 2005 through the end of fiscal year 2010, DOJ took an average of 14.5 months to process clemency petitions (petitions for commutation of sentence and pardon—9.8 months in OPA and 4.7 months in ODAG—and send them to the White House. DOJ, *Office of the Inspector General, Audit of the Department of Justice Processing of Clemency Petitions*, Audit Report 11-45 (Washington, D.C.: September 2011).

DOJ cannot be sure about the extent to which it is meeting its goal to identify and expedite its review of especially meritorious inmate petitions.

As shown in table 5, the number of petitions for commutation of sentence received during fiscal year 2014 totaled more than the number for the 3 previous fiscal years combined. DOJ attributes this increase in large measure to the launch of the new Clemency Initiative in April of 2014. Further, from fiscal year 2012 through the end of February 2015, the number of decisions (granted, denied, or closed without presidential action) did not keep pace with the number of incoming petitions—and nearly 8,000 petitions were still pending review. Last, DOJ reported that as of December 2014, over 30,000 inmates had requested legal assistance from defense attorneys who are part of the Clemency Project 2014, which was formed to provide pro bono representation to potential applicants under the initiative. As a result, DOJ reported that the numbers of commutation petitions filed by the end of fiscal year 2016 will be significant, and that the cumulative effect of processing these filings will be especially challenging.

Table 5: Number of Petitions for Commutation of Sentence That the Department of Justice Received and Dispositions from Fiscal Year 2011 through May 31, 2015

Fiscal year	2011	2012	2013	2014	2015—partial ^a (10/1/14-5/31/15)
Pending	3,431	1,523	2,232	2,785	7,889
Received	1,585	1,547	2,370	6,561	1,860
Granted	0	1	0	9	33
Denied	3,104	689	1,577	1,226	782
Closed without presidential action	389	148	240	222	651

Source: GAO analysis of Office of the Pardon Attorney (OPA) clemency data. | GAO-15-454

Notes: “Received” refers to petitions received during the fiscal year; “pending” refers to petitions at the beginning of the fiscal year for which there has not been closure; “granted” refers to petitions approved by the President during the fiscal year; “denied” refers to petitions rejected by the President during the fiscal year; “closed without presidential action” refers to petitions no longer under consideration because of circumstances such as petition withdrawal, death of the inmate, or inmate release from prison, during the fiscal year.

^aAt the time of our review, data were available only for the first 8 months of fiscal year 2015.

Relative to the number of petitions received, it is likely that the number of petitions granted will remain small because commutation of sentence has historically been considered an extraordinary remedy that the President has rarely applied. Nevertheless, to increase its capacity to handle the

recent influx of petitions, OPA—which is responsible for reviewing and investigating incoming petitions—received funding for 7 additional positions (for a total of 22) in fiscal year 2015. Additionally, OPA requested 24 additional positions for fiscal year 2016. However, it is not clear if these additional resources will be sufficient to enable OPA to maintain or increase its performance level because DOJ does not track on an aggregate basis how long it takes for petitions to clear each step in its review process.⁴⁹

According to a senior department official, DOJ is not mandated to process petitions within a certain time frame or to analyze data related to the time each step of its review process takes. Rather, DOJ is tasked to process petitions “with all due speed,” and therefore best positioned to determine what the appropriate time frames for review of petitions may be.⁵⁰ Further, the official explained that all parties involved in DOJ’s review chain work diligently to process petitions and generally quickly alert management of any concerns—therefore, from this official’s perspective, additional analysis of time frames, step by step, would be redundant. However, DOJ has generally agreed with past recommendations from its Office of the Inspector General (OIG) related to particular aspects of DOJ’s clemency petition review process, acknowledging the benefits of analyzing data related to this process that DOJ already has available.⁵¹ Specifically, the OIG reviewed the particular activities of DOJ components working with OPA to review and process clemency petitions and in 2011 made recommendations to improve DOJ components’ responsiveness. In 2012,

⁴⁹OPA set targets related to (1) the number of clemency petitions it processes during a given fiscal year, and (2) the number of clemency petitions that remain pending within OPA at the end of the fiscal year. Given recent and potential future increases in petition filings, OPA increased its targets for processing petitions from 1,500 in fiscal year 2014 to 1,700 in fiscal year 2015, and 3,500 in fiscal year 2016. Similarly, OPA increased its targets for petitions pending within OPA from 1,800 at the end of fiscal year 2014 to 10,000 at the end of fiscal years 2015 and 2016. However, OPA reports that the number of petitions it can reasonably expect to process to completion during fiscal years 2015 and 2016 depends on the number of additional staff OPA is able to hire and how quickly they can be brought on board and trained.

⁵⁰DOJ clarified in a written response from the ODAG that processing petitions “with all due speed” is its expectation and is the message that OPA sends to each of its staff.

⁵¹DOJ, Office of the Inspector General, *Audit of the Department of Justice Processing of Clemency Petitions*, Audit Report 11-45, (September 2011). Specifically, the OIG analyzed data available in DOJ’s Executive Clemency Tracking System related to clemency petitions pending at the beginning of fiscal year 2005 and clemency petitions opened between the beginning of fiscal year 2005 and the end of fiscal year 2010.

the OIG reported that DOJ components had taken appropriate action to address each of its 10 recommendations.

Nevertheless, a gap remains because an overall assessment of how long it takes, on average, for petitions to clear each step in DOJ's clemency review process has not been conducted. The *Standard for Program Management* states that meaningful measures can help program management determine whether or not benefits (outcomes that provide value to intended recipients) are delivered in a timely manner.⁵² Tracking the time it takes for petitions to clear each step in the review process, would better position DOJ to determine how well it is meeting the key goal of the new Clemency Initiative—to expeditiously identify and review especially meritorious petitions. Moreover, such tracking would help DOJ address any processes that may be contributing to delays to improve its overall review process.

BOP's Current Plan for Evaluating Some Reentry Programs Does Not Consider All of Its National Reentry Programs

BOP has developed a national directory of 18 reentry programs, but this directory does not provide sufficient support to demonstrate that its use of these programs is evidence based. To help enhance its knowledge about what works, BOP has recently developed a plan that prioritizes evaluations among some of these reentry programs—those specifically related to psychology services.⁵³ However, BOP does not have a plan in place to prioritize evaluations among all 18 of its national reentry programs, which would help it ensure the best approach for allocating resources for programs intended to reduce recidivism.

⁵²Project Management Institute, Inc. *The Standard for Program Management*, Third Edition, 2013.

⁵³Program evaluations are individual systematic studies that assess the strengths and weaknesses of programs, policies, and organizations to improve their effectiveness. Program evaluation is different from performance measurement, which measures progress toward pre-established goals but does not necessarily measure program effectiveness. BOP officials said they do not currently have operable metrics in place related to reentry for RSD because it continues to develop a bureau-wide reentry strategy and the existing metrics are suspended pending future revision or replacement. BOP officials told us they plan to complete their strategy by the end of calendar year 2015, at which point they will turn to the revision of existing (and potential development of new) related performance metrics.

In May 2014, BOP released its first national reentry program directory.⁵⁴ According to a DOJ official, ODAG directed BOP to compile this document as a means to (1) review its numerous programs across institutions, and (2) focus on programs with “evidence based” support. According to this official, BOP was to include only those programs that have been rigorously evaluated (or were based on methods that have been rigorously evaluated) and shown to have impact.

In our review of this directory, we found that BOP did not provide sufficient support to demonstrate that the use of its reentry programs is evidence based. Specifically, when assessing the support BOP cites for each program, we observed that

- For 10 of its 18 reentry programs, BOP provided only high-level, general statements about the proven effectiveness of the program or its treatment method(s), instead of providing citations of specific research and discussing how BOP’s approach (or approaches) is or is not consistent with this research. For example, for its Parenting Program, BOP states that “research has shown parenting programs for incarcerated parents can improve their self-esteem, parenting attitudes, and institutional adjustment.”⁵⁵ Similarly, for its Mental Health Step Down Program, BOP states that “the mental health interventions selected for this program have strong empirical support and appear in multiple evidence-based programs registries.”⁵⁶ As a result, we found it difficult to identify what specific empirical evidence BOP was referring to and the extent to which it may be applicable to the federal prison environment.⁵⁷
- For 5 of its 18 programs, BOP referenced specific studies of state or local reentry programs (or other studies not associated with prison populations) but did not include detailed information about the

⁵⁴Bureau of Prisons, Reentry Services Division, *A Directory of Bureau of Prisons’ National Programs*, (May 2014).

⁵⁵BOP’s Parenting Program provides inmates information and counseling through directed classes on how to enhance relationships with children even while incarcerated.

⁵⁶BOP’s Mental Health Step Down Program is a residential treatment program offering an intermediate level of care for inmates with serious mental illnesses.

⁵⁷DOJ’s National Institute of Justice, its research arm, notes the importance of ensuring that studies used to determine if programs are effective address the same program model and not similar program models that may vary in important ways.

similarities or differences between the populations studied and the federal prison population, and how the studies might apply to the federal environment.

- For 4 of its 18 programs, BOP cited its own prior evaluations of federal inmates, but these studies assess the impact of programs on offenders released in the 1980s and 1990s, using data from 15 to more than 30 years ago.⁵⁸ In recent decades, BOP's inmate population has increased significantly and characteristics of inmates have changed. For example, BOP's population has grown eight times larger than it was in 1980, and has more than doubled since the mid-1990s. Similarly, regarding inmates' characteristics, we previously reported that from 1991 through 1997, the percentage of reported crack cocaine–associated drug offenses increased from 9 percent to 26 percent.⁵⁹ Additionally, DOJ's Bureau of Justice Statistics (BJS) reported that from 1997 through 2012, the percentage of inmates 21 years of age through age 30 dropped by 17 percent while the percentage of inmates 41 years of age or older grew by 15 percent.⁶⁰ Thus, BOP's reliance on dated evaluations calls into question the extent to which the reentry programs it evaluated in the past continue to be effective amidst changes in inmate population size and inmates' characteristics.

⁵⁸The 3 BOP programs include (1) the Federal Prison Industries Program, which employs and provides job skills training to inmates; (2) the Residential Drug Treatment Program (RDAP), which provides intensive cognitive-behavioral drug abuse treatment; and (3) the Bureau Rehabilitation and Values Enhancement (BRAVE) program, which is designed to facilitate favorable institutional adjustment and reduce incidents of misconduct for young male offenders. The three corresponding BOP evaluations are (1) BOP, *PREP: Training Inmates through Industrial Work Participation, and Vocational and Apprenticeship Instruction*, (September 1996); (2) BOP, Office of Research and Evaluation, *TRIAD Drug Treatment Evaluation Project Final Report of Three-Year Outcomes: Part 1*, (September 2000); (3) BOP, Office of Research and Evaluation, *Technical Report for the Results from the Evaluation of the First Two Years of the Beckley Responsibility and Values Enhancement (BRAVE) Program*, (BOP estimates report completion in 2001). In addition, BOP currently has plans to evaluate a fourth program—BOP's Sex Offender Treatment Program—to examine the program's impact on recidivism.

⁵⁹GAO, *State and Federal Prisoners: Profiles of Inmate Characteristics in 1991 and 1997*, [GAO/GGD-00-117](#), (Washington, D.C.: May 2000).

⁶⁰DOJ, Office of Justice Programs (OJP), BJS, *Compendium of Federal Justice Statistics, 1997*, (October 1999). DOJ, OJP, BJS, *Federal Justice Statistics, 2012—Statistical Tables*, (January 2015). Data we use from these reports are “as of” the last day of the relevant fiscal year (September 30, 1997; and September 30, 2012).

In response to a recommendation we made in July 2013, BOP developed a plan for conducting evaluations among its psychology services programs.⁶¹ This plan addressed 9 programs that are also included among a list of 11 that BOP included in its national reentry program directory under “psychology services.”⁶² However, BOP’s directory also includes 6 programs listed under “industries, education, and vocational training,” and 1 program listed under “religious services.” Thus, while BOP’s plan to conduct program evaluations among its psychology services programs accounts for half of the 18 that BOP lists in its reentry directory, we identified 9 other national reentry programs for which BOP does not have an evaluation plan.

In a written response to our question regarding why it has not created a plan for conducting evaluations among the remaining 9 programs in its national directory, BOP stated that the evaluation of the 9 psychology services programs will take 6 to 10 years, and once those programs have been evaluated, and if sufficient resources exist, BOP will prioritize the evaluation of the remaining 9 programs. Further, in discussing their program evaluation efforts generally, BOP officials cited two challenges. First, rigorous evaluations require substantial investments of budget, time, and staff. Second, it is difficult or impossible to identify appropriate comparison groups for some programs, which are needed for effective

⁶¹We previously recommended that BOP develop a plan to carry out future evaluations of BOP’s psychology treatment programs. BOP concurred with this recommendation, and in January 2015, BOP provided us with an evaluation plan to address this recommendation. GAO, *Bureau of Prisons: Timelier Reviews, Plan for Evaluations, and Updated Policies Could Improve Inmate Mental Health Services Oversight*, [GAO-13-1](#) (Washington, D.C.: July 2013).

⁶²Specifically, BOP plans to conduct annual assessments of program fidelity (a form of process evaluation that assesses the extent to which programs are implemented as intended) for all 9 programs. Additionally, through fiscal year 2022, BOP intends to perform short-term outcome evaluations for 4 of 9 programs. According to BOP, short-term evaluations may be as simple as a pre/post knowledge test, an exercise to demonstrate acquired skills, or an evaluation project that more closely resembles a traditional research project. BOP also intends to measure long-term evaluation outcomes for 1 of 9 programs—its Residential Sex Offender Treatment Program. According to the plan, BOP intends to evaluate the program’s impact on recidivism.

evaluation.⁶³ Additionally, officials believe the three studies they have conducted previously remain valid because the core elements of the programs have not changed. While we agree with BOP officials that evaluations can be time and resource intensive, we have shown earlier that studies conducted more than a decade ago are worth reconsidering in light of changes in the number and characteristics of inmates who participate in such programs today. Further, there are alternative methods for conducting studies absent the ability to randomly assign inmates to reentry programs and comparison groups for evaluation.⁶⁴

The American Evaluation Association (AEA) recommends that each federal agency adopt AEA's proposed framework to guide the development and implementation of its evaluation programs. Among other things, AEA's framework specifies that programs should be evaluated throughout their life cycles for both program improvement and assessment of their effectiveness.⁶⁵ By building on its current plan for prioritizing the 9 psychology treatment programs, and prioritizing evaluations among all 18 national reentry programs, BOP could use this framework to consider (1) the applicability to the current federal prison population of reentry program evaluations that others have conducted on

⁶³For instance, officials explained that when BOP performed its evaluation of the Residential Drug Abuse Treatment Program in the 1990s, they were able to draw both a treatment group (inmates who participated in RDAP) and a comparison group (inmates who qualified for RDAP but did not participate in it) from among BOP inmates. However, since that study, BOP has made RDAP available to all inmates who qualify for it—making it difficult to draw a comparison group from among BOP inmates. Nevertheless, a BOP official said BOP is examining the feasibility of identifying a comparison group using inmates who qualified for RDAP but who did not have the opportunity to participate because, in certain cases, their sentence completion date arrived prior to the chance to enroll.

⁶⁴For instance, statistical procedures, such as “propensity score analysis,” can be used to statistically model variables that influence participants’ assigned to a program compared with individuals not assigned. These procedures are then applied to the analysis of outcome data to reduce the influence of those variables on the results attributable to the program. In BOP’s evaluation of its Federal Prison Industries program, it used propensity scoring to select matched comparison group members. BOP, *PREP: Training Inmates through Industrial Work Participation, and Vocational Apprenticeship Instruction*, (September 1996). Additionally, BOP plans to use this method in its planned evaluation of the Residential Sex Offender Treatment Program. For more on designing evaluations, see GAO, *Designing Evaluations: 2012 Revision*, [GAO-12-208G](#) (Washington, D.C.: January 2012).

⁶⁵American Evaluation Association, *An Evaluation Roadmap for a More Effective Government*, (Revised October 2013).

non-federal-prison populations, (2) the extent to which there have been significant changes to inmate characteristics since BOP or others conducted previous studies of BOP reentry programs that might affect the effectiveness of current reentry programs, (3) the resource requirements of evaluations that BOP could conduct, and (4) alternative methods for conducting evaluations in the absence of a comparison group or the ability to randomly assign inmates to reentry programs and comparison groups for evaluation. Doing so would better position DOJ to know the extent to which its investments in programs intended to reduce recidivism are effective.

DOJ Has Coordinated Early Efforts to Implement Its Smart on Crime Initiative

DOJ's early efforts to implement the Smart on Crime Initiative are consistent with GAO's key collaboration practices. In our prior work, we have found that collaboration is enhanced when partners follow certain key practices, such as (1) agreeing on roles and responsibilities, (2) establishing mutually reinforcing or joint strategies, and (3) identifying and addressing needs by leveraging resources—all of which can help clarify efforts and facilitate decision making.⁶⁶

Agreeing on Roles and Responsibilities

We have recognized in prior work that collaborating agencies should work together to define and agree on their respective roles and responsibilities, including how the collaborative effort will be led, designating a lead body, and establishing oversight for the initiative.

In defining and agreeing on roles and responsibilities, DOJ identified components to address each of its five Smart on Crime Initiative priorities. As table 6 illustrates, DOJ has assigned the Offices of the United States Attorneys a crosscutting role.

⁶⁶[GAO-06-15](#). We did not include the remaining five key practices for two reasons. First, our prior work on key collaborative efforts has typically focused on collaborative efforts among multiple departments and agencies making those practices less relevant to DOJ's efforts, which are largely internal. Second, DOJ's internal initiative is in its early stages, and we have generally discussed the remaining key collaboration practices for those interagency collaboration efforts that have been under way for some time.

Table 6: The Department of Justice’s Smart on Crime Initiative’s Goals and Component Responsibilities

Smart on Crime Initiative goals	Component responsibilities
Prioritize prosecutions to focus on most serious cases	Offices of the United States Attorneys: create district-specific guidelines for federal prosecutions.
Reform sentencing to eliminate unfair disparities and reduce overburdened prisons	Offices of the United States Attorneys: adhere to revised department policy regarding charging decisions to reserve severe penalties for those who have committed more severe crimes. Bureau of Prisons: expand medical criteria that will be considered for inmates seeking compassionate release.
Pursue alternatives to incarceration for low-level, nonviolent crimes	Federal law enforcement: encourage alternatives to incarceration. Offices of the United States Attorneys: adopt diversion policies at district level for nonviolent offenses.
Improve reentry to curb repeat offenses and revictimization	Offices of the United States Attorneys: designate a prevention and reentry coordinator to focus on prevention/reentry efforts
Surge resources for violence prevention and protecting most vulnerable populations	Offices of the United States Attorneys and federal law enforcement: put in place updated antiviolence strategies

Source: GAO analysis of the Department of Justice Smart on Crime Initiative documentation, *Smart on Crime: Reforming the Criminal Justice System for the 21st Century* (August 2013). | GAO-15-454.

DOJ has delegated the majority of responsibility and oversight of prosecutor efforts and coordination with law enforcement components to implement the Smart on Crime Initiative priorities to the Offices of the United States Attorneys and their individual districts. The Attorney General’s call for the creation of district-specific guidelines recognizes that each district’s priorities will often depend on local criminal threats and needs, according to DOJ leadership officials. Therefore, the Offices of the United States Attorneys have broad discretion to implement changes in their districts such as updating priorities and thresholds for prosecution, and choosing alternatives to incarceration, such as drug courts and other diversion tactics.

In addition to agreeing on roles and responsibilities, another strong practice is determining who will lead an effort and establishing oversight for implementation. In terms of leadership for the Smart on Crime Initiative, DOJ has determined that these responsibilities rest with the highest offices in the department—the Office of the Attorney General and ODAG. For example, the Deputy Attorney General, through the Attorney General Advisory Committee, holds “call networks” with all of the Offices

of the United States Attorneys' districts during which district representatives bring district-level concerns to the committee. These concerns generally involve policy problems that might potentially affect more than one district. Once the concerns are raised to the committee, they are elevated and presented, as appropriate, to the Deputy Attorney General. More complex cases (such as those involving a high-profile defendant, targeting the same individual, nationwide sensitivity, or terrorism) are presented directly to the Attorney General. Through use of this committee and the protocols for elevating any concerns, representatives from ODAG told us they are better able to ensure consistent application of the Smart on Crime Initiative's related guidance and keep track of and address any issues in a real-time manner.

Additionally, in terms of oversight for tracking the Smart on Crime Initiative's outcomes, DOJ created an Initiative Working Group, composed of several components and representatives from the Attorney General's and ODAG's offices. This working group is responsible for activities that include developing indicators to track the success of the initiative, overseeing components' related activities; reviewing progress during quarterly and biannual review meetings; and updating external stakeholders, such as the Office of Management and Budget, on the department's efforts.

Establishing Mutually Reinforcing or Joint Strategies

We have previously reported that to achieve a common outcome, collaborating agencies need to establish strategies that work in concert with those of their partners or are joint in nature. Such strategies help in aligning the partner agencies' activities, core processes, and resources to accomplish the common outcome.

DOJ has established mutually reinforcing and joint strategies across its components by encouraging and directing their partnerships with one another as appropriate. For example, DOJ's law enforcement components have coordinated with the Offices of the United States Attorneys and other components within DOJ to implement the Violence Reduction Network—a DOJ-wide antiviolenence strategy to address law

enforcement efforts in high-crime cities across the country.⁶⁷ According to DOJ officials, this collaborative effort complements the Smart on Crime Initiative through leveraging resources and reinforcing strategies to federal and local antiviolence strategies consistently. In addition, DOJ has directed many of these same components to coordinate to establish district-level priorities for prosecution and establish and reinforce antiviolence strategies in each individual United States Attorney district.

DOJ has also coordinated with external stakeholders outside of the department on initiative efforts. For example, bolstering reentry programs is a key priority of the Smart on Crime Initiative. The Federal Interagency Reentry Council, established in 2011 by the Attorney General to coordinate reentry efforts and policies across the federal government, continues to help in providing information and materials on reentry efforts related to employment, housing, and other issues under the initiative's reentry-related goals. DOJ has also publically urged the USSC to reduce drug-related mandatory minimum sentencing guidelines for low-level nonviolent drug offenders. The USSC voted in favor of related changes, and on November 1, 2014, the USSC revisions to retroactively reduce sentencing guidelines for some inmates already serving time for drug-related charges took effect. USSC researchers estimate that applying the amendment going forward may reduce the BOP prison population by 6,500 in 5 years and far more over time, while more than 46,000 current prisoners could be eligible to have their sentences reduced by retroactive application of the amendment.

Identifying and Addressing Needs by Leveraging Resources

Key collaboration practices indicate that collaborating agencies should identify the human, information technology, physical, and financial resources needed to initiate or sustain their collaborative effort to ensure successful implementation of activities. Collaborating agencies bring different levels of resources and capacities to an effort. By assessing their relative strengths and limitations, collaborating agencies can look for opportunities to address resource needs by leveraging one another's

⁶⁷The Violence Reduction Network is a federal law enforcement partnership with five high-crime cities and their local law enforcement entities: Camden, New Jersey; Chicago, Illinois; Detroit, Michigan; Oakland/Richmond, California; and Wilmington, Delaware. Through this partnership, DOJ components such as ATF, DEA, FBI, USMS, and EOUSA work with police chiefs and city leaders, among others, to develop ways to make progress on each city's violence reduction strategies. This work includes sharing federal resources with the cities, such as access to databases, training, and other technical resources.

resources, thus obtaining additional benefits that would not be available if they were working separately.

DOJ law enforcement components share resources with their state and local law enforcement partners, as well as with the Offices of the United States Attorneys in their districts, to provide and share training, as well as to leverage technology, crime-related data, and intelligence networks. This resource sharing has been enhanced with the implementation of the Violence Reduction Network, as discussed earlier. DOJ has also leveraged resources across several components and entities external to DOJ. For example, DOJ sponsored a June 2014 training focused on federal crime prevention efforts as well as reentry solutions, programs, and resources offered by BOP and individual districts. The purpose of the training was to share information among federal practitioners involved with pretrial and post-conviction decision making and setting district-specific policies and practices related to reentry and prevention. Participants included those from BOP, the Administrative Office of the Courts, federal judges and prosecutors.

DOJ has used its recent annual budget justification to identify the resources it needs across components to sustain the Smart on Crime Initiative. For example, DOJ requested to reprioritize \$173 million in its fiscal year 2015 budget request to support the initiative, directing funding primarily to its reentry and prevention efforts, which is a key priority.⁶⁸ Of that amount, the budget request identified \$15 million for the Offices of the United States Attorneys to, among other activities, establish Prevention and Reentry Coordinator positions in its judicial districts, engage in other prevention and reentry efforts and provide outreach and training for those districts that develop action plans to prioritize the Smart on Crime Initiative.⁶⁹ In that same justification, DOJ requested about \$29 million for BOP to continue funding its Residential Drug Abuse Program

⁶⁸The \$173 million was not a request to increase funding from the previous fiscal year, but rather to sustain the previous year's level of funding and redistribute the funding to support the Smart on Crime Initiative. DOJ was ultimately appropriated \$122 million of the \$173 million for fiscal year 2015.

⁶⁹For example, one United States Attorney district noted in its action plan that it held a meeting in August 2014 with the district's federal law enforcement agencies to address the Smart on Crime Initiative.

(RDAP) and reentry programs.⁷⁰ In its fiscal year 2016 budget request, DOJ again identified about \$15 million for the Offices of the United States Attorneys to expand the prevention and reentry programs associated with the Smart on Crime Initiative and \$10 million, including 94 positions, to ensure every district maintains a permanent, full-time equivalent serving in the Prevention and Reentry Coordinator role. For BOP, DOJ requested funding for 150 positions at \$146.2 million for the bureau's reentry and recidivism-reducing programs. DOJ also requested funding in both years for an expanded policy analysis function. The 2015 and 2016 budget justifications note that this unit could be used to, among other things, assess the Smart on Crime Initiative's effectiveness.

Conclusions

DOJ's Smart on Crime Initiative, new Clemency Initiative, and BOP's RSD are positive steps in addressing long-standing federal incarceration challenges, and DOJ has taken some initial steps to measure its efforts in these areas. We recognize the challenges in designing any measurement system and the degree to which the complexities of the criminal justice system can make this task even more daunting. However effective measurement is critical to gauging the progress of these initiatives, and DOJ's early measurement efforts have limitations that cannot ensure that DOJ's investments are having their desired effect. In particular, DOJ does not have assurance that its Smart on Crime indicators are effectively measuring progress toward meeting the initiative's key goals because its indicators partially conform to the key elements of successful performance measurement systems. Similarly, DOJ has not adequately assessed the extent to which the new Clemency Initiative is expeditiously identifying and reviewing meritorious petitions because it has not tracked the average time frames for reviewing petitions or identified and addressed any processes that may contribute to unnecessary delays. Finally, DOJ has not fully assessed the effectiveness of its investments in programs designed to reduce recidivism because BOP has not considered all of its 18 national reentry programs in its plan to prioritize future evaluations. Taking action to measure the progress of these three initiatives and the degree to which each is effectively addressing the long-standing challenges of crowding, rising costs, and recidivism would help ensure that DOJ is prudently investing federal resources. Taking these

⁷⁰Congress appropriated funds at the requested levels for both BOP and the Offices of the United States Attorneys.

actions now will also allow DOJ to make any necessary changes while each effort is still relatively new.

Recommendations for Executive Action

To ensure that the Department of Justice effectively measures its efforts to address incarceration challenges, we recommend that the Attorney General take the following three actions:

- explore additional data collection opportunities and modify its Smart on Crime indicators to incorporate key elements of successful performance measurement systems;
- direct the Office of the Pardon Attorney, in conjunction with the Office of the Deputy Attorney General, to (1) track how long it takes, on average, for commutation of sentence petitions to clear each step in the review process under DOJ's control, and (2) identify and address, to the extent possible, any processes that may contribute to unnecessary delays; and
- ensure that the Director of BOP includes, as part of its current evaluation plan, all 18 of BOP's national reentry programs, and prioritizes its evaluations by considering such factors as resources required for conducting evaluations and changing characteristics of inmates over time.

Agency Comments and Our Evaluation

We provided a draft of this report to DOJ for review and comment. DOJ provided written comments, which are reprinted in appendix V. DOJ partially concurred with the first recommendation, but agreed with the second and third recommendations. DOJ also provided technical comments, which we incorporated as appropriate.

DOJ partially concurred with our recommendation that DOJ explore additional data collection opportunities and modify its Smart on Crime indicators to incorporate key elements of successful performance measurement systems. Specifically:

- DOJ agreed to continually refine and enhance the indicators to improve their clarity and context, as we recommended. DOJ also noted its reliance on the 16 Smart on Crime indicators in assessing the effect of the overall initiative.
- DOJ did not agree to enact measurable targets for its Smart on Crime indicators. The Department stated that measurable targets for the Smart on Crime Initiative are inappropriate and asserted that prosecutors should make case by case decisions without

regard to targets or concern for any other incentive. We agree with the Department's contention that prosecutors should not be forced to choose between charging an individual and failing to advance a measurable target. Independent prosecutorial discretion is a bedrock principle of the nation's criminal justice system and we would not advocate developing and implementing performance measures in a manner that creates perverse incentives for prosecutorial decision-making. At the same time, performance measures and associated measurable targets have been a helpful tool in helping ensure federal programs are making progress toward their stated goals. We recognize that it might not be appropriate to create targets for every indicator early in the development of a performance measurement system. Nevertheless, we maintain that measurable performance targets that are properly developed, communicated, and managed, can aid Department leadership in the admittedly challenging task of assessing progress in the Smart on Crime Initiative.

DOJ concurred with our recommendation that the Department track and address unnecessary delays in the commutation process and reiterated the importance of identifying and addressing unnecessary delays in the clemency review process. Specifically, the Department stated that it would consider our findings and recommendation during the course of its ongoing efficiency reviews.

DOJ concurred with our recommendation that BOP include all 18 of BOP's national reentry programs in its evaluation plan. DOJ stated that BOP will ensure its evaluation plans are inclusive of all national reentry programs, including those that have been previously studied. The Department also noted that it will consider resource constraints as it prioritizes which programs to study in which order. Finally, the Department noted that forthcoming evaluations of programs that had been studied before will consider both changes to program operations and the inmate population.

We are sending copies of this report to the appropriate congressional committees, the Attorney General, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions, please contact me at (202) 512-9627 or maurerd@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made significant contributions to this report are listed in appendix V.

A handwritten signature in black ink that reads "David C. Maurer". The signature is written in a cursive style with a long, sweeping tail on the final letter.

David C. Maurer
Director, Homeland Security and Justice

List of Congressional Committees

The Honorable Richard C. Shelby
Chairman

The Honorable Barbara Mikulski
Ranking Member

Subcommittee on Commerce, Justice, Science, and Related Agencies
Committee on Appropriations
United States Senate

The Honorable John Culberson
Chairman

The Honorable Chaka Fattah
Ranking Member

Subcommittee on Commerce, Justice, Science, and Related Agencies
Committee on Appropriations
House of Representatives

Appendix I: Scope and Methodology

To identify the Department of Justice's (DOJ) initiatives related to federal incarceration challenges, we first reviewed DOJ's fiscal year 2014-2018 Strategic Plan to determine which components were involved, either directly or indirectly, in the federal criminal justice process. Further, we reviewed DOJ documentation, such as agency memoranda, findings from its review of criminal justice working groups, and component websites to identify three distinct initiatives that DOJ is currently in the process of implementing: (1) the Smart on Crime Initiative, (2) the new Clemency Initiative, and (3) the Federal Bureau of Prison's (BOP) newly established Reentry Services Division (RSD). These initiatives focus on better investing department resources to curb federal prison population growth, reduce costs, and stem recidivism. To better understand all three of the initiatives, we interviewed DOJ leadership, members of DOJ's criminal justice review working groups, and component officials to determine each initiative's intent and purpose, anticipated effect(s) on incarceration challenges, and the departmental resources used to support them, including the funding and number of full-time employees.

With respect to the Smart on Crime Initiative, we also reviewed DOJ's comprehensive criminal justice review results; DOJ's budget justifications for fiscal years 2015 and 2016; and Attorney General memoranda which provided further detail on the initiative's goals. With respect to the new Clemency Initiative, we reviewed documentation related to the standards that DOJ uses when considering clemency for petitioners, the processes by which DOJ evaluates petitions, clemency data, and the application form to determine eligibility requirements. We also interviewed officials from the Office of the Deputy Attorney General (ODAG) to determine how these standards and the new criteria are used when reviewing clemency applications.

To determine the extent to which DOJ is measuring its efforts to address incarceration challenges, we reviewed DOJ and component-specific documents on the Smart on Crime Initiative, the new Clemency Initiative, and BOP's newly established RSD. Specifically, to determine the extent to which DOJ is measuring its efforts related to the Smart on Crime Initiative, we reviewed, among other documents, a key internal DOJ document that outlines the actions the department is taking to measure the success of the initiative, and includes related key indicators, or performance metrics. We also interviewed relevant officials, including from DOJ's leadership offices, to discuss DOJ's plans to measure the effectiveness of the Smart on Crime Initiative.

To determine whether DOJ's 16 Smart on Crime key indicators effectively measured progress, we compared them against selected attributes we previously identified for successful performance measures. In particular, given that the Smart on Crime Initiative and its related indicators are relatively new, we focused on 3 of 9 key attributes of successful performance measures from our previous work that we identified as foundational (linkage, clarity, and measurable targets).¹ We excluded 6 of the 9 attributes because, while important, they are not foundational.² For instance, objectivity and reliability (2 of the 6 indicators we excluded) may be difficult to understand without clarity across indicators, and may not be relevant if indicators are not aligned (linked) with program goals. After initially receiving the Smart on Crime key indicators from DOJ, we determined that many of DOJ's indicators were legal and complex—and additional contextual information would be helpful in understanding them. Additionally, we identified instances where contextual information would be necessary to interpret indicator results appropriately. Further, DOJ officials acknowledged the interpretation of the results of many of the indicators depends on other circumstances (context). Therefore, although we were generally satisfied with using the criteria of linkage, clarity, and measurable targets, we also believed it was important to include “provides contextual information,” which is 1 of 9 additional key attributes associated with results-oriented management from other previous GAO work.³ For purposes of this report, we refer to the attributes we use in this report (linkage, clarity, measurable targets, and context) as key elements of successful performance measurement systems. A GAO analyst assessed each indicator against these 4 criteria, another analyst reviewed the reasoning and assessment of the first analyst, and a GAO attorney reviewed and confirmed legal parts of the assessment.

To determine the extent to which DOJ is measuring its efforts related to the new Clemency Initiative, we reviewed DOJ's publicly available

¹Our prior work establishes 9 key attributes of successful performance measures. GAO, *Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures*, [GAO-03-143](#) (Washington, D.C.: November 2002).

²The 6 attributes not included in this review are objectivity, reliability, core program activities, limited overlap, balance, and government-wide priorities. For more information about these key attributes, see [GAO-03-143](#).

³GAO, *Information Sharing: DHS Could Better Define How It Plans to Meet Its State and Local Mission and Improve Performance Accountability*, [GAO-11-223](#) (Washington, D.C.: December 2010).

information and data. The data we reviewed related to the number of petitions for commutation (reduction) of sentence received and their disposition (pending, granted, denied, or closed without presidential action) from October 2010 through May 2015. We selected this period because the new Clemency Initiative began in April 2014, and we wanted to observe trends before and after it began. We assessed the reliability of these data by obtaining written responses to questions about steps taken to ensure data quality from DOJ, and concluded that these data were sufficiently reliable for the purposes of our review. We also interviewed an official from ODAG with responsibility for overseeing the new Clemency Initiative and obtained written information related to DOJ's process for reviewing petitions for commutation of sentence. We assessed DOJ's process for reviewing these petitions against a criterion from *The Standard for Program Management*, which states that meaningful measures can help program management determine whether or not benefits (outcomes that provide value to intended recipients) are delivered in a timely manner.⁴

To determine the extent to which DOJ is measuring the efforts of BOP's new RSD, we reviewed documents related to the division's creation, its ongoing data and information collection efforts, and other relevant documents. We also interviewed officials from BOP's RSD, as well as its Information, Policy, and Public Affairs Division, who contributed to the thinking and discussions behind RSD's developing reentry strategy before RSD's creation. We reviewed a key document—BOP's *Directory of National Programs*—to assess the extent to which, for each of the 18 reentry programs it listed, BOP (1) included specific studies that provide empirical support, (2) was clear with respect to what population was studied, and (3) provided information about how the population studied relates to federal prisoners. Further, to better understand how past evaluations of reentry programs performed by BOP might be affected by changes over time, we reviewed BOP population data from 1980 through 2015, and inmate characteristic data from 1997 and 2012. Regarding growth in BOP population, we selected the date range of 1980 through 2015 because past evaluations BOP has conducted use data from the 1980s and 1990s, and we wanted to compare inmate population totals from those time periods against totals from the present. We assessed the reliability of these data by obtaining written responses to questions from

⁴Project Management Institute, Inc., *The Standard for Program Management*, 2013.

BOP, and concluded that these data were sufficiently reliable for the purposes of our review. Regarding changes in inmate characteristics, we selected 2012 because this is the year that has the most recent data available, and 1997 because this is the oldest year that data were recorded in a format easily comparable with the 2012 data. We reviewed the methodology used by DOJ's Bureau of Justice Statistics to compile these statistics, and concluded that these data were sufficiently reliable for the purposes of our review. We also assessed the extent to which BOP had a plan for prioritizing and conducting future evaluations, in accordance with criteria from The American Evaluation Association (AEA), which recommends that each federal agency adopt AEA's recommended framework to guide the development and implementation of its evaluation programs. Among other things, AEA's framework specifies that programs should be evaluated throughout their life cycles for both program improvement and assessment of their effectiveness.⁵

To determine the extent to which DOJ is coordinating across components to implement its initiatives to address federal incarceration challenges, we reviewed documentation and interviewed DOJ officials to identify the components that were involved in each of the initiatives. On the basis of our analysis, we determined that DOJ's Smart on Crime Initiative was the only one that involved multiple components in various aspects of the initiative, so we focused our assessment on this initiative. To identify the steps DOJ has taken to coordinate the Smart on Crime Initiative, we reviewed department-wide and component strategic plans and budget justification documents, where available. We then compared DOJ's early efforts to coordinate activities associated with the Smart on Crime Initiative against three of eight key collaboration practices we have previously identified.⁶ These three criteria were agreeing on roles and responsibilities, establishing mutually reinforcing or joint strategies, and identifying and addressing needs by leveraging resources. We did not

⁵American Evaluation Association, *An Evaluation Roadmap for a More Effective Government*, (revised October 2013).

⁶GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005); *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms*, [GAO-12-1022](#) (Washington, D.C.: Sept. 27, 2012); and *Managing for Results: Implementation Approaches Used to Enhance Collaboration in Interagency Groups*, [GAO-14-220](#) (Washington, D.C. Feb. 14, 2014).

include the remaining five key practices for two reasons.⁷ First, DOJ's collaborative efforts are internal to DOJ and its components. Our past work on key collaborative efforts has typically focused on interagency collaborative efforts among multiple departments and agencies. Second, DOJ's internal initiative is in its early stages, and we have generally discussed the remaining key collaboration practices for those interagency collaboration efforts that have been under way for some time. To add additional context to our work, we reviewed DOJ's Smart on Crime Initiative documentation—*Smart on Crime: Reforming the Criminal Justice System for the 21st Century* and its *Smart on Crime Framework* document, which details the activities and oversight of component deliverables and tasks, periodic meetings on progress, work on developing indicators to track the Smart on Crime Initiative's efforts and successes, and other aspects of the department's implementation of the initiative. We also reviewed available Attorney General memoranda that set forth policy changes for the Offices of the United States Attorneys on charging practices; specific tasks and time frames for district-level implementation of the Smart on Crime Initiative's actions, such as setting district-level charging guidelines; and district-level antiviolence strategy work with law enforcement partners. These activities are directly related to the priorities and goals set forth in the Smart on Crime Initiative. Finally, we interviewed officials from several DOJ components to discuss how they coordinated across component agencies to work on activities related to the Smart on Crime Initiative. We also interviewed officials from ODAG and the Office of the Attorney General to discuss oversight responsibilities and district-specific activities to implement the Smart on Crime Initiative's priorities.

⁷The five key practices not included in this review are reinforcing agency accountability for collaborative efforts through agency plans and reports; reinforcing individual accountability for collaborative efforts through performance management systems; developing mechanisms to monitor, evaluate, and report on results; establishing compatible policies, procedures, and other means to operate across agency boundaries; and defining and articulating a common outcome.

Appendix II: Examples of Key Activities That Affected Federal Charging and Sentencing Practices

Over time, the federal government has been involved in activities that have modified federal charging practices and sentencing guidelines, which have resulted in changes to the size of the federal prison population. For example, some efforts have resulted in stricter sentencing for offenders and less discretion for judges, while other, more recent efforts have resulted in greater discretion in the prosecution of offenders and more sentencing flexibility. See table 7 for additional examples of key activities that have affected charging and sentencing.

Table 7: Examples of Key Activities That Have Affected Federal Charging and Sentencing Practices since 1984

Key activity	Description	Effect on sentencing or charging of offenders
Sentencing Reform Act of 1984 ^a	Modified sentencing for offenses committed on or after November 1, 1987. Established the independent United States Sentencing Commission (USSC) within the judicial branch and charged it with, among other things, developing federal sentencing guidelines. ^b	Abolished parole for federal offenders sentenced after its effective date. ^c Specified sentencing guideline ranges in terms of time (in months) that offenders should serve given the nature of their offense and other factors. Permitted sentences to depart upward or downward from guideline ranges because of aggravating or mitigating circumstances.
Attorney General memorandum (2003)	Established the Department of Justice’s (DOJ) policy for federal prosecutors to charge and pursue the most serious, readily provable offense and yield the most substantial sentence.	Resulted in stricter charging of offenders.
Supreme Court decision <i>United States v. Booker</i> , 543 U.S. 220 (2005)	Found the <i>Sentencing Guidelines</i> , which had previously been binding for federal judges to follow in sentencing criminal defendants, to be advisory in nature. ^d	Provided federal judges discretion to sentence offenders outside of the <i>Sentencing Guidelines</i> .
Attorney General memorandum (2010)	Underscored the need for consistency in sentencing among offenders committing the same crimes. Stated that in order to initiate charges against a defendant, prosecutors must (1) determine that the person’s conduct constitutes a federal offense and admissible evidence is sufficient to obtain and sustain a conviction and (2) that the prosecution serves a substantial federal interest, the person is not subject to effective prosecution elsewhere, and there is no adequate noncriminal alternative to prosecution. Requested federal prosecutors to (1) conduct individualized assessments of offenders’ conduct and criminal history, (2) decline to charge the quantity necessary to trigger a mandatory minimum sentence if the defendant meets certain criteria, and (3) ensure that plea agreements reflect the totality of defendants’ conduct.	Reinforced principle that persons who commit similar crimes and have similar culpability should, to the extent possible, be treated similarly and equal justice depends on individualized justice. Accordingly, federal prosecutors when making decisions regarding charging, plea agreements, and advocacy at sentencing must make decisions based on the merits of each case, taking into account an individualized assessment of the defendant’s conduct and criminal history and the circumstances relating to the commission of the offense, among other things.

**Appendix II: Examples of Key Activities That
Affected Federal Charging and Sentencing
Practices**

Key activity	Description	Effect on sentencing or charging of offenders
Supreme Court decision <i>Alleyne v. United States</i> , 133 S. Ct. 2151 (2013)	Held that any fact that increases the statutory mandatory minimum sentence is an element of the crime that must be submitted to the jury and found beyond a reasonable doubt.	For a defendant to be subject to a mandatory minimum, requires prosecutors to include in the charging document those elements of the crime that trigger the statutory minimum penalty, thereby heightening the role a prosecutor plays in determining whether a defendant is subject to a mandatory minimum sentence.
Attorney General memorandum (2013)	Refined DOJ's charging policy in light of the Supreme Court decision in <i>Alleyne v. United States</i> and requested districts to develop prosecutorial priorities. Requested federal prosecutors to consider particular factors when developing district-level investigative and prosecution priorities, including whether (1) the offense falls under explicit DOJ or government-wide priorities, (2) the federal government had primary or exclusive jurisdiction in the location where the offense took place, and (3) there are effective alternatives to incarceration available to the defendant.	Reinforces an individualized assessment of the extent to which particular charges fit the specific circumstances of the case, are consistent with the purpose of the federal criminal code, and maximize the impact of federal resources on crime.
Changes in sentencing guidelines affecting prison term lengths	Sentencing guidelines changed to reduce prison sentence length for future federal drug offenders, and retroactively to incarcerated drug offenders.	Expected to reduce the federal prison population and BOP's operating costs over time, as we reported in September 2014. ^e

Source: GAO analysis of DOJ documentation and legal rules and decisions affecting sentencing and charging practices. | GAO-15-454.

^aPub. L. No. 98-473, 98 Stat. 1987.

^bUSSC establishes sentencing policies and practices for the federal criminal justice system that are intended to provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar criminal records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted. 28 U.S.C. § 991(b)(1)(B).

^cSubsequent legislation established mandatory minimum sentences for many federal offenses.

^dJudges were still required to properly calculate and consider the *Sentencing Guidelines* and other sentencing goals.

^eGAO, *Bureau of Prisons: Information on Efforts and Potential Options to Save Costs*, GAO-14-821 (Washington, D.C.: Sept. 30, 2014).

Appendix III: DOJ's Smart on Crime Key Indicators

The Department of Justice (DOJ) created 16 key quantitative indicators that, it reports, act as proxies in assessing the effectiveness of Smart on Crime policies intended to achieve these goals.

Table 8: Department of Justice's (DOJ) 16 Smart on Crime Key Indicators and Descriptions

DOJ key indicator ^a	Description ^b
1. Number of defendants subject to (sentenced to) mandatory minimum sentence under 21 U.S.C. § 841 ^c	Defendant was sentenced to a 5-year or 10-year or higher mandatory minimum.
2. (Number of defendants sentenced to) no mandatory minimum	Defendant was not sentenced to a drug mandatory minimum sentence either because the offense did not trigger a drug mandatory minimum sentence or because the provisions of 18 U.S.C. § 3553(f) also known as the "safety valve," applied. ^d
3. (Number of defendants sentenced to) 5-year mandatory minimum	Defendant was sentenced to a 5-year mandatory minimum.
4. (Number of defendants sentenced to) 10-year mandatory minimum	Defendant was sentenced to a 10-year or higher mandatory minimum.
5. No mandatory minimum plus safety valve (number of drug defendants not charged with an offense carrying a drug mandatory minimum that also qualified for the safety valve)	Cases where a drug mandatory minimum sentence did not apply and the safety valve applied.
6. Mandatory minimum plus safety valve (number of drug defendants charged with an offense carrying a drug mandatory minimum that also qualified for the safety valve)	Cases where a drug mandatory minimum sentence applied but the court sentenced the offender without regard to any applicable mandatory minimum sentence in accordance with the safety valve.
7. Number of drug defendants with weapon involvement	Number of drug defendants who received either a guideline enhancement for weapon involvement or a conviction under 18 U.S.C. § 924(c). ^e
8. Number of drug defendants with an aggravating role adjustment ^f	Number of drug defendants who received an aggravating role adjustment under USSG § 3B1.1. ^f
9. Number of drug defendants with a mitigating role adjustment	Number of drug defendants who received a mitigating role adjustment under USSG § 3B1.2.
10. Number of 851-enhanced charges (number of 851-enhanced mandatory minimum sentences) ^g	Number of drug defendants that received mandatory minimum sentence enhancements under 21 U.S.C. § 851. ^g
11. Hours spent on reentry efforts ^h —FTE ⁱ	Number of hours, expressed as full-time equivalent (FTE) positions, spent on reentry efforts by the Offices of the United States Attorneys.
12. Hours spent on prevention efforts—FTE	Number of hours, expressed as FTE positions, spent on prevention efforts by Offices of the United States Attorneys. ^j
13. Number of compassionate release decisions (granted) ^k	Number of compassionate release requests granted.
14. Number of reentry courts ^l	Number of reentry courts Offices of the United States Attorneys participate in.
15. Number of drug diversion courts ^m	Number of drug diversion or specialty courts Offices of the United States Attorneys participate in.
16. Number of commutations ⁿ —granted	Number of commutation (reduction) of sentences granted.

Source: GAO analysis of DOJ's Smart on Crime key indicators. | GAO-15-454

Appendix III: DOJ's Smart on Crime Key Indicators

Notes: According to DOJ, indicators 2-6 are subsets of the universe composed of the total number of drug defendants who were sentenced under the *U.S. Sentencing Guidelines* (USSG) sections: 2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), and 2D2.1 (Simple Possession).

^aParentheses in indicator names added by GAO for clarity.

^bDescriptions provided by DOJ, with edits added by GAO for clarity.

^cUnder 21 U.S.C. § 841, it is unlawful for anyone to knowingly or intentionally manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance, or create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance, except as authorized by law.

^d18 USC § 3553(f). The safety valve allows for certain defendants sentenced for certain drug offenses who meet specified criteria not to be subject to mandatory minimum penalties. For the safety valve exception, the court is to consider at sentencing (1) the defendant's criminal history; (2) whether the defendant used violence or credible threats of violence or possessed a firearm or other dangerous weapon in connection with the offense; (3) whether the offense resulted in death or serious bodily injury to any person; (4) whether the defendant was an organizer, leader, manager, or supervisor of others in the offense or was engaged in a continuing criminal enterprise; and (5) the defendant has truthfully provided to the government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan.

^eGenerally, 18 U.S.C. § 924(c) prohibits the using, carrying, brandishing, or discharging of a firearm during a drug or violent crime.

^fJudges are required to consult the *U.S. Sentencing Guidelines Manual* when determining an appropriate sentence and may apply adjustments to a sentence based on aggravating or mitigating circumstances.

^gBy filing one or more notices of prior felony drug conviction under 21 U.S.C. § 851, prosecutors can potentially enlarge a mandatory minimum sentence from 5 to 10 years or 10 to 20 years or life.

^hFor purposes of this indicator, reentry efforts are defined as "all work associated with performing the Offices of the United States Attorneys' duties attendant to a reentry program, including attendance at reentry court meetings or hearings as part of intensive supervision of offenders on supervised release, meetings with incarcerated offenders as part of a program to discuss reentry issues, or other meetings with members of the public or government and non-government organizations to discuss offender reentry issues. In addition, any time spent on training, preparation, and consultation in connection with reentry programs is included."

ⁱDOJ officials stated that they use 2,080 hours to calculate one FTE.

^jFor purposes of this indicator, prevention efforts are defined as "all work associated with the Offices of the United States Attorneys' outreach activities designed to prevent crime, particularly violent crime. This includes presentations at government and non-government facilities, and time spent preparing for and arranging such presentations and events." DOJ also confirmed that prevention efforts include efforts related to diversion activities.

^kUpon motion of the Director of BOP, the court may reduce a term of imprisonment after considering certain factors, if it finds that either (1) extraordinary and compelling reasons warrant such a reduction, or (2) the inmate is at least 70 years of age, has served at least 30 years in prison for the offense or offenses for which the inmate is imprisoned, and a determination has been made by the Director of BOP that the inmate is not a danger to the safety of any person or the community, and that such a reduction is consistent with applicable policy statements issued by the United States Sentencing Commission (USSC). 18 U.S.C. § 4205(g), 18 U.S.C. § 3582(c)(1)(A).

^lFederal reentry courts manage the reintegration of offenders from prison to the community. Such programs allow the court to impose graduated sanctions and positive reinforcements in a team approach that typically involves a judge, probation officer, assistant U.S. Attorney, assistant federal defender, and contract services provider.

^mDrug court or specialty court (e.g., alien smuggling courts, veterans courts) programs seek to creatively meet public safety imperatives while avoiding incarceration for certain offenders. Each of these programs explicitly incorporates some form of judicial involvement in the offender's supervision; thus, courts are primary actors in these programs, and courts must participate in their creation. The goal of supervision in these programs is to identify and address the root causes that led or

Appendix III: DOJ's Smart on Crime Key Indicators

contributed to the defendant's criminal activity, in the hope of avoiding recidivism. Some of these programs result in a full dismissal of charges, while others result in a probationary sentence or a sentence of little or no incarceration.

ⁿPer Article II, Section 2 of the United States Constitution, the President may commute, or reduce, federal inmates' sentences. Commutation of sentence has long been considered to be an extraordinary remedy that is rarely granted. Appropriate grounds for considering commutation have traditionally been disparity or undue severity of sentence, critical illness or old age, and meritorious service rendered to the government by the petitioner, among other things.

Appendix IV: GAO Assessment of the Department of Justice’s Smart on Crime Initiative’s Key Indicators

Table 9: GAO Assessment of Whether the Department of Justice’s (DOJ) Smart on Crime Initiative’s Key Indicators Possess Certain Key Elements of Successful Performance Measurement Systems

DOJ key indicator ^a	Linkage (aligns with one or more program goals)	Clarity	Measurable target/established direction indicative of success ^b	Provides contextual information needed to interpret the results
Number of defendants subject to (sentenced to) mandatory minimum sentence under 21 U.S.C. § 841 ^c	Yes	No	No/no	No
(Number of defendants sentenced to) no mandatory minimum	Yes	No	No/no	No
(Number of defendants sentenced to) 5-year mandatory minimum	Yes	No	No/no	No
(Number of defendants sentenced to) 10-year mandatory minimum	Yes	No	No/no	No
No mandatory minimum plus safety valve ^d (number of drug defendants not charged with an offense carrying a drug mandatory minimum that also qualified for the safety valve)	Yes	No	No/no	No
Mandatory minimum plus safety valve (number of drug defendants charged with an offense carrying a drug mandatory minimum that also qualified for the safety valve)	Yes	No	No/no	No
Number of drug defendants with weapon involvement	Yes	Yes	No/no	No ^e
Number of drug defendants with an aggravating role adjustment	Yes	Yes	No/no	No ^e
Number of drug defendants with a mitigating role adjustment	Yes	Yes	No/no	No ^e
Number of 851-enhanced charges ^f (number of 851-enhanced mandatory minimum sentences)	Yes	Yes	No/no	No
Hours spent on reentry efforts	Yes	Yes	No/yes	Yes
Hours spent on prevention efforts	Yes	No ^g	No/yes	Yes
Number of compassionate release decisions (granted)	Yes	Yes	No/yes	No ^e
Number of reentry courts	Yes	Yes	No/yes	No ^e
Number of drug diversion courts	Yes	Yes	No/yes	No ^e
Number of commutations—granted	Yes	Yes	No/no	Yes
Total that met the criteria	16 of 16	9 of 16	0 of 16/ 5 of 16	3 of 16

Source: GAO analysis of DOJ key indicators. | GAO-15-454

^aParentheses in indicator names added by GAO for clarity.

**Appendix IV: GAO Assessment of the
Department of Justice's Smart on Crime
Initiative's Key Indicators**

^b"Established direction indicative of success" refers to whether or not an indicator has a defined direction (up or down) that would signify progress; this key element is a subcriterion of "measurable target," which refers to an indicator having a numerical goal.

^cUnder 21 U.S.C. § 841, it is unlawful for anyone to knowingly or intentionally manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance, except as authorized by law.

^d18 USC § 3553(f), also known as the safety valve, allows for certain defendants sentenced for certain drug offenses who meet specified criteria not to be subject to mandatory minimum penalties.

^eIn some cases, we found that indicators were clearly stated and their names and definitions were consistent with the methodology used to calculate them (clarity); however, the indicators lacked information about what factors might influence their results (context).

^fBy filing one or more notices of prior felony drug conviction under 21 U.S.C. § 851, prosecutors can enlarge a mandatory minimum sentence from 5 to 10 years or 10 to 20 years or life.

^gIn one instance, an indicator included contextual information related to its broader interpretation and meaning (context), but the name of the indicator was not consistent with the definition and methodology used to calculate it (clarity).

Appendix V: Comments from the Department of Justice



U.S. Department of Justice

JUN 05 2015

Washington, D.C. 20530

Mr. David Maurer
Director, Management Security and Justice Team
Government Accountability Office
441 G Street, NE
Washington, DC 20548

Dear Mr. Maurer:

Thank you for the opportunity to review and comment on GAO's report entitled, "Federal Prison System: Justice Could Better Measure Progress Addressing Incarceration Challenges." (GAO-15-454/441237) The Department of Justice (the Department) appreciates the significant work that your team put into this review and the collaborative manner in which they went about it. We particularly appreciate your understanding that the efforts of the Department to assure fairness and procedural justice in our criminal system often cannot be captured in quantitative measurements. Nevertheless, as a Department, we always strive to be more effective in improving public safety and advancing the cause of justice, and we welcome GAO's work in helping us reach those goals.

Your review assessed Department initiatives that were designed, at least in part, to address the challenges of incarceration, including prison overcrowding, rising prison costs, and recidivism. You looked at the Smart on Crime Initiative, the Clemency Initiative, and the Bureau of Prison's Reentry Services Division. Your report makes three recommendations, each of which is intended to "ensure that the Department of Justice effectively measures its efforts to address incarceration challenges." Our responses to these recommendations follow:

Recommendation Number 1: Explore additional data collection opportunities and modify its Smart on Crime indicators to incorporate key elements of successful performance measurement systems.

Response: The Department agrees with some, but not all, of this recommendation. As the report recognizes, the Smart on Crime Initiative was designed to ensure finite resources are devoted to the most important law enforcement priorities; to promote fairer enforcement of the laws and alleviate disparate impacts of the criminal justice system; to ensure just punishments for low-level, nonviolent convictions; to bolster prevention and reentry efforts that deter crime and reduce recidivism; and to strengthen protections for vulnerable populations.¹

¹ We note that what the GAO report lists as "goals" are in fact identified in the Smart on Crime announcement bulletin as its five "principles." The actual stated goals of the Smart on Crime Initiative are as follows: (1) "To

As the report notes, the Department identified 16 quantitative indicators in April 2014 as part of its plan to assess the implementation of the Smart on Crime Initiative. These indicators have been very useful in our initial assessment of the effects of the Initiative. They have shown, for example, that drug defendants are being charged with a crime carrying a mandatory minimum sentence twenty-percent less frequently than before the Smart on Crime Initiative and that, at the same time, the average guideline sentence for drug defendants has increased. We take these initial numbers to mean that prosecutors are charging more serious cases than before, even while charging crimes carrying mandatory minimums less frequently. We also learned from our indicators that drug defendants are cooperating with the government to make cases against other criminals at the same rate as before the Smart on Crime Initiative, despite the fact that defendants are subject to mandatory minimum sentences twenty-percent less frequently than before. We take these initial numbers to mean that the Smart on Crime policies have not negatively affected our ability to make cases against serious offenders. Both of these outcomes are very encouraging and consistent with Smart on Crime's five goals.

Although these numerical indicators provide a powerful insight into the success of the Smart on Crime Initiatives, we are concerned that the report recommends that the Department use these indicators in a way that could actually undermine the five goals of the Initiative. The report identifies four elements of successful performance measurement: linkage, clarity, measurable targets, and contextual information. The report notes that the Department's indicators lack three of these four elements, namely clarity, measurable targets, and contextual information.

The Department does not believe that measurable targets for the Smart on Crime indicators are appropriate. Instead, prosecutors should investigate and charge federal crimes when justice and public safety demands it. And prosecutors should make these individualized decisions without concern for the overall federal prison population, without concern for a charging decision's effect on a "measurable target," and without concern for any other incentive.

There will be times when a U.S. Attorney's office will charge more defendants with crimes carrying mandatory minimum sentences because the community is plagued by violence or because a drug cartel has started a thriving business in the area. There will also be times, as we have seen recently, when fewer defendants are charged with crimes carrying mandatory minimum sentences because the facts and circumstances (to include principles of fairness and justice) warrant it. These are individual exercises of prosecutorial discretion and will differ based on the facts and circumstances at hand. A prosecutor should never be forced to choose between charging a violent drug dealer with a mandatory minimum sentence and failing to advance a measurable target. Likewise, targets may encourage prosecutors to seek a sentence that advances the national target, even when such a sentence would be inappropriate for that individual defendant. Put simply, the establishment of "measurable targets" for prosecutors is

ensure finite resources are devoted to the most important law enforcement priorities," (2) "To promote fairer enforcement of the laws and alleviate disparate impacts of the criminal justice system," (3) "To ensure just punishments for low-level, non-violent convictions," (4) "To bolster prevention and reentry efforts to deter crime and reduce recidivism," and (5) "To strengthen protections for vulnerable populations." Like the Smart on Crime principles discussed in the GAO report, these goals are not numeric targets, but are rather designed to guide and inform prosecutorial discretion.

tantamount to other perverse incentives – such as arrest quotas – and is simply not appropriate in this context.

While we disagree with the recommendation to enact measurable targets, we agree with the report's recommendation that our indicators be clearer and contain appropriate contextual information to facilitate a fuller understanding of their purpose and meaning. As the report recognizes, the Smart on Crime indicators described therein are only a starting point. The Department will continue to refine and enhance the Smart on Crime indicators as appropriate.

Recommendation Number 2: Direct the Pardon Attorney, in conjunction with the Office of the Deputy Attorney General, to 1) track how long it takes, on average, for commutation of sentence petitions to clear each step in the review process under DOJ's control, and 2) identify and address, to the extent possible, any processes that may contribute to unnecessary delays.

Response: We appreciate the discussion regarding the clemency petition review process. As the report correctly noted, the volume of clemency petitions has markedly increased since the announcement of the clemency initiative in 2014. The Department wholeheartedly agrees that identifying and addressing unnecessary delays in the review process is important. The Department regularly works to identify and address areas of unnecessary delays and will consider your recommendation throughout our ongoing reviews for efficiency.

Recommendation Number 3: Ensure that the Director of BOP tasks its Reentry Services Division with including as part of its current evaluation plan all 18 of BOP's national reentry programs, and prioritizing evaluations by considering such factors as resources required for conducting evaluations and changing characteristics among inmates.

Response: The Department and the Bureau of Prisons agrees with this recommendation. The Bureau will ensure its evaluation plans include all national reentry programs, regardless of whether a prior study has been conducted. The studies will be prioritized based on resources required. For programs that were previously studied, consideration will be given to changes in the inmate population and the operations of the program.

Thank you again for the opportunity to comment on this report. We look forward to working with the GAO as we strive to improve our programs and further our mission.

Sincerely,



Lee J. Lofthus
Assistant Attorney General
for Administration

Appendix VI: GAO Contact and Staff Acknowledgments

GAO Contact

David C. Maurer, (202) 512-9627, maurerd@gao.gov

Staff Acknowledgments

In addition to the contact named above, Joy Booth (Assistant Director), David Alexander, Willie Commons III, Tonnye' Conner-White, Elizabeth Curda, Michele Fejfar, Jennifer Felder, Emily Gunn, Eric Hauswirth, Jeff Jensen, Alicia Loucks, Heather May, Jasmine Masand, Linda Miller, Tovah Rom, Tyler Schiefelbein, and Sarah Veale made key contributions to this report.

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