



Department of Justice

STATEMENT OF

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BEFORE THE

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COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES**

ENTITLED

**“QUITTING HARD HABITS: EFFORTS TO EXPAND
AND IMPROVE ALTERNATIVES TO INCARCERATION
FOR DRUG-INVOLVED OFFENDERS”**

PRESENTED

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Chairman Kucinich, Ranking Member Jordan, and distinguished Members of the Subcommittee, thank you for the opportunity to be here today. We appreciate this Subcommittee's interest in this important and timely topic.

My name is Jim Burch and I am the Acting Director of the Bureau of Justice Assistance (BJA) in the Office of Justice Programs (OJP), U.S. Department of Justice (DOJ). BJA's mission is to provide leadership and services in grant administration and criminal justice policy development to support state, local, and tribal justice strategies to achieve safer communities. I have served in OJP for more than 16 years and prior to my appointment as the Acting Director, I served as the Deputy Director for National Justice Policy at BJA. The Policy Office focuses on state and local justice issues, such as law enforcement, information sharing, the courts, community and institutional corrections, substance abuse, tribal justice, and crime prevention. The Policy Office also acts as a liaison to national organizations that partner with BJA to guide local justice policy and help disseminate information on best and promising practices from around the country. Today, I'll be discussing alternatives to incarceration and the Department of Justice's commitment to a more strategic, effective, and efficient approach to preventing and reducing crime.

It will come as no surprise to this Subcommittee that crowded jails and prisons and high recidivism rates across the country are wreaking havoc on state and municipal budgets. According to OJP's Bureau of Justice Statistics (BJS), there are currently more than 1.5 million individuals serving time in federal and state prisons and another 786,000 incarcerated in local jails. About 725,000 individuals are released from prison and millions of people cycle through local jails every year. According to the Council of State Governments (CSG) Justice Center, in the past 20 years state spending on corrections has grown at a faster rate than nearly any other state budget item. In Michigan, for example, corrections spending accounts for almost a quarter of state general fund expenditures, and one in three state employees works for the state's department of corrections. Other states are facing similar dilemmas.

The U.S. Department of Justice is responding to these challenges in a number of ways. First, we need to focus on a more strategic, effective, and sustainable approach to addressing crime that recognizes the critical role of evidence-based prevention strategies as well as pretrial justice strategies and sentencing alternatives. Validated risk assessments in justice decision-making and treatment will lead to better outcomes for communities without relying exclusively on costly and unsustainable options for those who may not require it. Second, as a general matter, we believe we have a responsibility to be not only tough on crime, but also smart on crime. This means supporting programs that are backed by evidence of effectiveness, not just ideology.

Pretrial Justice Strategies

Shrinking budgets and growing jail and prison populations have created the "perfect storm" for state and local policy reform - an opportunity for policymakers to enhance justice systems in a more efficient and innovative way while encouraging collaboration and improving public safety. BJA believes pretrial justice strategies can play a major role in this effort, not only in reducing recidivism and correctional facility crowding, but also in reducing corrections costs.

According to the National Association of Counties (NACo), more than half of defendants in pretrial detention are later sentenced without incarceration, which suggests that many in pretrial detention could await trial in alternative settings. A Bureau of Justice Statistics Inmate Survey conducted in 2008 found that more than 60 percent of persons who were confined in jail on any given day were those awaiting trial, frequently for a non-violent offense. By implementing pretrial justice strategies that facilitate risk assessments of offenders and then match those offenders with appropriate services, state and local communities may be able to efficiently and effectively utilize community supervision alternatives to protect public safety, reserving the use of jail and prison space for the most serious of criminal offenders.

In partnership with many national organizations, BJA is providing training and technical support for many front-end decision-making practices and closely examining the role that pretrial services, prosecution, adjudication, and sentencing can play in making the criminal justice process more effective. For example, the President's FY 2011 budget includes \$5 million for an Ensuring Fairness and Justice in the Criminal Justice System initiative, which includes funding for these very front-end decision-making points. Specifically, this initiative, if funded, will support efforts to provide training and technical assistance and to identify best practices in pretrial justice, as well as support for strategic and effective decision-making by defenders, prosecutors, and judges, and will also provide support for more general court improvement efforts.

We must capitalize on the opportunities presented at the front-end of the system to gain the foothold needed to be successful with reentry and other post-conviction efforts. Effective reentry planning must begin when an offender first comes into contact with the criminal justice system. The steps that follow -- such as decisions to incarcerate versus decisions to find alternatives to incarceration that include a wide variety of medical treatment and accountability - - are vital. Validated risk assessment during pretrial decision-making and sentencing are necessary to permit the safe release of certain defendants—without jeopardizing community safety or the integrity of the legal process.

Smart Policing

Encounters with law enforcement often play a critical role in whether or not people with mental illness, or co-occurring disorders such as mental illness and substance abuse, are identified for and directed to appropriate treatment for their underlying illness or are simply incarcerated and continue to cycle in and out of jails and prisons. Many law enforcement officials, frustrated by the lack of effective options for responding to these issues, are partnering with local mental health advocates and service providers to make it easier to connect people to treatment on the front-end of the criminal justice process. BJA partnered with the Council of State Governments Justice Center and NACo on a number of publications that address issues such as law enforcement responses to individuals with mental illnesses, mental health courts, effective reentry practices for people with mental health issues, and state and county collaboration. The International Association of Chiefs of Police also partnered with BJA recently on this very issue, holding a summit for law enforcement and mental health professionals that resulted in a report of recommendations to support law enforcement who respond to calls involving people with mental illness.

Research shows that effective policing also requires a tightly focused, collaborative approach that is measurable; based on sound, detailed analysis; and includes policies and procedures that promote and support accountability. In support of these goals, BJA partnered with the CNA Corporation, which has extensive experience in law enforcement operations and evaluation, to provide training and assist with the development and implementation of Smart Policing strategies in 10 sites. These 10 sites, selected under a national competitive solicitation in FY 2009, are law enforcement agencies that represent a diverse sampling of agency size, type of crime challenge, and law enforcement approach, such as place- and offender-based policing, problem oriented policing, intelligence-led policing, and victim-based policing. Each site is required to work with a research partner and will develop and evaluate smarter, data-driven law enforcement practices to reduce and prevent crime.

Every local justice system component - law enforcement, prosecutors, defenders, and judges - plays a key role in front-end decision-making and they all have a stake in the outcome of the criminal case process as professionals and members of their respective communities.

Sentencing Alternatives

Problem-Solving Courts

Many of today's court cases involve individuals with medical, psychological, and social problems such as substance abuse, homelessness, or lack of access to mental health treatment, which drive criminal behavior. However, many adults and juveniles have been steered away from further offending by programs that use the coercive and monitoring power of the court. Traditional court practices have not always been shown to be particularly effective in addressing the underlying social and psychological issues that propel individuals into involvement with the justice system. Problem-solving forums such as drug, mental health, and reentry courts that rely on collaboration with social service, public health, and other criminal justice agencies, have been shown to be effective in addressing these underlying problems and in reducing recidivism.

One such program, Back on Track, in San Francisco is a problem-solving court aimed at reducing recidivism among low-level drug-trafficking defendants. Back on Track combines strict accountability with real opportunities for self-improvement. Participants must find employment, enroll in school full time, and comply with all the terms of an individualized Personal Responsibility Plan (PRP). Over a two-year period, Back on Track has reduced recidivism among its graduates to less than 10 percent. In comparison, 53 percent of California's drug offenders return to prison or jail within two years of release. The program has been adopted by the National District Attorneys Association as a model program and is being replicated in other states.

During FY 2010, BJA is directing \$57 million in funding for problem-solving courts through the Drug Court Discretionary Grant Program and the Justice and Mental Health Collaboration Program. The FY 2011 Budget Request, also \$57 million, combines these two successful programs into a single Problem-Solving Courts Initiative, allowing state, local, and tribal jurisdictions increased flexibility in funding strategies that address unique local needs and that can expand collaboration among drug courts, mental health, and substance abuse providers.

Research funded by OJP's National Institute of Justice (NIJ) and others verifies that problem-solving courts significantly improve mental health and substance abuse treatment outcomes, substantially reduce crime, and produce greater cost benefits. Research is clear that drug courts can reduce recidivism and future drug use. One study that looked at the impact of mature drug courts over ten years showed that compared to traditional criminal justice system processing, treatment, and other investment, costs averaged \$1,392 lower per drug court participant. Reduced recidivism and other long-term program outcomes resulted in an average public savings of \$6,744 per participant. These savings rose to \$12,218 if victimization costs are included (<http://www.ncjrs.gov/pdffiles1/nij/grants/219225.pdf>).

Research findings show that drug courts can reduce recidivism and promote other positive cost-saving outcomes. Various factors affect a drug court program's success, such as proper assessment and treatment, the role assumed by the judge and the nature of offender interactions with the judge, and other variable influences such as drug use trends, staff turnover and resource allocation. These and other issues, such as treatment service delivery and judicial interaction, are addressed in the NIJ special report, *Drug Courts: The Second Decade* (<http://www.ncjrs.gov/pdffiles1/nij/211081.pdf>). In addition, through a Multisite Adult Drug Court Evaluation program, NIJ researchers are now examining underlying processes to identify what practices are effective, for whom, and under what conditions. Preliminary findings can be found on the NIJ website: <http://www.ojp.usdoj.gov/nij/topics/courts/drug-courts/madce.htm>.

Smart Probation

We know that spending more on prisons does not equate to more public safety because, in spite of mounting expenditures, recidivism rates remain high. Research by BJS indicates that half of all individuals released from state prison are sent back within three years. Most of the people released from prison, and many people released from jail, are placed under some form of community supervision. In 2008, the Pew Center on the States reported that 7.3 million people, or 1 in every 31 adults, were under correctional supervision.

Over the years, we have given remarkably little attention, and few resources, to probation and parole. Today, BJA is working with state probation and parole agencies to help them focus their efforts and their criminal justice dollars on targeting high-risk offenders and reducing prison populations in a more effective and efficient way to better serve public safety. The President's Fiscal Year 2011 Budget request includes \$10 million for a program called, "Smart Probation: Reducing Prison Populations, Saving Money, and Creating Safer Communities." Managing our corrections population is a critical challenge facing our justice system. Some states and communities have found effective and sustainable ways of managing their probationers and parolees, such as Hawaii's Opportunity Probation with Enforcement (HOPE) Program, which I will discuss in greater detail later, or Maricopa County's strategy in Arizona of creating financial incentives for the Probation Department when recidivism is reduced. The Smart Probation program would build upon this progress and help other jurisdictions improve supervision strategies through data collection and analysis, better interagency coordination, replication of evidence-based efforts, and training and technical assistance.

Hawaii's Opportunity Probation with Enforcement (HOPE) Program

Too often convicted felons routinely fail to show up for appointments, decline to take mandatory drug tests, or fail mandatory drug tests without immediate accountability. A judge in

Hawaii decided to take a new approach involving law enforcement, local jail officials, probation officers, drug treatment professionals, prosecutors, and defense counsel to collaborate on an initiative known as Hawaii's HOPE Program. The HOPE Program is a probation initiative that emphasizes the delivery of "swift and certain" punishment when an offender violates conditions of probation. Those who violate the conditions of probation are arrested immediately, appear in court within hours, and have the terms of their supervision modified to include a short stay in jail. The court also assists in providing access to social services for probationers who need drug abuse treatment, mental health treatment, or other social services. Results from a recent NIJ-funded evaluation of the HOPE Project are encouraging. Compared to probationers in a control group, after one year HOPE probationers were 55 percent less likely to be arrested for a new crime, 72 percent less likely to use drugs, 61 percent less likely to skip appointments with their supervisory officer, and 53 percent less likely to have their probation revoked. As a result, HOPE probationers served or were sentenced to 48 percent fewer days, on average, than the control group. These are dramatic findings -- and ones we hope to see replicated in other jurisdictions.

Justice Reinvestment

The economic challenges that many state, local, and tribal jurisdictions face today require us to reemphasize the critical importance of cost effectiveness within the overall determination of what works and how well it works. Families, neighborhoods, communities, and states can no longer afford to rely on incarceration as a universal option for all offenders. In partnership with the CSG's Justice Center, and other national organizations, BJA launched its Justice Reinvestment initiative in 2006. This approach is a highly strategic effort that includes extensive collection and analyses of corrections, crime, and resource data. By using this approach, state, local, and tribal policymakers are better able to assess their criminal justice systems and implement policy options that control spending on corrections and ensure that those cost savings are reinvested in benefits and services such as substance abuse prevention and treatment programs to prevent crime and increase public safety.

Justice Reinvestment has shown significant results in communities throughout the country. In Kansas, for example, the prison population was expected to increase 22 percent by 2016 at a cost of approximately \$500 million in additional construction and operating costs. Analysis by experts from CSG's Justice Center showed that violations of parole and probation in Kansas were a significant factor in individuals returning to prison. In response, the state enacted new policies and redirected \$7.9 million to strengthen probation and parole operations and expand treatment programs. As a result, the state prison population decreased by four percent and recidivism rates declined by more than 20 percent.

As a result of similar successes across the nation, additional states are beginning to implement Justice Reinvestment strategies. Vermont, one of the least populous states in the country, was among the states with the fastest growing prison populations in the nation. To keep pace with the growth in the prison population, state spending on corrections increased from four percent of state general funds in 1990 to 10 percent of state general funds in 2008. Over several years, Vermont policymakers designed numerous innovative strategies, including intensive community-based supervision and substance abuse treatment, to reduce this rate of recidivism, but no data-driven mechanism existed to guide decisions about who received particular

resources. Consequently, policymakers could not track the impact of these programs on recidivism rates and public safety.

With bipartisan support, policymakers in Vermont decided to employ a Justice Reinvestment strategy, using rigorous data analyses. In turn, the state enacted new policies and programs that, if implemented effectively, will help reduce the state's need to contract for out-of-state capacity to house the prison population and avert the need to construct new prisons, yielding an estimated \$54 million in net savings between FY 2009 and FY 2018. State officials developed a plan to reinvest \$3.9 million of the projected savings over the next two years to support assessment tools to identify people with substance abuse needs prior to release, to expand in-prison substance abuse treatment and vocational training, and to increase funding for a transitional housing program to include housing assistance and life skills training.

In fiscal year 2010, BJA issued a competitive solicitation to expand our Justice Reinvestment initiative by reaching additional states, counties, and tribal governments and by expanding the number of national organizations participating as technical assistance providers. Through this solicitation, BJA will also make available seed funding for states, counties, and tribes to implement policy options identified to reduce costs and improve outcomes. Additionally, BJA has worked closely with the Pew Center on the States to develop a process for more closely aligning our Justice Reinvestment efforts to ensure that states participating in the initiative with BJA and /or Pew will be eligible for further support through both organizations.

Evidence-Based Crime Prevention

Evidence Integration Initiative

In problem-solving courts, justice reinvestment strategies, and unique probation programs, we see examples of how evidence can play a role in shaping policy and practice. The Attorney General has made it a priority to support, develop, and enhance evidence-based practices that build upon current models and encourage innovative approaches and strategies nationwide. This means that supporting research is a vital part of OJP's mission. Hand in hand with supporting research is the responsibility for translating it for use and integrating evidence into the day-to-day work of justice professionals.

To meet these goals, OJP's Assistant Attorney General, Laurie Robinson in 2009 launched a new Evidence Integration Initiative, or E2I, for short. This is an agency-wide effort, and it has three objectives: 1) improve the quantity and quality of evidence that we generate through research, evaluations, and statistics; 2) better integrate evidence into program and policy decisions; and 3) improve the translation of evidence into practice.

Above all else, E2I will help us expand programs that work, such as the ones I have mentioned today. By providing clear evidence and easy-to-use resources, E2I will help us nourish successful programs and reform those that don't work using proven models. With E2I, we are not starting over; we are capitalizing on our existing successes and creating an environment where they can be easily replicated. E2I incorporates careful study, thorough analysis, and practical tools and will help us do more to provide viable alternatives to incarceration.

Our objective with E2I is to help criminal justice policymakers and practitioners better understand what has been shown to work, and we are already taking some specific steps. For example, we are working to establish common expectations and definitions for credible evidence across programs. We are forming Evidence Integration Teams to synthesize evidence on specific justice topics, such as children exposed to violence and gangs, and to develop principles for practice that can be communicated to the field. In addition, we are focusing on how to get information out to practitioners and policymakers in a format that is accessible and useful.

The President has requested funding for two critical elements of E2I in his Fiscal Year (FY) 2011 Budget Request. One is a Crime Solutions Resource Center and the other element is a diagnostic center, or “help desk,” that will provide direct support to jurisdictions as they apply these approaches. These projects are rooted in our commitment to supporting, developing, and enhancing evidence-based practices, building upon current models, and encouraging innovative strategies in the field.

Conclusion

Recidivism is a complicated problem, and we need to acknowledge that there is a lot more to learn in this area. At OJP, we are committed to investing in research to ensure we spend public dollars wisely. Confronting challenges associated with recidivism in a more balanced way means recognizing the role of prevention, pretrial services, sentencing alternatives, and treatment. Each of the national projects I discussed today is a valuable tool that represents an opportunity to maximize the effectiveness of state and local systems and make our communities safer.

This concludes my statement, Mr. Chairman. Thank you for the opportunity to testify today. I welcome the opportunity to answer any questions you or other Members of the Subcommittee may have.