

BRENNAN
CENTER
FOR JUSTICE

SUCCESS-ORIENTED FUNDING:
REFORMING FEDERAL
CRIMINAL JUSTICE GRANTS

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INTRODUCTION

The unrest in Ferguson, Missouri, has riveted the nation. It has also drawn attention to a phenomenon previously hiding in plain sight: how the federal government spends grant dollars and the very real and human consequences of those decisions.

The bullets fired at Michael Brown, the tear gas thrown at the protesters, and the armored trucks designed for war driving through the streets of Ferguson did not appear out of nowhere. They were purchased.

As has now been widely reported, the Departments of Defense and Homeland Security supply America's local police departments with military weaponry or money to buy such equipment, including full body armor, assault rifles, and military trucks designed for crossing land mines.¹ These programs may not have been directly responsible for purchasing the equipment used in Ferguson. However, they still encourage local police to access and use such equipment.²

To be clear, many federal grants pay for important law enforcement programs that help control crime. The question is not whether police should have more money or less money, but rather what they do with that money. Washington should not be in the business of giving out funds without knowing and condoning their ultimate use.

On August 23, 2014, President Obama ordered a review of the federal programs that send military equipment and money to police departments, often with no strings attached.³ He is right to do so. But these are not the only problematic federal programs. And excessive force is not the only harmful outcome.

To bring full accountability to the flow of federal funds used by state and local law enforcement, the scope of review should be wider. News reports indicate the review will include the largest federal criminal justice grant program, the Edward Byrne Memorial Justice Assistance Grant (JAG) administered by the Justice Department.⁴ But a review focused on JAG risks being too narrow. Rather, an effective review should extend to all federal grants for criminal justice purposes. This report recommends the President take swift executive action to reform these grants.

Today, a complex web of federal crime-fighting grants funnels billions of dollars across the country each year. Many of these programs were created during the height of the War on Drugs. Their initial aim: to encourage states to increase arrests, prosecutions, and incarceration, all in the belief that harsher punishment would better control crime. In recent years, the War on Terror prompted augmenting these existing grants and creating new ones to enlist and equip local police.⁵

The Pentagon-to-police equipment transfer program was created in the early 1990s to help police fight drug gangs.⁶ The Homeland Security Grant Program gives over \$1 billion to local police to purchase military equipment. All states receive a minimum amount regardless of how they spend the money.⁷

Similarly the Byrne JAG program, widely expanded during the War on Drugs, largely subsidizes equipment for local police.⁸ As the Brennan Center has documented in previous reports, the program inadvertently creates incentives to increase arrests, prosecutions, and incarceration.⁹ For example, it

evaluates recipients on the number of criminal cases opened, but not whether crime dropped. It asks them how many kilos of cocaine were seized, but not how many people were sent to drug treatment. It asks how many cases were prosecuted, but not how many petty offenders were diverted from prison.¹⁰

Strikingly, these examples are just a few among many such initiatives. In 2013, the Department of Justice administered more than 150 of these programs.¹¹ Hundreds of other federal programs administered by different agencies provide additional dollars while slipping the leash of accountability and clear direction. Research by the Brennan Center indicates the federal government sends at least \$3.8 billion in federal criminal justice grants across the country for crime fighting and other criminal justice purposes, not including the billions sent through national security programs run by the Departments of Defense and Homeland Security.¹²

These dollars often flow on autopilot. Too frequently, they incentivize antiquated practices that we now know have little public safety value and massive human consequences. They have contributed to an explosion in arrests and imprisonments, often without accompanying public safety benefits. The United States is now the largest incarcerator in the world.¹³ One in three Americans has a criminal record.¹⁴ And one in three black men can expect to spend time behind bars.¹⁵

Fortunately, the process of reform in the Justice Department has begun. Over the past several years, DOJ has begun to recalibrate its grants, including revising evaluation measures for JAG and in 2014, removing a question on number of arrests. Attorney General Eric Holder's cutting-edge "Smart on Crime" Initiative has spurred other vital changes to federal criminal justice policies. The Department is well positioned to continue this momentum with deeper reform, casting a wider net. The Administration can also take action to reform all federal criminal justice grants spread across federal agencies.

This is a moment for strong executive leadership to reverse our outdated crime-control policies. The President should issue an executive order directing federal agencies to review all federal criminal justice grants under their purview. Where these grants encourage harmful practices or have unclear goals, the President should direct federal agencies to recast them in a model called "Success-Oriented Funding."

Grounded in basic principles of economics and management, Success-Oriented Funding ties government dollars as closely as possible to clear outcomes and provides incentives to ensure those outcomes are achieved.¹⁶ Law enforcement grants, for example, should be tied to specific goals that reduce violence, ensure fair and appropriate justice, and keep communities safe – without encouraging unnecessary arrests or force. The question should be asked: When money is spent purchasing more bullets or more guns, is it going to further these goals? Or, is it missing the point?

An act of Congress – which may never come – is not needed. The President has clear authority to reform these grants. Federal agencies have discretion to implement this model into the grants they administer. In some cases, they may not be able to outright condition funding on meeting specific targets, but they can "nudge" recipients by sending clear signals on how administering agencies want recipients to use the money.¹⁷

Because these dollars travel across the country, implementing Success-Oriented Funding into federal grants can shift practices and outcomes nationwide.

I. FEDERAL GRANTS TODAY

The United States prison population has grown 700 percent since 1970.¹⁸ A system of this size demands ample funding. The country spends nearly \$260 billion each year to operate its prisons, courts, and police departments.¹⁹

The federal government aids states and cities by subsidizing their criminal justice costs through grant funding. Congress defines the purpose and requirements of each grant program, while executive agencies administer the application and award process.

Federal criminal justice grants send at least \$3.8 billion to states and localities each year.²⁰ These dollars flow to state and local police departments, prosecutors, courts, prisons, and reentry programs.²¹ These grants are critical to states and cities, which have come to rely on annual federal largesse. Additional programs send billions in dollars and equipment to law enforcement for fighting terrorism and other purposes; the Department of Homeland Security alone awarded nearly \$1 billion in 2013.²²

Federal funding is particularly influential in shaping state policy. Many grants support and even reward unwise policies that can encourage punishment and incarceration not tied to any public safety benefit. Brennan Center reports have previously documented this phenomenon.²³

At the height of the War on Drugs, the federal government played a role in the nationwide growth of incarceration. In one notable example, a 1994 federal crime law granted states \$9 billion in prison construction funds if they passed laws severely limiting parole eligibility. After this federal law was passed, 20 states enacted or increased laws limiting parole eligibility, which contributed to increased prison populations nationwide.²⁴

Some federal grants, called “formula grants,” guarantee funding for all eligible applicants. Applicants receive a set amount, usually dictated by a formula set by Congress. They do not compete for funds. Congress creates these grants for a general purpose, but beyond that there are usually no strings attached.

The Edward Byrne Justice Assistance Grant (“JAG”) uses a formula to send dollars to all 50 states, territories, and more than a thousand localities.²⁵ The funding level for the program averages between \$300 and \$500 million annually.²⁶ In 2009, JAG received a one-time infusion of \$2 billion as part of the American Recovery and Reinvestment Act.²⁷ States and cities can distribute the funding to various criminal justice agencies for almost any criminal justice activity.²⁸ In 2012, almost half of state JAG funds sent to law enforcement went toward drug and gang enforcement, and 34 percent went to equipment and operations.²⁹

The Department of Justice has authority to create reporting and evaluation requirements for recipients.³⁰ These evaluations send signals to recipients of desired outcomes. JAG inadvertently articulates goals in these evaluations that incentivize pulling more people into the pipeline to prison. For example, it asks the number of criminal cases opened and how many kilos of cocaine were seized, but not whether violent crime dropped or how many people were sent to drug treatment. Measuring the wrong practices strengthens the wrong practices. By linking more cases and more incarceration to the daily operation of

the criminal justice system, the federal government has encouraged further expansion of the country's incarcerated population in every state and city these dollars reach.

In contrast, “competitive grants” allow federal agencies to determine which applicant is most worthy of funding. Agencies base these decisions on applicable requirements and criteria, but retain ultimate judgment on which applicants receive awards. Though competitive grants create more accountability for how federal funds are spent, agencies often do not articulate clear outcomes when choosing applicants and sometimes choose applicants whose policies encourage mass incarceration.

The High Intensity Drug Trafficking Areas (“HIDTA”), a competitive grant program, provides \$238 million annually to law enforcement agencies operating in “high-intensity” drug-trafficking regions.³¹ The Office of National Drug Control Policy (“ONDCP”) asks applicants to submit proposals with strategies on how to respond to their unique drug trafficking problems.³² Congress has focused the statute on drug enforcement and restricted recipients from spending more than 5 percent of awards on drug prevention.³³ However, there are many ways to reduce drug crime other than arrests and seizures, including drug treatment, drug courts, and diversion for those with drug abuse issues. Research has shown that treatment and other non-criminal justice interventions can often reduce drug crime more effectively than arrests.³⁴ ONDCP approves funding proposals with strategies that focus primarily on enforcement, expanding local and state drug enforcement efforts without ensuring that these efforts prioritize quality over quantity.³⁵ For example, nine regions use HIDTA funds to support Domestic Highway Enforcement initiatives that flood national highways with law enforcement with the aim of disrupting drug markets by vigorously enforcing traffic laws.³⁶ This can be an incentive to increase arrests and stops.

Reform to federal grants can reorient these incentives. Because they flow to every state and thousands of cities and counties, federal grant dollars have an outsize impact on state and local policy. These grants shape policy across the country because any available funds help states struggling to support their overgrown systems. Recipients mold their criminal justice policies to meet federal grant criteria in order to receive as many awards as possible.³⁷

II. MODERNIZING FEDERAL GRANTS

The Obama Administration has signaled its desire to reform federal grants. In his 2014 budget proposal, the President asked Congress to consider funding a new Byrne Incentive program to provide additional funding to states that implement proven public safety strategies.³⁸ More recently, President Obama ordered a review of federal programs that supply police with military equipment.³⁹ The Justice Department has also taken many steps to reform criminal justice policies, including grant reforms, directives to federal prosecutors, and support for smart legislation to reduce sentences.

But the President can and should do more. This is a rare moment in which progressives and conservatives, both at the federal and local level, are willing to re-think criminal justice policy, including federal grants.⁴⁰ A review of equipment programs is significant, but not enough alone.

The President should lead a more coordinated effort to reorient all existing federal criminal justice grants toward the goals of reducing mass incarceration and better reducing crime. Through his executive authority, he can do so without waiting on Congress to act. Specifically, the President should issue an executive order to review and revitalize existing criminal justice grant programs by recasting them in a model called “Success-Oriented Funding.”

In this way the federal government can use its embedded influence over state policy to move the country away from a mass incarceration model.

A. Success-Oriented Funding

The criminal justice system needs a new set of incentives – one that aligns funding incentives with smarter public policy goals.

Success-Oriented Funding would use the power of the purse to change outcomes by tying government funding as tightly as possible to clear priorities that drive toward the twin goals of reducing crime *and* reducing mass incarceration.⁴¹ It provides incentives and concrete, measurable success measures to shift behavior toward those goals. The model can apply to all government dollars: whether federal, state, or local, through grants, budgets, or salaries, and going to public agencies or private companies. Such funding streams include:

- Federal grants
- State budgets
- Local budgets
- Prisons and probation agencies
- Private prisons or probation offices
- Prosecutor offices and police department
- Employee salaries within these agencies

It would be a sea change from the current criminal justice system, which often either ties funding to no goals or to goals that directly or inadvertently promote mass incarceration.

Success-Oriented Funding first requires priorities that underscore the goals of reducing crime and reducing mass incarceration for all criminal justice funding streams. Top priorities include reducing serious and violent crime, reducing unnecessary incarceration, and reducing recidivism.

Second, the model requires clear, concrete success measures that allow the government – and recipients – to determine whether recipients are meeting these priorities. Success measures would vary depending on the agency or program funded. For example, grants for police would measure their reduction in violent crime or diversion of drug-addicted arrestees to treatment.

Government can apply priorities and success measures to all public funding that supports criminal justice activities. It would announce these priorities before funding an agency and would later measure the agency's success in meeting them. Funding recipients would report on their progress toward these success measures annually. The government would then use this data in determining future funding allocations.

Success Measures

Figure 1 provides examples of possible success measures for various funding recipients. As is the case with any data-collection, success measures can never create perfect incentives and recipients could “fudge” numbers. Success measures should be designed to minimize these problems and create the best incentives possible for recipients to orient them toward stated priorities. Success measures are generally measured from year to year so that recipients' progress toward goals over time can be seen. In this way, recipients are primarily measured against themselves and not against other recipients, who may have more resources or different criminal justice challenges. In many instances, the agency may not have complete control over these outcomes. However, all agencies contribute to these outcomes and by ensuring that all agencies have aligned priorities, the government can harness all their resources to improve these outcomes. In some cases, agencies have little control over outcomes in which case Figure 1 provides modified or no success measures for those priorities. The data required for these measures are largely already collected or are relatively easy to begin collecting. These measures are the product of two years of research and interviews compiled in a previous Brennan Center report.⁴²

Figure 1: Sample Success Measures for Criminal Justice Agencies

Agency	Reducing Serious and Violent Crime ¹	Reducing Unnecessary Incarceration	Reducing Recidivism
Police Departments	<ul style="list-style-type: none"> Decrease in violent crime rate Percent of arrests for violent crime, compared to last year Increase in percent of community feeling safe (if surveys exist) Percent of violent crime arrests that resulted in convictions, compared to last year 	<ul style="list-style-type: none"> Increase in percent of misdemeanor arrests issued desk appearance or citations Decrease in percent of arrests for misdemeanors 	<ul style="list-style-type: none"> Increase in arrestees screened for mental health/drug addiction within 24 hours of arrest
Prosecutor Offices	<ul style="list-style-type: none"> Decrease in violent crime rate Percent of violent crime cases on docket, compared to last year Increase in percent of community feeling safe (if surveys exist) 	<ul style="list-style-type: none"> Decrease in percent of defendants sentenced to incarceration Decrease in prison population Decrease in percent of pre-trial defendants detained 	<ul style="list-style-type: none"> Decrease in percent of prisoners arrested within 3 years of release Decrease in percent of prisoners convicted of a new crime within 3 years of release Decrease in percent of prisoners convicted and sentenced to incarceration for a new crime within 3 years of release
Jails	<ul style="list-style-type: none"> Decrease in violent crime rate within jail 		<ul style="list-style-type: none"> Increase in detainees screened for mental health/drug addiction within 24 hours of detainment
Public Defense Offices		<ul style="list-style-type: none"> Increase in defendants who met with a defense attorney within 24 hours of arrest Decrease in percent of defendants sentenced to incarceration 	
Treatment and Training Programs (including Drug/Mental Health Courts)			<ul style="list-style-type: none"> Increase in percent of program completers Increase in percent of program completers demonstrating improvement in mental health/drug use (or for educational programs: percent passing tests or receiving certificates) Decrease in percent of prisoners arrested within 3 years of discharge Decrease in percent of prisoners convicted of a new crime within 3 years of discharge
Prisons	<ul style="list-style-type: none"> Decrease in violent crime rate within prison Decrease in percent of prisoners convicted of a violent crime within 3 years after release 	<ul style="list-style-type: none"> Increase in percent of prisoners earning good time behavior credits Increase in percent of prisoners participating in programs (drug, mental health, education, training) Increase in recommendations for parole or supervised release 	<ul style="list-style-type: none"> Decrease in percent of prisoners arrested within 3 years of release Decrease in percent of prisoners convicted of a new crime within 3 years of release Decrease in percent of prisoners convicted and sentenced to incarceration for a new crime within 3 years of release
Parole and Probation Offices	<ul style="list-style-type: none"> Decrease in percent of supervisees convicted of a violent crime within 3 years after discharge 	<ul style="list-style-type: none"> Decrease in number of supervisees revoked back to prison for technical violations 	<ul style="list-style-type: none"> Decrease in percent of supervisees arrested within 3 years of discharge Decrease in percent of supervisees convicted of a new crime within 3 years of discharge Decrease in percent of supervisees convicted and sentenced to incarceration for a new crime within 3 years of discharge

1 Measures focus on reducing violent crime because there is not a current national definition for serious crime. However, serious crime could be defined and similar success measures applied.

Three Ways to Apply Success-Oriented Funding

Often, the government will be unable to outright condition dollars on outcomes. Depending on legal and practical considerations, Success-Oriented Funding can be applied in three broad ways.

- Conditioned Success-Oriented Funding.** Recipients only receive dollars when they achieve specific priorities. This reserves scarce dollars for agencies that achieve intended outcomes. Conditioned Success-Oriented Funding works best for federal grants to state and local recipients because federal grant dollars are “extra” dollars, acting as rewards to existing budgets for agencies and programs.
- Bonus Success-Oriented Funding.** Recipients receive additional dollars if they achieve specific target outcomes (e.g. reduction in prison population by 20 percent). This incentivizes agencies to meet priorities, without stripping them of the necessary cash to function. Bonus Success-Oriented Funding works best when applied to agency budgets. It could also apply to federal grants when it is not practical to directly condition dollars, or to individual employees of agencies (e.g. a prosecutor could receive a bonus for reducing the number of low-level defendants he sent to prison). Individual success measures would derive from an agency’s success measures to ensure priorities are aligned.
- Indirect Success-Oriented Funding.** Without tying explicit strings to dollars, the government can encourage agencies to achieve specific priorities by providing goals alongside funding. One method is to incorporate success measures into annual evaluations or reporting requirements. This form gives funding a clear purpose without mandating it. The government nudges recipients toward these goals. Research shows that goals act as signposts in setting policy and ultimately affect the behavior of actors.⁴³ Indirect Success-Oriented Funding can be applied broadly to all funding streams and can influence practices just as effectively as more direct requirements. It can apply to individual employees by incorporating success measures into annual performance evaluations.

Type of Success-Oriented Funding	How it works	Best Candidates
Conditioned	Government dollars only available for agencies that show progress toward priorities	Competitive federal grants, private prisons
Bonus	Government provides additional “bonus” dollars to agencies if they achieve specific target success measures	Certain federal grants; federal and state prisons, prosecutors, police departments; agency employees
Indirect	Government encourages agencies to achieve specific priorities alongside funding usually through performance evaluations	Formula federal grants; all agencies; agency employees

Several states have incorporated similar models into individual programs on a smaller-scale, proving the case for tying funding to concrete goals.

- **Illinois: Conditioned Success-Oriented Funding.** The Adult Redeploy program aims to send nonviolent offenders to specialty courts or probation rather than prison. Through the program, the state provides certain counties with more dollars when they agree to send 25 percent fewer people to prison, giving county officials a financial incentive to use incarceration as a punishment of last resort.⁴⁴ Since 2011, the program has cut recidivism within those counties by as much as 20 percent, kept more than 800 people out of prison, and saved \$16 million in prison costs.⁴⁵ By setting specific targets and conditioning funding on achieving those targets, this program has achieved great results.
- **California: Bonus Success-Oriented Funding.** In 2009, California passed the Community Corrections Performance Incentive Act. It encourages probation offices to keep people who violate supervisor rules on probation, rather than sending them back to prison, by awarding counties up to 45 percent of the state’s prison savings.⁴⁶ In its first year alone, California probation officers sent 23 percent fewer felony offenders back to prison, which saved the state nearly \$180 million.⁴⁷ In return, the state government awarded the counties \$88 million from these savings.⁴⁸ This program incentivized a better criminal justice system while saving government costs.
- **New York: Bonus Success-Oriented Funding.** These types of financial incentives apply equally powerfully to private companies. In 2012, Goldman Sachs invested \$9.6 million in a New York City program to reduce juvenile recidivism at Riker’s Island jail.⁴⁹ Goldman stands to earn up to \$2.1 million in profit if it cuts recidivism by more than 10 percent in four years.⁵⁰ But, should recidivism rise above 10 percent, Goldman can lose as much as \$2.4 million.⁵¹ Although it is too early to tell whether this investment will ultimately prove successful, this kind of funding ultimately “bets” on the success of prisoners reintegrating into society and signals the direction the country is beginning to take in criminal justice policy. This type of model can be applied to other private actors, including private prisons. For example, private prisons could be paid based on whether they reduced the recidivism of rate of their prisoners, instead of on how many prison beds they can fill. This would create new profit incentives for private companies while encouraging a reduction in incarceration.

The basic lesson: financial incentives can direct the behavior of criminal justice actors to reduce crime, recidivism, incarceration, and associated costs. Success-Oriented Funding adopts this premise by encouraging funding recipients to change their behavior.

B. Applying Success-Oriented Funding to Federal Grants

The federal government can build upon the momentum and early successes of these state funding programs. It should implement Success-Oriented Funding into all federal criminal justice grants.

Congress has the authority to completely revamp these grants into strong Success-Oriented Funding models. However, an act of Congress is not needed. The President also has authority to make this change, in a more limited but still potent, manner. Federal agencies have discretion to implement this model into the grants they administer. In some cases, they may not be able to outright condition funding on meeting specific targets, but they can nudge recipients by sending clear signals on how administering agencies want recipients to use the money.

Though concentrated in the Justice Department, these grants are spread across federal agencies. Below are several examples of existing grant programs and how executive agencies can use their own authority to revamp these grants. Each example describes the grant program, how it works, and explains how to apply the most relevant type of Success-Oriented Funding. Recommended success measures combine each grant's statutory goals with the Success-Oriented Funding model's priorities of reducing crime, incarceration, and recidivism.

Not all these grants create harmful outcomes. Yet all could benefit from clearer goals and stronger success measures.

1. Candidate for Conditioned Success-Oriented Funding

Example: Tribal Governments Program, Department of Justice

How it Works

The Tribal Governments Program is a funding program administered by the Department of Justice (DOJ) that provides tribes with a comprehensive approach to combating issues of public safety and victimization. In particular, the program enhances the ability of tribes to respond to violent crimes against Native American women, enhance victim safety, and develop education and prevention strategies on domestic violence, dating violence, and sexual assault.⁵² In 2013, DOJ funded 52 Tribal Government Program awards, totaling more than \$28.5 million.⁵³

Federally-recognized tribes may apply for this grant by submitting a detailed funding plan to DOJ. Applicants must develop their proposals in consultation with a nonprofit, a nongovernmental Native American victim services program, or with women in the community to be served.⁵⁴ The applications must propose funding plans that fulfill the programmatic goals of enhancing governmental strategies to combat gender-based violence against Native American women and providing services to victims.⁵⁵

Congress granted DOJ vast discretion in the administration of the Tribal Governments Program. In choosing which applicants to fund, DOJ scores each application. The score is based on a review of the demonstrated need for funding and the plan's reasonableness. DOJ also considers the applicant's past performance, lowering an application's score for a history of poor effectiveness. DOJ may negotiate with applicants on the scope of their plans and may also offer an award for a lower amount than the applicant requested.⁵⁶

After DOJ sends out the awards, recipients must complete semi-annual progress reports where they explain their grant activities and assess the effectiveness of those activities. Currently, these progress reports include questions on the number of persons served, the number of persons seeking services who could not be served, and the outcome of any court involvement.⁵⁷ However, these reports do not measure the ultimate impact of grant efforts.

Applying Conditioned Success-Oriented Funding

DOJ should use its discretion to condition Tribal Governments Program grants on recipients meeting clear success measures. Given the focus of the grant program, a powerful recommended success measure is: the reduction in incidents of domestic violence, dating violence, sexual assault, sex trafficking, and stalking on tribal land.

DOJ could implement this success measure to the Tribal Governments Program in two simple steps. First, DOJ would revise its annual solicitation to reflect that past success in meeting this measure is required for awards to returning applicants. Second, it would include this measure in the progress report recipients complete semi-annually, aggregating this data to determine future Tribal Governments Program eligibility.

By requiring tribal agencies to make an impact with their awards, DOJ can drive them toward effective crime prevention efforts.

2. Candidates for Bonus Success-Oriented Funding

Example: Community Oriented Policing Services Hiring Program, Department of Justice

How it Works

The Community Oriented Policing Services Hiring Program (CHP) provides grants to law enforcement agencies to hire career law enforcement officers to support their community policing and crime prevention efforts.⁵⁸ CHP is commonly referred to as the “COPS grant.”⁵⁹ CHP grants are administered by the Department of Justice, which awarded approximately \$127 million under this program in 2013.⁶⁰

CHP grants help law enforcement agencies to increase police presence, improve cooperative efforts between law enforcement agencies and the community, and enhance public safety.⁶¹ DOJ expanded the program “to increase the capacity of law enforcement agencies to implement community policing strategies that strengthen partnerships for safer communities and enhance law enforcement’s capacity to prevent, solve, and control crime through funding for additional officers.”⁶²

All local, state, and tribal law enforcement agencies are eligible for CHP grants.⁶³ Law enforcement agencies submit an application that details a long-term strategy, an implementation plan, and an assessment of the impact of increased police resources on other components of the criminal justice system.⁶⁴

DOJ reviews CHP applications to determine proper applicant qualifications. DOJ must award each state a minimum of 0.5 percent of the total CHP amount for the year.⁶⁵ If all 50 states apply, DOJ must award them at least 25 percent of the total funds. However, DOJ has broad discretion in awarding the remaining funds to other applicants.

CHP recipients must complete quarterly Programmatic Progress Reports where they rate the effectiveness of the grant in helping them develop new resources, increase their community policing capacity, and complete their application plan.⁶⁶ Remarkably, these reports do not seek information from recipients on how well their plan achieved the purpose of the grant.

Applying Bonus Success-Oriented Funding

DOJ can use its administrative authority to reserve a portion of CHP funding each year – perhaps 25 percent – to provide bonus funding to applicants that meet clear success measures. Potent recommended success measures include: a reduction in the violent crime rate and an increase in the number of community partnerships.⁶⁷ At the end of each fiscal year, DOJ would distribute this additional funding evenly among all recipients who meet these success measures.

DOJ could implement these success measures to the CHP program by revising its annual application guideline and quarterly Programmatic Progress Reports. The application guideline could include a new section on “Additional Funding,” which would announce the availability of bonus funding for recipients that successfully reduce their violent crime rate and increase their community partnerships. Further, DOJ could include these measures in the progress report recipients complete quarterly and use the results to determine who qualifies for a bonus award at the end of the year.

By encouraging law enforcement agencies with additional funding to make an impact with their CHP award, DOJ can drive law enforcement to develop effective crime reduction and community-oriented policing policies.

Example: High Intensity Drug Trafficking Areas, Office of National Drug Control Policy

How it Works

The High Intensity Drug Trafficking Areas program (HIDTA), created by Congress with the Anti-Drug Abuse Act of 1988, supports law enforcement agencies operating in high drug-trafficking areas.⁶⁸ In 2012, HIDTA awarded \$238 million to support hundreds of initiatives in 28 high-risk areas.⁶⁹

The program, run by the White House Office of National Drug Control Policy (ONDCP), is designed to reduce drug trafficking and production in the United States. ONDCP approves funding proposals for law enforcement initiatives and encourages applicants to develop plans that facilitate cooperation among law enforcement agencies, enhance intelligence sharing, provide reliable intelligence, and support effective coordinated strategies.

Eligible law enforcement applicants must be located in an area the Director of ONDCP determines is an area of high-intensity drug trafficking. To qualify, an area must be a significant center of illegal

drug activities that have a harmful impact, law enforcement must have committed resources to combat this activity, and an increase in federal resources must be necessary to adequately respond. There are currently 28 approved HIDTA areas, which include approximately 16 percent of all counties in the United States and 60 percent of the U.S. population. Each approved area sets up an Executive Board, composed of law enforcement leaders, to help develop, support, and implement HIDTA initiatives within the designated area.

Each Executive Board assesses its drug trafficking threat for the upcoming year, develops a strategy to address that threat, designs initiatives to implement the strategy, and proposes funding needed to carry out the initiatives. The Board then submits a HIDTA application for funding that tracks this plan. ONDCP is tasked with approving the most effective plans for HIDTA awards.

After receiving funding, each HIDTA Executive Board must submit an Annual Report to ONDCP on its performance for the year. The reports must include data on progress toward performance targets, effectiveness in accomplishing the program's mission, and a description of how the resources were spent.⁷⁰ These measures focus on progress toward goals and measure the impact of these dollars on communities; however, ONDCP must tie the measures to the approved strategy. By approving funding proposals that emphasize arrests and seizures, ONDCP measures the right goals but misses an opportunity to promote modern law enforcement policies. It ignores creative solutions – outside of drug enforcement – to fight drug trafficking, improving public safety and reducing incarceration levels.

Applying Bonus Success-Oriented Funding

ONDCP has discretion to set aside a certain percentage of funds – perhaps 15 percent – as bonus dollars for recipients who meet clear success measures. Powerful success measures include: reducing drug trafficking and reducing violent crime.

ONDCP could implement these success measures to the HIDTA program by revising its application process and progress reports. The grant announcement could include a new section on “Additional Funding,” which would announce the availability of bonus funding for recipients that successfully reduce their drug trafficking and violent crime. Further, ONDCP could include these measures in the Annual Report and use the results to determine who qualifies for a bonus award at the end of the year. Bonus dollars would ensure that HIDTA award recipients develop the most effective initiatives to combat drug activity, making an impact on the levels of both drug trafficking and violent crime in high-intensity drug trafficking areas.

Example: Distracted Driving Grant Program, Department of Transportation

How it Works

The Distracted Driving Grant Program sends funding to all states that enacted and enforced distracted driving laws, including anti-texting statutes.⁷¹ The Department of Transportation (DOT), which administers this new grant, offered \$17.5 million last year to eligible states.⁷²

Distracted Driving grants provide states with resources to help implement distracted driver laws as part of a broader effort to prevent highway injuries. Further, the program incentivizes other states to enact similar laws. To qualify, a state must have and enforce a comprehensive law against distracted driving or a primary law prohibiting texting while driving, which allows law enforcement to stop violators solely for distracted driving.

States applying for funding must identify their anti-distracted driver statutes for DOT to review and verify eligibility for the award. As long as the state statute meets eligibility requirements, the state is guaranteed an award. While the program statute does not specify how much to allocate to each state, DOT has determined to allocate funding consistent with its past practices in various highway safety grant programs.

Award recipients must comply with program spending requirements. By statute, states must spend at least 50 percent of Distracted Driver grants to support advertisements, traffic signs, and law enforcement costs associated with anti-distracted driver laws. States may spend the remaining funds on highway safety programs.

Congress does not require states that receive Distracted Driving grants to report their performance to DOT. However, it does require annual reports for a similar federal highway safety grants. In that instance, each state must submit a report to DOT that describes its grant activities, assesses its progress toward highway safety goals, and explains how its activities contributed toward that progress.⁷³

Applying Bonus Success-Oriented Funding

DOT cannot condition Distracted Driving Grant Program funding on meeting goals; however, it retains vast authority over how the awards are allocated. DOT should use this authority to reserve a portion of the money – perhaps 10 percent – to provide bonus funding to states that meet clear success measures. A potent success measure would be: a reduction in the number of vehicular accidents, injuries, and deaths.

DOT can implement Bonus Success-Oriented Funding by requiring recipients to report their performance annually, as similar highway safety grant programs do. When creating this report requirement, DOT could include the success measure of reducing the number of vehicular accidents, injuries, and deaths.

Without this additional funding incentive, states that simply pass qualifying laws but do not increase highway safety receive guaranteed funding. In contrast, providing these incentives for states to meet priorities through bonus dollars would better fulfill the true purpose of the program: to prevent highway injuries and save lives.

Alternatively, DOT should encourage award recipients through performance reports to meet the success measure of reducing vehicular accidents, injuries, and deaths. By encouraging states who receive federal funding to make an impact in enforcing anti-distracted driver laws can drive states to develop effective law enforcement, transportation, and education policy.

3. Candidates for Indirect Success-Oriented Funding

Example: Edward Byrne Justice Assistance Grant Program, Department of Justice

How it Works

Today, the Edward Byrne Justice Assistance Grant program (JAG) is the largest single source of federal funding for state and local criminal justice activities, providing \$300 to \$500 million each year to all states, territories, and thousands of cities.⁷⁴

Under the statute creating JAG, the Justice Department is authorized to administer the program, sending funding awards to states and localities based on a strict formula. The formula considers a state's share of the number of violent crimes nationwide and its share of the national population. By statute, DOJ must send 60 percent of a state's allocation directly to the state government. DOJ distributes the remaining 40 percent to local governments within the state. The program's legislation also mandates a minimum allocation level for each state or territory equal to 0.25 percent of the total JAG allocation, regardless of its population or crime average. State and local governments pass JAG funds on to an array of sub-recipients.

Recipients can use JAG funds to support almost any criminal justice activity. Collectively, states spend just over half of their JAG formula dollars to support law enforcement.⁷⁵ And, about one-third of the funds spent on law enforcement support purchases of equipment and technology.⁷⁶ Approximately 21 percent of all Law Enforcement JAG funds are allocated to task forces, which tend to focus on such activities as: gang member arrests, firearm seizures, and drug-related arrests.⁷⁷ JAG funds often support drug task forces by paying for the salaries or overtime hours of task force officers and other personnel as well as for vehicles and undercover equipment.⁷⁸ As of 2011, 585 multi-jurisdictional task forces were funded through the JAG program.⁷⁹

After receiving funding, recipients must fill out a yearly evaluation form. The evaluation's questions span 58 pages and 212 questions, focusing on various criminal justice activities. DOJ asks states to report the number of new criminal cases opened, but not whether the crime rate dropped. It measures the amount of cocaine seized, but not whether arrestees were screened for drug addiction. It tallies the number of cases prosecuted, but not whether prosecutors reduced the number of petty crime offenders sent to prison. These measures send a powerful signal to states and localities that the federal government desires more arrests, more cocaine busts, and more prosecutions, at the expense of other, more effective activities.

Further, JAG's evaluation measures suffer from data collection challenges. By some accounts, 30 percent of JAG recipients do not submit these questionnaires to DOJ at all.⁸⁰ This lack of data makes it difficult for DOJ to assess whether recipients are achieving the grant's goal of funding effective programs.

Fortunately, the Justice Department has been revising these measures, and in June 2014, it removed a harmful measure asking recipients to report on number of arrests.

Applying Indirect Success-Oriented Funding

Because of its strict statutory formula, DOJ cannot condition or provide bonus dollars in the JAG program. Instead DOJ should set clear success measures in the JAG yearly evaluation for each type of recipient, focusing on outcomes. For example, for police, DOJ should measure: the drop in violent crime or the increase in percent of arrestees with drug addiction who were diverted to treatment programs. For prosecutors, DOJ should measure, for example: the decrease in percent of low-level offenders sent to prison.

Through revamped measures, DOJ can nudge thousands of recipients and sub-recipients across the country toward modern, data-driven policies that effectively control crime while helping shrink the overgrown system. This can also help focus scarce resources on the most serious crimes and encourage proportional criminal justice responses to crime.

Example: Juvenile Title II Grant, Department of Justice

How it Works

The Juvenile Title II Grant program supports state delinquency prevention and intervention efforts and juvenile justice system improvements.⁸¹ The Department of Justice, which administers the program, funds programs to prevent at-risk youth from entering the juvenile justice system or help first-time juvenile offenders reintegrate. Last year, the program awarded \$28.4 million.

To be eligible to receive Title II Grant funding, states must submit comprehensive three-year plans outlining the needs in their jurisdictions and the services they intend to provide. Each plan must comply with program mandates to (1) deinstitutionalize status offenders, (2) separate juveniles from adult inmates, (3) remove juveniles from adult jails and lockup, and (4) reduce disproportionate minority contact with the juvenile justice system.

DOJ reviews applications to ensure statutory requirements have been met. However, the Juvenile Title II Grant nearly guarantees funding to each state that applies. All eligible applicants receive an amount of funding according to the program's formula, which is based on the relative population of people under 18 years old within the state. State governments pass Title II funds onto an array of sub-recipients. Recipients can use these funds to support a range of juvenile justice activities within 36 broad program areas. However, DOJ will reduce a state's award amount by 20 percent if it has previously failed to comply with any program mandate.

After receiving funding, grantees complete an annual performance measures questionnaire. The questionnaire is more than 195 pages and covers a variety of topics, including how many youth were served, the percent that completed the program, and how many re-offended afterwards.⁸² While these performance measures are thorough and cover dozens of funding activities, the volume of measures and priorities distract from the program's overall purpose: preventing at-risk youth from entering the juvenile justice system and helping first-time juvenile offenders reintegrate.

Applying Indirect Success-Oriented Funding

Congress has mandated that all Juvenile Title II grant dollars go to states based on a formula. Therefore, DOJ cannot condition the funding or set aside bonus dollars. Instead, DOJ should implement fewer, clearer success measures in the annual performance measures questionnaire. Strong success measures include: a decrease in the number of at-risk participants who committed crimes within one year of completing the program, or reduction in first-time offender recidivism within one year of program completion.

Through limited measurements, DOJ can nudge states and agencies across the country toward focused outcomes that shrink the size of the juvenile justice system.

III. RECOMMENDED ACTION

A. Action for the President

The President should expand his current review to encompass all existing criminal justice grant programs. He should issue an executive order directing a review of these grants. Where they do not achieve intended outcomes, he should direct federal agencies to implement a Success-Oriented Funding model to the extent allowable by their executive authority.

The President has authority to do this under his power to direct executive officers and clarify existing laws.⁸³ While Congress determines the purpose and requirements of each grant program, agencies administer the application and award process. In administering these grants, agencies can be bound to either strict legislative requirements or carry wide discretion over who receives funding and how much. Though the form would vary, agencies can use their discretion to implement Success-Oriented Funding into all federal criminal justice grants they administer. Further, the White House Office of Management and Budget plays a large role in federal grant operations.⁸⁴ The President need not mandate this reform through executive order, but such an order would initiate strong executive action and signal a moment for change.

Presidents have similarly used executive authority to reform federal grants in the past. For example, President Ronald Reagan issued an order in 1982 to require federal, state, and local government to coordinate around federal grants.⁸⁵ President Bill Clinton signed an order in 1993 to increase efficiency in the regulatory process, including grants administered through regulations.⁸⁶ President Obama himself issued an order in 2009 to reduce error, waste, and fraud in grant payments.⁸⁷

Because many grants for law enforcement and criminal justice purposes originate in the Department of Justice and the Attorney General has indicated his desire to reform the justice system, the Attorney General, working with the Office of Management and Budget, can assist the President in coordinating such an initiative.

A strong executive order to implement Success-Oriented Funding to federal grants would:

- Create a Task Force on Federal Criminal Justice Grants headed by the Attorney General working, with the Office of Management and Budget, to within 60 days identify all federal agencies with criminal justice grants where Success-Oriented Funding could be applied (including programs that provide equipment to police for crime fighting and national security purposes).
- Direct each identified agency within 120 days to submit plans to the Attorney General and the Office of Management and Budget that review each grant, determine whether they achieve intended priorities, and recast their grants in a Success-Oriented Funding model to the extent allowed by their agency authority. Plans should include proposals to implement the most appropriate of the three types of Success-Oriented Funding into identified grants as part of the President's 2016 budget.

- For competitive grants, where executive authority allows agencies to choose the most qualified grant recipients for funding, agencies should condition grant funding on whether recipients meet clear goals or success measures.
 - For grants where agencies cannot directly condition funds, agencies should create award programs to provide additional funding to recipients who meet success measures, where statutes creating these grants provide agencies discretion to create such awards.
 - If agencies can do neither of the above, they should adopt clear, concrete success measures that incentivize and encourage recipients to achieve specific goals. Goals will act as signposts in setting policy and ultimately affect the behavior of actors.
- Direct the Attorney General and Office of Management and Budget to work with each agency to begin executing plans within 360 days, while coordinating goals where possible so they are relatively consistent across grants and agencies.

B. Action for the Attorney General

The Attorney General has already been playing a distinct role in leading the nation toward reducing incarceration. If the President chooses not to expand his review of federal programs to include all federal criminal justice grants, the Attorney General can still lead the way to revamp the Justice Department's grants so that their incentives explicitly align with the Department's new, smarter criminal justice goals.

The Attorney General can issue a Memorandum to the various Justice Department sub-agencies that administer federal criminal justice grants. With this step, he can immediately modernize the more than 150 DOJ programs that send billions of dollars each year to states and cities.

A strong Memorandum to implement Success-Oriented Funding to DOJ grants would:

- Identify all sub-agencies of the Justice Department with criminal justice grants that would be candidates for Success-Oriented Funding.
- Direct each identified sub-agency to within 120 days submit plans to the Attorney General to recast their grants in a Success-Oriented Funding model to the extent allowed by their agency authority.
- Direct each sub-agency to execute plans within 360 days, while working with the Attorney General to coordinate goals where possible so they are relatively consistent across grants.

CONCLUSION

The time is ripe for executive action to fix our broken justice system. The Attorney General has called for action to address our mass incarceration crisis. The White House and the Office of Management and Budget are moving toward ways to make federal funding more efficient. Staunch conservatives, including the Koch Brothers and Senator Rand Paul, are calling for similar reform. And the events that transpired in Ferguson have brought federal crime-fighting grants to the forefront of public discourse.

It is a rare moment for cooperation across ideological lines and an opportunity for this Administration to create a strong legacy in criminal justice. Success-Oriented Funding would achieve much-needed national change. It would encourage governments to reduce overcriminalization, over-punishment, and overincarceration, while also reducing crime and corrections spending.

We are at pivotal moment. As the country struggles with the budget shortages and the social injustice of mass incarceration, an executive order applying Success-Oriented Funding to federal criminal justice grants provides a solution to both. It also provides a model for states and localities to implement to their own funding streams. Establishing better incentives and goals into federal funding would go a long way toward curbing mass incarceration and making our justice system more effective, fair, and rational.

APPENDIX A: MODEL EXECUTIVE ORDER

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in the interest of promoting criminal justice practices that are more effective, better fight crime, and reduce mass incarceration and its devastating social costs, it is hereby ordered as follows:

Section 1. Purpose.

The United States criminal justice system is overfilled, overused, and in need of systemic reform. Mass incarceration is a social burden that the Federal Government must act to reverse. When the Federal Government makes criminal justice payments to individuals and businesses as program beneficiaries, grantees, or contractors, or on behalf of program beneficiaries, it must make every effort to confirm that recipients are acting to reduce mass incarceration while also reducing crime. The purpose of this order is to ensure that federal funds are spent effectively and efficiently in this effort by implementing a Success-Orienting Funding model in the criminal justice programs administered by the Federal Government.

Sec. 2. Definition of Success-Oriented Funding.

- (a) **Success-Oriented Funding** is a funding model that ties government funding to clear goals to shift behavior toward those goals. It can apply to all government dollars: whether federal, state, or local; through grants, budgets, or salaries; or going to public agencies or private companies.
- (b) **Goals**
 - (i) The overall criminal justice funding goals are to reduce mass incarceration while also reducing crime rates. Federal agencies would evaluate funding recipients to see whether they achieve these goals and base budget and grant decisions on this data.
- (c) **Priorities**
 - (i) Priorities underscore the overall goals for all criminal justice funding streams of reducing mass incarceration while also reducing crime. Federal agencies should define these priorities and tie grant dollars to achieving them.
- (d) **Success Measures**
 - (i) Success measures help the government determine whether funding recipients are meeting defined priorities. They should vary depending on the agency or program funded. Federal agencies should require grant recipients to answer these measures annually.
- (e) **Types of Success-Oriented Funding:**
 - (i) **Conditioned Success-Oriented Funding:** Government dollars would only be available for agencies that have achieved specific priorities in past performance;
 - (ii) **Bonus Success-Oriented Funding:** Providing bonus dollars to agencies after they achieve specific priorities; or
 - (iii) **Indirect Success-Oriented Funding:** Federal agencies encourage agencies to achieve specific priorities when providing them with funding, often by including them and their success measures in evaluations or questionnaires, or as part of annual performance reporting requirements.

Sec. 3. Task Force on Federal Criminal Justice Grants Review.

- (a) Within 30 days of the date of this order, the Attorney General should organize a Task Force on Federal Criminal Justice Grants consisting of representatives from each executive agency that administers grant programs that support criminal justice activities.
- (b) Within 60 days of the date of this order, the Task Force on Federal Criminal Justice Grants, working with the Office of Management and Budget (OMB), shall:
 - (i) identify Federal programs that support criminal justice activities which lack a Success-Oriented Funding model and have the authority to implement a Success-Oriented Funding model, including programs that provide equipment to police for crime fighting and national security purposes;
 - (ii) establish, in coordination with the executive department or agency responsible for administering the identified program, annual or semi-annual targets, as appropriate, for implementing Success-Oriented Funding into the identified program; and
 - (iii) issue Government-wide guidance on the implementation of this order, including procedures for implementing a Success-Oriented Funding model. This guidance should require that where executive authority allows, the identified agencies and departments should implement Conditioned Success-Oriented Funding. Where executive authority is limited, the identified agencies and departments should implement Bonus Success-Oriented Funding. Where executive authority is further limited, the identified agencies and departments should implement Indirect Success-Oriented Funding.

Sec. 4. Agency and Department Implementation Plan.

- (a) Within 90 days of the date of this order, the head of each agency and department responsible for operating an identified program shall designate an official to be accountable for meeting the targets established under section 3 of this order.
- (b) Within 120 days of the date of this order, each agency or department official designated under subsection (a) of this section, or otherwise designated by the Attorney General, shall provide the Attorney General and the OMB a report containing:
 - (i) an analysis of whether each grant program is currently achieving intended priorities;
 - (ii) the agency or department's methodology for implementing the strongest model of Success-Oriented Funding possible into the identified program within executive authority, including whether it is implementing Conditioned, Bonus, or Indirect Success-Oriented Funding, and proposed funding Priorities and corresponding Success Measures;
 - (iii) the agency's plans, together with supporting analysis, for meeting the Attorney General and OMB targets in implementing Success-Oriented Funding into the identified program; and
 - (iv) proposals to implement the best of the three types of Success-Oriented Funding into identified grants as part of the President's 2016 budget.

- (c) Following the receipt and review of this report, the Attorney General and OMB shall:
 - (i) assess the level of risk associated with the applicable programs, determine the extent of oversight warranted, and provide the agency or department head with recommendations, if any, for modifying the agency's methodology and target plans to streamline goals whenever possible so they are consistent across grants and agencies; and
 - (ii) approve a final plan and coordinate with each agency or department head to implement the plan within 360 days from the date of this order.

- (d) If an agency fails to meet the targets established under section 2 of this order or implement the plan described above for 2 consecutive years, that agency's accountable official designated under subsection (a) of this section shall submit to the agency head, the Attorney General, and the Director of OMB a report describing the likely causes of the agency's failure and proposing a remedial plan. The agency head shall review this plan and, in consultation with the Attorney General and Director of OMB, forward the plan with any additional comments and analysis to the Task Force on Federal Criminal Justice Grants.

- (e) Within 180 days of the date of this order, the Attorney General and the Director of OMB in consultation with the Task Force on Federal Criminal Justice Grants and program experts shall recommend to the President actions designed to better implement the Success-Oriented Funding model into criminal justice grants.

Sec. 5. General Provisions.

- (a) Nothing in this order shall be construed to impair or otherwise affect:
 - (i) authority granted by law to a department, agency, the head thereof, or any agency Attorney General; or
 - (ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

- (b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

- (c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

ENDNOTES

- 1 The Department of Homeland Security authorizes Federal Emergency Management Agency (FEMA) grants to fund local, tribal, territorial, State and Federal law enforcement agencies' measures to address "risks associated with potential terrorist attack." U.S. DEP'T OF HOMELAND SECURITY, FISCAL YEAR 2010 HOMELAND SECURITY GRANT PROGRAM GUIDANCE AND APPLICATION KIT 1-2 (2009), *available at* http://www.fema.gov/pdf/government/grant/2010/fy10_hsgp_kit.pdf. These grants authorize equipment ranging from vitamins to "remotely piloted aircrafts" to "terrorism incident protective ensembles" to protective gear "against ideological, chemical, and biological threats." *Responder Knowledge Base (RKB) Home Page*, U.S. DEP'T OF HOMELAND SECURITY, <https://www.llis.dhs.gov/knowledgebase> (last visited Aug. 26, 2014). The Department of Defense Excess Property Program (1033 Program) "provides surplus military equipment to state and local civilian law enforcement agencies for use in counter-narcotics and counter-terrorism operations, and to enhance officer safety." *Department of Defense Excess Property Program (DoD 1033)*, MISSOURI DEP'T PUB. SAFETY, <http://www.dps.mo.gov/dir/programs/cjle/dod.asp> (last visited Aug. 26, 2014). Such items may include aircrafts, four-wheel drive vehicles, ballistic helmets and vests, and other field gear items. *Id.* In the Ferguson incident, local police obtained "two soft-skinned Humvees, a generator and a cargo trailer" from through the 1033 program.
- 2 Emma Roller, *No, the Ferguson Police's Weapons Did Not Come From the Pentagon*, NAT'L J. (Aug. 26, 2014), <http://www.nationaljournal.com/defense/no-the-ferguson-police-s-weapons-did-not-come-from-the-pentagon-20140826>.
- 3 *See* Matt Apuzzo & Michael S. Schmidt, *In Washington, Second Thoughts on Arming Police*, N.Y. TIMES, Aug. 23, 2014, at A1 (reporting that White House will review grants to local police departments providing military grade equipment).
- 4 *Id.*
- 5 Colleen Nelson, *White House to Review Programs that Supply Military Gear to Local Police*, WALL ST J. (Aug. 24, 2014), <http://online.wsj.com/articles/white-house-to-review-programs-that-supply-military-gear-to-local-police-1408893421>.
- 6 Matt Apuzzo, *What Military Gear Your Local Police Department Bought*, N.Y. TIMES (Aug. 19, 2014), <http://www.nytimes.com/2014/08/20/upshot/data-on-transfer-of-military-gear-to-police-departments.html>.
- 7 *See* 42 U.S.C. § 3796dd(f) (all states that apply for DHS grant receive 0.5 percent of total funding appropriated in fiscal year).
- 8 INIMAI CHETTIAR ET AL., BRENNAN CENTER FOR JUSTICE, REFORMING FUNDING TO REDUCE MASS INCARCERATION 4 (2013), *available at* <http://www.brennancenter.org/publication/reforming-funding-reduce-mass-incarceration> [hereinafter, BRENNAN CENTER, REFORMING FUNDING]. *See also* NAT'L CTR. FOR JUSTICE PLANNING, CORNERSTONE FOR JUSTICE: BYRNE JAG AND ITS IMPACT ON THE CRIMINAL JUSTICE SYSTEM 5 (2011), *available at* <http://www.ncja.org/sites/default/files/documents/cornerstone-for-justice-report.pdf>.
- 9 *See generally id.*; MICHAEL WALDMAN & INIMAI CHETTIAR, eds., BRENNAN CENTER FOR JUSTICE, 15 EXECUTIVE ACTIONS 17-18 (2014), *available at* <http://www.brennancenter.org/publication/15-executive-actions>.
- 10 BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, JUSTICE ASSISTANCE GRANT (JAG) PROGRAM ACCOUNTABILITY MEASURES 10, 13, 16 (2014), *available at* <https://www.bjaperformancetools.org/help/JAGMeasuresQuestionnaire.pdf>.
- 11 This number is based on original research compiled by authors through examination of all current Department of Justice grant programs. *See Grant Programs*, OFFICE ON VIOLENCE AGAINST WOMEN, <http://www.justice.gov/ovw/grant-programs> (last visited Aug. 26, 2014) (listing 24 grant programs offered by office); *Grants and Funding*, COMMUNITY ORIENTED POLICING SERVICES, <http://www.cops.usdoj.gov/Default.asp?Item=46> (last visited Aug. 26, 2014) (listing 5 grant programs offered by office); *see also Funding Resources*, OFFICE OF JUSTICE PROGRAMS, <http://ojp.gov/funding/funding.htm> (last visited Aug. 26, 2014) (listing over 100 programs under data tool for current solicitations).

- 12 The authors calculated this total based on a thorough search for data available online for each grant program the federal government offered in 2013 to support criminal justice activities. The authors found this data primarily on websites hosted by federal agencies that offered 2013 grant opportunities. Where 2013 data was unavailable for an identified criminal justice program, the authors instead compiled data on the most recently available year. The authors excluded programs dedicated to national security purposes in order to determine the particular total amount the federal government spends for criminal justice purposes. Based on its limitation to publicly available data, it is possible this calculation does not include all data for all federal grants that support criminal justice activities. However, it includes a robust compilation of available data. Data on file with the authors.
- 13 See NAT'L RESEARCH COUNCIL, *THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES*, 2 (Jeremy Travis, Bruce Western, & Steve Redburn eds., 2014).
- 14 U.S. DEP'T OF LABOR, DIR. 2013-02 (Jan. 29, 2013), *available at* <http://www.dol.gov/ofccp/regs/compliance/directives/dir306.htm#ftn.id1>.
- 15 *Racial Disparity*, THE SENTENCING PROJECT, <http://www.sentencingproject.org/template/page.cfm?id=122> (last visited Aug. 26, 2014).
- 16 See generally BRENNAN CENTER, *REFORMING FUNDING at Pt. One* (introducing concept of Success-Oriented Funding).
- 17 *Id.* at 16-17.
- 18 PEW CHARITABLE TRUSTS, PUBLIC SAFETY PERFORMANCE PROJECT, PUBLIC SAFETY, PUBLIC SPENDING: FORECASTING AMERICA'S PRISON POPULATION 2007-2011 i (2007), *available at* http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/State-based_policy/PSPP_prison_projections_0207.pdf (stating that the prison population grew by 700 percent between 1970 and 2005).
- 19 See TRACEY KYCKELHAHN & TARA MARTIN, U.S. BUREAU OF JUSTICE STAT., JUSTICE EXPENDITURE AND EMPLOYMENT SERIES, NCJ 237912, JUSTICE EXPENDITURE AND EMPLOYMENT EXTRACTS, 2010 – PRELIMINARY, *available at* www.bjs.gov/index.cfm?ty=pbdetail&iid=4679 (showing that the correctional costs amount to \$80 billion). The Brennan Center estimates the \$260.5 billion number by adding the estimated judicial and legal costs (\$56.1 billion), police protection costs (\$124.2 billion), and corrections costs (\$80 billion). See *id.*
- 20 See *supra* note 12.
- 21 For example, DOJ alone offers federal financial assistance to a broad range of criminal justice actors, including scholars, practitioners, experts, state and local governments and agencies, crime victims, and law enforcement agencies. See *Grants*, DEPARTMENT OF JUSTICE, <http://www.justice.gov/business/> (last visited July 25, 2014).
- 22 DEP'T. OF HOMELAND SECURITY, FY 2013 HOMELAND SECURITY GRANT PROGRAM (HSGP) 1 (2013), *available at* http://www.fema.gov/media-library-data/8d0439562c89644a68954505a49cbc77/FY_2013_Homeland+Security+Grant+Program_Fact_Sheet_+Final.pdf.
- 23 See BRENNAN CENTER, *REFORMING FUNDING at 20*.
- 24 Violent Crime Control and Law Enforcement, Pub. L. No. 103-322, 108 Stat. 1786 (codified as amended in scattered sections of 42 U.S.C.) (1994). See also WILLIAM J. SABOL ET AL., URBAN INST. JUSTICE POL'Y CTR., *THE INFLUENCES OF TRUTH-IN-SENTENCING REFORMS ON CHANGES IN STATES' SENTENCING PRACTICES AND PRISON POPULATIONS 17* (2002), *available at* http://www.urban.org/uploadedpdf/410470_finalisrpt.pdf (collecting data on state truth-in-sentencing laws after 1994).
- 25 42 U.S.C. § 3755(b).
- 26 See *History of Byrne JAG Funding*, NATIONAL CRIMINAL JUSTICE ASSOCIATION, <http://www.ncja.org/history-of-byrne-jag-funding> (last visited Aug. 26, 2014). See also *Appropriations*, NATIONAL CRIMINAL JUSTICE ASSOCIATION, <http://www.ncja.org/issues-and-legislation/legislation/appropriations> (last visited Aug. 26, 2014).

- 27 OFFICE OF JUSTICE PROGRAMS, OFFICE OF JUSTICE PROGRAMS RECOVERY ACT GRANTS 1 (2009), *available at* <http://ojp.gov/recovery/pdfs/ojpfactsheet.pdf>.
- 28 BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, JUSTICE ASSISTANCE GRANT (JAG) PROGRAM ACCOUNTABILITY MEASURES (2014), *available at* <https://www.bjaperformancetools.org/help/JAGMeasuresQuestionnaire.pdf>.
- 29 NATIONAL CRIMINAL JUSTICE ASSOCIATION, THE IMPACT OF THE BYRNE JUSTICE ASSISTANCE GRANT PROGRAM: HOW BYRNE JAG IS CHANGING THE CRIMINAL JUSTICE SYSTEM 4 (2013), *available at* <http://www.ncja.org/sites/default/files/documents/System-Change-Through-the-Byrne-JAG-Program-NCJA-10-13.pdf> (providing 2012 state JAG funding amounts).
- 30 These requirements are in performance evaluation questionnaires. *See* BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, JUSTICE ASSISTANCE GRANT (JAG) PROGRAM ACCOUNTABILITY MEASURES 10, 13, 16 (2014), *available at* <https://www.bjaperformancetools.org/help/JAGMeasuresQuestionnaire.pdf>.
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- 59 The Community Oriented Policing Services Office administers several grants, but the CHP is the largest and most commonly known.
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- 63 Eligibility for CHP is broad. DOJ calls the grant program an “open solicitation” for “[a]ll local, state, and tribal law enforcement agencies that have primary law enforcement authority.” CMTY. ORIENTED POLICING SERVS., U.S. DEP’T OF JUSTICE, COPS FY2014 APPLICATION GUIDE: COPS HIRING PROGRAM (CHP) 5 (2014), *available at* http://www.cops.usdoj.gov/pdf/2014AwardDocs/CHP/2014_CHP_AppGuide.pdf. An agency has “primary law enforcement authority” when it is “the first responder to calls for service for all types of criminal incidents within the jurisdiction served.” *Id.*
- 64 *See generally* CMTY. ORIENTED POLICING SERVS., U.S. DEP’T OF JUSTICE, COPS FY2014 APPLICATION GUIDE: COPS HIRING PROGRAM (CHP) 5 (2014), *available at* http://www.cops.usdoj.gov/pdf/2014AwardDocs/CHP/2014_CHP_AppGuide.pdf.
- 65 42 U.S.C. § 3796dd(f) (“Unless all applications submitted by any State and grantee within the State pursuant to subsection (a) of this section have been funded, each qualifying State, together with grantees within the State, shall receive in each fiscal year pursuant to subsection (a) of this section not less than 0.5 percent of the total amount appropriated in the fiscal year for grants pursuant to that subsection.”). This stipulation applies to any state that submitted an application for a grant. *Id.*
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