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Chapter 1. Overview

The Office of the Federal Detention Trustee “... shall exercise all power and functions authorized by law relating to the detention of federal detainees in the custody of the United States Marshals Service; and the detention of aliens in the custody of the Immigration and Naturalization Service.”

Public Law 106-553

The Office of the Federal Detention Trustee (OFDT) was established within the Department of Justice (DOJ) in September 2001 by directive of the United States Congress (Public Law 106-553) in response to growing concerns about the federal detention system. As stated in the law, the Federal Detention Trustee “... shall exercise all power and functions authorized by law relating to the detention of federal detainees in non-federal institutions or otherwise in the custody of the United States Marshals Service; and the detention of aliens in the custody of the Immigration Service.” Prior to the OFDT’s establishment, the management of federal detention was decentralized into three organizations. The primary responsibility for detention was divided between the United States Marshals Service (USMS), Immigration and Naturalization Service (INS), with the Federal Bureau of Prisons (BOP) providing a supporting role.

In recent years, federal detention has grown enormously. Detention bed space increased at an annual rate of 12.4% between 1994 and 2001, resulting in a total increase of over 125%. Such growth has generated the need for additional funding for bed space, transportation, medical costs, support services, and associated personnel. Congress appropriated over \$2 billion in the fiscal year 2002 budget to fund existing detention programs. Unfortunately, growth in the demand for detention services has outpaced the ability of the USMS and INS to coordinate needs efficiently, plan effectively, and develop business process improvements. Furthermore, as both agencies face a growing demand for detention beds, locating bed space sufficient for each agency is often a concern in many locations.

Since 1989, the DOJ Office of the Inspector General (OIG) has continuously identified detention space as a material weakness and one of the “*Top Management Challenges in the Department of Justice – 2001 List*”. The fragmented management structure of federal detention and the complexity and dynamic nature of detention issues have led to difficulty in developing and implementing coordinated business practice improvements. While significant resources have been provided over the years to detention operations, generally such resources have been allocated in subsequent fiscal years to the funding of major law enforcement initiatives. Detention bed space acquisitions have been “reactionary” to short-term immediate needs at the field level as opposed to a strategic Department-wide approach to maximizing detention resources.

The size and scope of federal detention demands a central organization that can direct resources and implement programmatic changes. A number of previous studies in DOJ have addressed these very issues. This central command structure is the key to realizing cost-savings and gaining efficiency. The OFDT’s mission is to support the core and critical missions of INS and USMS, from a DOJ-wide perspective, through a consolidated and effective detention program. The transition to this program will require the support of DOJ components, OMB, and Congress to overcome barriers of organizational culture and resistance, and further the OFDT’s mission to resolve “growing concerns about the problem of inadequate planning and management” of federal detention (language stated in House Appropriations Committee Reports H.R. 106-680 and H.R. 107-139).

Currently, the agencies involved in federal detention are undergoing significant organizational transformations. For example, INS Detention and Removal Operations are being brought under centralized headquarters control and USMS is considering to increase the use of a job series that focuses on detention duties and detainee transportation. The timeliness of the transition to the OFDT will be paramount to effect programmatic change.

Some of the recommendations and business practice improvements that will be addressed by OFDT and raised in this report such as the areas of planning, policy, acquisition, and quality assurance can be seen in the table below.

Table 1. Findings on Detention Needs and Business Practices Improvements

Detention Needs Assessment Issues	OFDT Business Practice Improvements
<p>Strategic and Long-Range Planning</p> <ul style="list-style-type: none"> No DOJ Detention Master Plan Fragmented data systems Lack of coordination for budget and resource management Duplication of agency effort Disparity between critical local area needs and available detention resources 	<p>Consolidate planning and coordinate detention needs with law enforcement initiatives.</p> <p>Develop micro-simulation models to incorporate the impact of proposed legislation, law enforcement initiatives, and contingency plans regarding unforeseen detention needs.</p> <p>Eliminate duplicate efforts (e.g., budget and procurement activities, contract administration, etc.).</p> <p>Correlate budget forecasts and expenditures to meaningful performance measures.</p> <p>Create a centralized detention database to track key information across the detention spectrum, including detainees, bed space, transportation, medical costs, etc.</p>
<p>DOJ-Wide Policy Development</p> <ul style="list-style-type: none"> No consistent DOJ detention policy Inability to provide clear and concise management guidance and direction Lack of accountability 	<p>Establish overall DOJ detention policy and standards for:</p> <ul style="list-style-type: none"> - life safety and sanitation - detainee movement - health and food service - security and control - emergency/contingency planning - alternatives to detention - risk assessment methodology (INS field law enforcement detention decisions). <p>Acknowledge unique differences between alien and federal prisoner detention requirements while leveraging the similarities for cost efficiency.</p>
<p>Acquisition of Detention Services and Bed Space</p> <ul style="list-style-type: none"> Protracted procurement process with little or no coordination between agencies Reactionary acquisition practices result in paying what the market will bear as opposed to capitalizing on economies of scale and best value approach Insufficient use of competitive sourcing 	<p>Form strategic alliances with state and local governments and private industry to develop proactive “results oriented” acquisition practices.</p> <p>Use of long-term contracting vehicles to stabilize government costs.</p> <p>Establish national detention clearinghouse to track bed space availability in federal, state, and local facilities.</p> <p>Conduct a feasibility study of JPATS air operations for potential competitive sourcing.</p> <p>Develop DOJ-wide “performance-based” detention requirements.</p> <p>Consolidate IGA (state and local) needs to achieve “best value” results through DOJ-wide negotiations (i.e., economies of scale).</p>
<p>Conditions of Confinement and Quality Assurance</p> <ul style="list-style-type: none"> Lack of effective oversight Duplication of monitoring practices Inconsistent application of core detention standards 	<p>Establish DOJ-wide detention monitoring policy and consolidate jail inspections.</p> <p>Develop contract (and IGA) administration standards, incentives for superior performance, and price reductions for non-compliance.</p> <p>Implement a systematic follow-up program to ensure deficiencies are corrected in a timely manner.</p> <p>Assist all providers (state, local, private, and federal) in achieving professional accreditation(s).</p>

Chapter 2. Purpose

In House Appropriations Committee reports (Report H.R. Rep. No. 680, 106th Cong., 2nd Sess. (2000), and Report H.R. Rep. No. 139, 107th Cong., 1st Sess. (2001)), the OFDT was tasked with:

- Conducting a needs assessment of detention and detainee handling requirements and developing a baseline for the present efficiency and effectiveness of all aspects of detention and detainee handling, against which subsequent process improvements will be assessed; and
- Selecting two regional problem “hot spots”, one along the southwest border and one in the midwest; and implementing pilot projects that centralize the detention operation, including the management of Inter-Governmental Agreements (IGAs), prisoner transportation, healthcare management, and the Cooperative Agreement Program (CAP).¹

In fulfilling these directives, this report presents two interrelated volumes, this *Detention Needs Assessment and Baseline Report* and the *Compendium of Federal Detention Statistics: 1994 to 2001 Trends*. Together, these volumes provide analysis and discussion regarding federal detention trends including the primary drivers of detention demand, magnitude and growth of federal detention, and ways in which the USMS and INS have been managing the rapidly increasing detention demand.

The reports also complement each other in assessing the current state of federal detention, and highlight critical areas of concern and opportunities for OFDT action. To facilitate action, this report includes a discussion of detention concerns, each accompanied by a corresponding OFDT opportunity for systemic improvement.

In addition, this *Detention Needs Assessment and Baseline Report* identifies federal detention “hot spots” – those locations with urgent INS and USMS detention needs. The OFDT is proposing pilot projects at two such critical locations: Chicago, IL and El Paso, TX. The purpose of the pilot projects is to demonstrate the cost-effective and efficiency-gaining opportunities presented in this report. The findings from these pilots will be used to generate a *National Federal Detention Master Plan*, which will reveal a strategy for implementing such opportunities on a national scale.

The OFDT has worked closely with INS, USMS, and BOP to develop the concepts presented in the reports. Representatives from each agency have been temporarily detailed to the OFDT and have facilitated a series of working groups composed of representatives from each agency. In addition, OFDT personnel have visited detention locations across the country to witness firsthand the strained resources and pressures placed upon field law enforcement personnel.

Together, this *Detention Needs Assessment and Baseline Report* and the *Compendium of Federal Detention Statistics: 1994 to 2001 Trends* provide historical analysis, highlight critical trends, confirm the need for centralized detention management, and identify the initial direction of the OFDT.

¹ The DOJ *Cooperative Agreement Program* (CAP), administered by USMS – Prisoner Services Division, was implemented in 1982. CAP assists state and local governments by improving confinement conditions through the funding of renovation, construction, expansion, or upgrade projects to jail facilities used as federal detention space. In return, participating state and local governments guarantee the USMS and INS critically needed bed space for a specified period of time, at established per diem rates.

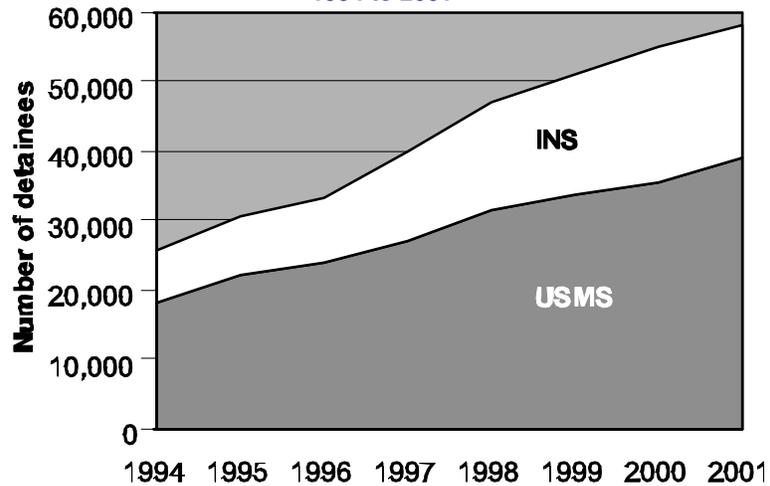
Chapter 3. Magnitude of Detention Services

Federal detention, like incarceration, is a large and complex program that demands billions of dollars and significant personnel time and resources.

Federal detention commands a significant amount of DOJ resources (accounting for approximately 10% of the total fiscal year (FY) 2002 DOJ budget). However, detention for both the USMS and INS have not been adequately afforded priority consideration in DOJ-wide needs assessments. This chapter combines statistics for both agencies in an effort to describe the size and scope of federal detention. Where practical, comparisons are made between federal detention and federal incarceration, the latter of which is handled by BOP.² This comparison is intended to reinforce the reality that detention, like incarceration, is a large and complex program that consumes billions of dollars and significant personnel time and resources.

Detention differs markedly from incarceration in terms of population stability. Detention is comparatively temporary in nature and involves the constant movement of detainees in and out of facilities. Detainee self-improvement programs (e.g., education, vocational training, drug treatment, work programs, etc.) are rare because detention is typically short-term. Instead, the focus is necessarily on detainee processing, movement, and management.

Figure 1. Number of Persons in Federal Detention, by Agency with Jurisdiction, 1994 to 2001



Ideally, detainees are housed in facilities near court locations or in proximity to alien removal locations. Due to increasing detainee populations, a typical court or removal location is supported by several detention facilities. Such facilities can be federal, state or local, or private (non-federal). A USMS or INS district may house detainees in all three types of facilities.

As detention facilities near courts or removal locations reach capacity, the USMS and INS are forced to widen the geographic area surrounding the locations, housing detainees further away, usually in non-federal facilities contracted by the federal government. For instance, between 1994 and 2001, the distance that the USMS transported criminal detainees increased from 46 to 70 miles, on average, per defendant. As a method of population management, a detainee may be

² *Detention* refers to the temporary holding of individuals charged with federal crimes (i.e., prisoner detention) or pending immigration hearings and removal proceedings (i.e., alien detention). By contrast, *incarceration*, the primary responsibility of BOP, refers to the confinement of individuals convicted of and sentenced for federal crimes.

relocated among numerous facilities several times during the period of detention. For example, USMS detainees, when trials and other proceedings are ongoing, will often be housed in a facility near the court. While awaiting trial, sentencing dates, or prison designation, a detainee may be housed in various locations further from the court to provide space closer to a courthouse for other detainees.

Detention is a constantly changing environment. As such, proper planning and detainee management are crucial.

There are many exceptions to the detention scenario described above. However, detention is a constantly changing and fluid environment where detainees are regularly moved and field personnel must continuously monitor multiple locations to assess bed space availability and react accordingly. As such, proper planning and detainee management are crucial. Unlike the relatively stable federal incarcerated population, the volatile detention environment has persisted without the benefit of a DOJ-wide focal point responsible for centralized planning, coordination, and management.³ This distinction merits consideration in view of the following federal detention trends.

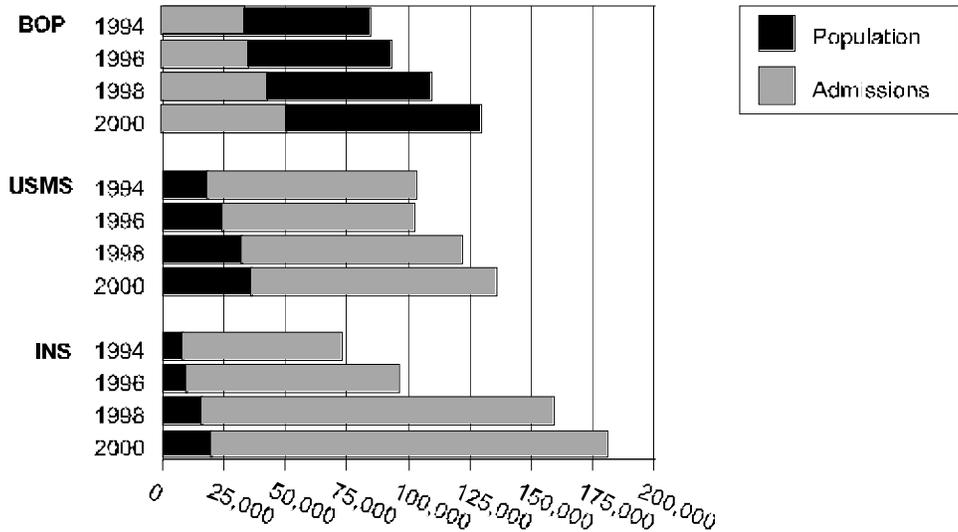
Additionally, the expanded use of video-conferencing by the federal courts may reduce the need to transport criminal defendants from various detention facilities to federal court facilities. The Federal Judiciary has adopted amendments to the Federal Rules of Criminal Procedure that, with the consent of the defendant, would permit district courts to video-conference court proceedings.

Growth in Detainees and Federal Bed Space

When describing the size and scope of federal detention, examining trends in both the number of detainees and available beds is important. New admissions into federal detention are much greater than incarceration, suggesting a far more fluid system. For example, in FY 2000, BOP received 49,636 new admissions into federal prisons (U.S. District Court commitments), while 315,933 new detainees were admitted into federal detention (180,532 by INS and 135,401 by USMS). With each new detainee comes a multitude of processing tasks (e.g., identification, booking, classification, medical screening, facility assignment, tracking personal belongings, managing files, data entry, transportation to and from judicial and immigration proceedings, etc.). Processing is a costly, time-intensive task for detention personnel, even if the detainee will only remain in custody for a short duration.

³ In recognition of the need for centralized detention, INS has proposed placing the management of its Service Processing Centers (INS owned and operated detention facilities) under headquarters control as part of its FY2002 restructuring plan (April 17, 2002).

Figure 2. Persons Admitted to Federal Detention and Incarceration, And Year-End Population, FY 1994 to FY 2000



The number of detention beds required depends on both the number of initial admissions into detention and the length-of-stay for each detainee. Unlike the federal incarcerated population, which has comparably lower admissions and longer lengths-of-stay, detention is subject to high levels of admissions and relatively short lengths-of-stay. Thus, a detention bed “turns over” multiple times in the course of a year. During 2001, the average length-of-stay for detainees exiting INS custody was 39 days. For detainees exiting USMS jurisdiction the average length-of-stay was 5.6 months. Mexican nationals in the custody of INS were detained for the shortest period of time, an average of 15 days. Nationals of other countries were detained for an average of 63 days.⁴ By comparison, the average prison term imposed on offenders entering federal incarceration was 4.7 years, of which, prisoners could expect to serve approximately four years after reductions for good conduct time. Consequently, for INS, a bed “turns over” about once a month; for USMS, twice a year; and for BOP, once every four years.

The combination of admissions and length-of-stay has prompted a substantial increase in the number of beds required for federal detention. The total number of beds needed to meet the daily detention demand increased from 25,675 in 1994 to 58,029 in 2001. This represents a total growth of 126%.⁵ In contrast, the number of offenders serving a federal prison sentence during this timeframe grew from 84,362 to approximately 138,000 (60% growth). These statistics illustrate the rapidly growing demand for detention, which compounds the challenges of providing detention-related services and detainee management.

The need for additional beds may be mitigated by the increased use of electronic monitoring for certain criminal defendants and aliens awaiting adjudication. Preliminary research conducted by both the Federal Judicial Center and the INS

⁴ Average length of detention is the interval from booking to release from custody (INS) or booking to release from jurisdiction (USMS).

⁵ The bed numbers presented depict the number of detainees (i.e., utilized beds) on the last day of each fiscal year.

Growth in Detention Personnel

suggests that electronic monitoring is an effective mechanism to facilitate compliance with court-ordered release conditions and appearance at scheduled court proceedings.

The growth in detention personnel is difficult to quantify because the personnel that perform detention responsibilities in both the USMS and INS also perform a variety of other collateral law enforcement duties. This situation differs in comparison to BOP, which employs dedicated correctional officers and other professional corrections personnel. Another significant difference between federal incarceration and detention is that both the USMS and INS rely heavily on contracted detention officers to supplement full time employees (FTEs), while BOP staffs its institutions primarily with federal employees.

USMS

USMS personnel perform an array of detention-related responsibilities, including receiving detainees from law enforcement agencies, detaining individuals during court proceedings, transporting or producing detainees, and delivering sentenced prisoners to the BOP for incarceration. The overall USMS mission is broad in scope, with detention being just one of its many responsibilities.

Few USMS personnel are assigned solely to detention duties. In recent years, criminal investigators have covered detention responsibilities in addition to court security, fugitive apprehensions, and other assignments (though contract staff perform many detention responsibilities). The USMS is currently evaluating the utility of reorganizing staff into three categories: criminal investigation, court security, and detention enforcement.

The USMS performs many detention-related activities including the negotiation, award, and post-award review of IGAs with local and state jails and detention contracts. The USMS also performs pre-contract inspections, compliance inspections, jail bill verification, and general contract administration. The table below depicts the work years currently associated with these duties. This does not include activities such as the movement of prisoners around the country, the processing of prisoners through receipt and intake, the control of prisoners in USMS-controlled space (e.g., federal court cellblocks, etc.), nor the use of contract guards.

Table 2. USMS Detention Support Staff - FY 2001

Staffing *	Full Time Equivalent Staff
Headquarters	37.5
Field Offices	53
Total	90.5

* There are 94 districts that carry out administrative duties related to jail and medical services

INS

The Detention and Removal Operations (DRO) division of INS is responsible for detaining and removing (deporting) illegal aliens. A variety of staff execute DRO's mission. Two primary personnel categories are detention enforcement officers (DEO) and deportation officers (DO). These officers are dedicated to DRO functions; however, their duties are often intermingled. For example, it is common practice for a DEO to interact with foreign consulates and participate in deportation activities. The following chart depicts the number of authorized positions in FY 2001 for INS detention and removal (actual work years were not available).

Table 3. INS Detention and Removal Operations Staffing - FY 2001

Staffing	Auth.
Deportation and Detention Officer	256
Deportation Officer	708
Detention Enforcement Officer	2083
Docket Clerk	275
Other Detention and Removal Personnel	692
Total	4014

In recent years, INS funding has increased significantly in response to initiatives along the southwest border. These initiatives have generated additional personnel for DRO. For example, the number of detainees increased by more than 130% and the number of removals by more than 180% between 1997 and 2001. The combination of DEOs and DOs increased at a rate of approximately 90% between the same period.

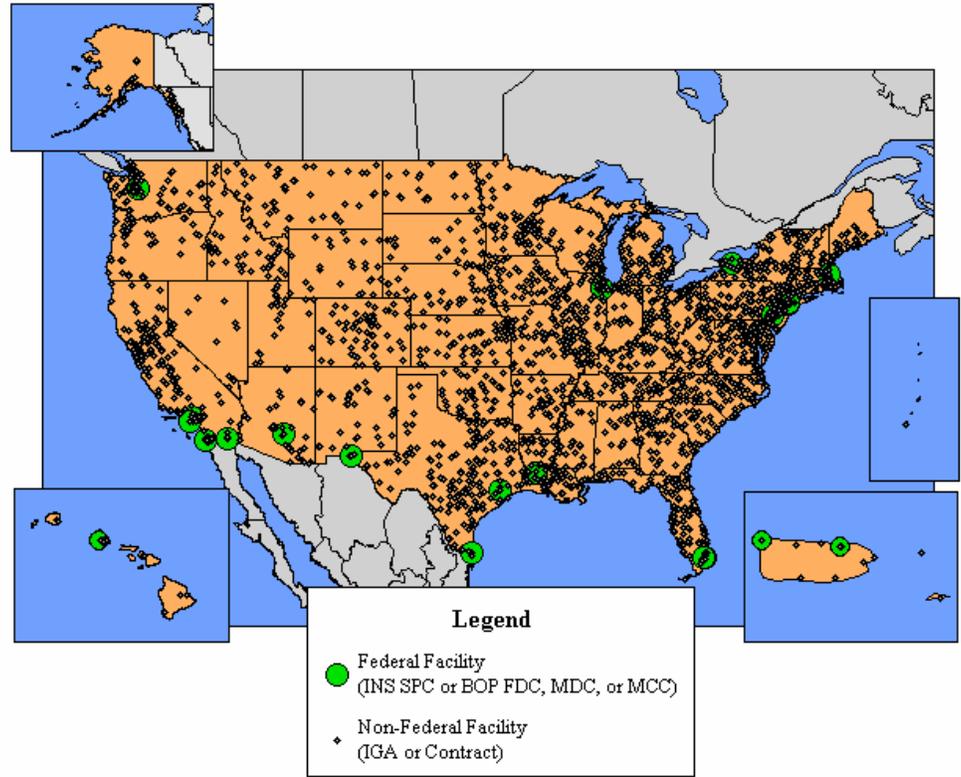
The growth statistics presented throughout this chapter are not equivalent comparisons. Precise comparisons are not feasible because of the use of contracted staff in the USMS and INS and the intermingling of detention and other duties. Nonetheless, such trends are useful in comparing federal detention staff growth to the general increase in detention demand.

Detention Locations

The following map clearly shows the breadth and magnitude of federal detention, with each point representing a federal and non-federal detention location available for use by USMS and INS. The map also shows that detainees are presently housed in a combination of federal and non-federal facilities. Except for nine INS owned and operated Service Processing Centers (SPCs), the remaining federally-owned detention facilities are operated by the BOP. In general, most BOP operated facilities (Federal Detention Centers - FDCs; Metropolitan Detention Centers – MDCs; Metropolitan Correctional Centers – MCCs) are located in or near urban areas to ensure that detainees are housed near federal and immigration courts and removal locations. Another important consideration is the proximity to transfer points for the Justice Prisoner and Alien Transportation System (JPATS).⁶

⁶ JPATS was established in October 1995 to consolidate USMS and INS airlift resources and operations, under the management of the USMS. In October 1998, the JPATS revolving fund was created in which each organization pays for its services, with the purpose of the overall JPATS operation being a self-supporting enterprise. JPATS is managed by the USMS and includes the airlift operation, revolving fund, and coordination of scheduling of long-distance prisoner movements for the USMS, BOP, and INS. Each organization is represented on a governing body chaired by the Assistant Attorney General/Administration.

Figure 3. Federal and Non-Federal Detention Locations



As discussed in detail in chapter 5 on managing detention demands, total bed space needs are growing faster than the capacity of available bed space. This growth has necessitated an increased reliance on contract jails (state or local, and private) to expand the total capacity for federal detention. These facilities are not as predictably accessible to metropolitan areas, and can be hundreds of miles away from courts and removal locations.

In FY 2001, the USMS and INS housed detainees in 1,942 facilities, of which 842 housed fewer than 10 federal detainees each.

Because the USMS and INS have no direct authority over state and local jails, they are usually limited to a proportionately small number of beds in each facility, in accordance with the terms of the specific Inter-Governmental Agreement (IGA). For example, field staff may require five or more separate IGAs with local jails to house 50 detainees. CAP arrangements can mitigate this effect by guaranteeing that federal detainees will fill a certain number of beds in the facility. In FY 2001, the USMS and INS housed detainees in 1,942 facilities, of which 842 (43% of the total) housed fewer than 10 federal detainees each throughout the year. In fact, a large majority of federal detention locations (over 60%) housed fewer than 50 detainees each. This distribution increases the demand for contract oversight and detainee transportation.

The National Clearinghouse of Detention Space Availability project proposed by OFDT would streamline the identification of bed space and placement of detainees in state, local, and private detention facilities. Development and implementation of the Clearinghouse project will provide U.S. Marshals and INS District Directors the ability to quickly identify the location of available detention space and ancillary services in their area.

Transportation

Transportation needs are directly related to the number of locations and the relative distance to courts, district offices, JPATS, and medical facilities. As the number of detainees and facilities has grown, transportation usage has likewise increased. Between 1996 and 2001, USMS detainee movements for court proceedings and JPATS transports increased by 32% (from 476,946 to 628,070). INS does not track alien vehicle transports but does track the number of detainee transfers both within and between districts. These combined transfers grew by 196% (from 32,052 to 94,938) between 1996 and 2001. Additionally, the number of JPATS transports for INS increased by 629% (from 10,378 to 75,613).

Detention Budget

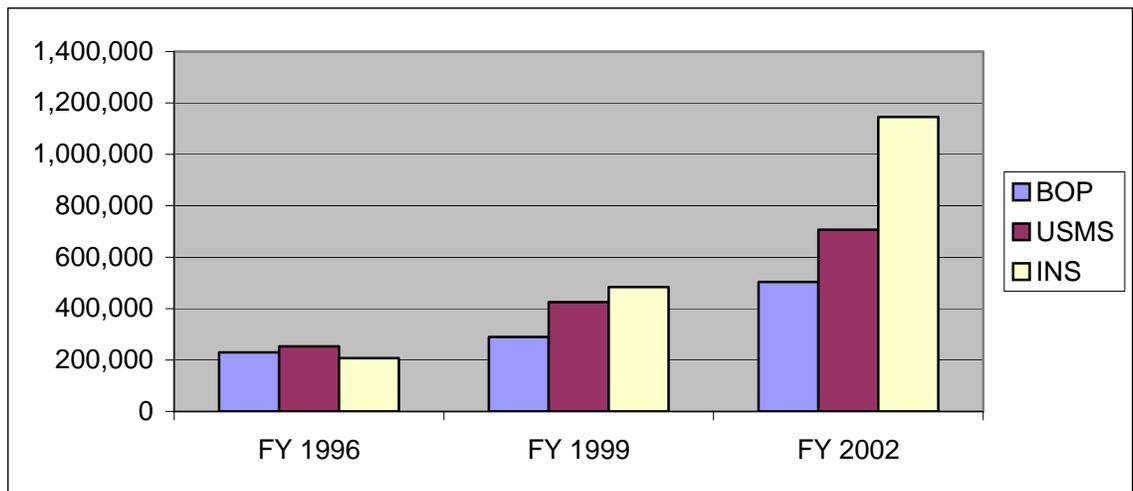
Finally, since various elements related to detention have grown rapidly, the total budget for federal detention has also expanded. Federal detention expenditures include bed space, transportation and equipment costs, medical expenses, and related categories.

In total for FY 2001, \$596 million in federal detention was appropriated for the USMS, \$1.1 billion was appropriated for INS detention programs, and a total of \$539 million was identified by the BOP for detainee expenses and construction of facilities for long-term detainees. Additionally, \$83 million was appropriated for JPATS services.

Between 1994 and 2001, detention funding increased from approximately \$690 million to \$2.4 billion (exclusive of JPATS), a total growth of approximately 240%. Should this rate of growth continue, the cost of federal detention programs will surpass \$5.0 billion during the next five years.

After nearly a decade of significant growth, the combined federal detention program today consists of over 58,000 beds in nearly 2,000 facilities, which will cost at least \$2.3 billion to administer in FY 2002. To improve program and financial accountability, DOJ consolidated the FY 2003 USMS and INS detention budgets under OFDT control. The purpose, in part, for this consolidation was to create a single management focal point to maintain costs by streamlining protracted processes, utilizing economies of scale in funding detention services, and eliminating duplicative agency efforts.

Figure 4. Detention Resources
Dollars in Thousands



Chapter 4. Drivers of Detention Need

Law Enforcement Initiatives

The foremost difficulty associated with managing an effective detention program is the reality that the drivers of detention demand are outside the control of agency staff responsible for detention. “Detention” personnel do not generate detainees, nor do they influence the inputs or outputs of detention. Instead, law enforcement initiatives, departmental and agency policies, and laws enacted by Congress result in the arrest/apprehension of individuals suspected of violating federal law.

To protect the public and to ensure efficient court proceedings, an increasingly large portion of these individuals have become federal detainees and drive the demand for detention space and resources. The effectiveness of the criminal justice and immigration systems depends, in part, on the direct correlation of the detention infrastructure in relation to these drivers.

Historically, the federal government responds to citizen concerns and national crime trends by enacting and implementing law enforcement initiatives. A sample of initiatives over the past decade include:

- **Project Safe Neighborhoods** – A nationwide commitment to reduce gun crime in America by networking existing local programs that target gun crime and providing those programs with additional tools. Under Project Safe Neighborhoods, additional resources have been allocated to the United States Attorneys (USA), USMS, and Bureau of Alcohol, Tobacco, and Firearms (ATF), as well as state and local assistance.
- **Organized Crime Drug Enforcement Task Force (OCDETF)** – A federal drug enforcement program that focuses attention and resources on the disruption and dismantling of major drug trafficking organizations. Under the program, resources have been allocated to the Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), USMS, INS, United States Customs Service, ATF, Internal Revenue Service (IRS), United States Coast Guard, and USA.
- **High-Intensity Drug Trafficking Area Program (HIDTA)** - Beginning in 1990, federal funds were appropriated to areas in the United States that were considered the most critical for combating major drug trafficking operations. The DEA, USMS, and USA have received additional resources under HIDTA.
- **Southwest Border Initiative (SWBI)**- The SWBI, in operation since 1994, is a coordinated effort to combat drug smuggling, corruption, violence, and alien smuggling along the U.S.-Mexican border. The SWBI mobilizes the DEA, FBI, INS, U.S. Customs Service, and USA to target major smuggling organizations. Between 1995 and 2000, the SWBI and other border initiatives resulted in significant growth in law enforcement personnel (particularly the INS Border Patrol) and apprehensions along the border.

With the advancement of each initiative, Congress has approved additional funding for law enforcement resources. Data from the Office of Personnel Management and the FBI indicate that since 1997, DOJ and Department of Treasury law enforcement investigative personnel increased by 12%, INS Border Patrol increased by 65%, and INS inspectors increased by 19%.

The effectiveness of the criminal justice and immigration systems depends, in part, on the availability of sufficient detention bed space in appropriate locations.

Although the reactive nature of detention cannot necessarily be changed, the coordination of law enforcement and detention resources and the adoption of comprehensive proactive detention planning strategies can ensure a proper balance.

Predictably, the growing number of federal agents has resulted in more arrests and apprehensions, which has substantially increased federal detention needs. However, an increase in corresponding detention resources to directly support such initiatives and accompanying law enforcement personnel has not received sufficient priority in budget requests. The detention funding provided has not been coordinated with law enforcement growth, which has led to implementing inefficient short-term detention solutions in an effort to bridge the gap between the lack of detention planning and increased demand.

This systemic disconnect represents a “weak link” in criminal justice administration. New law enforcement agents increase the system’s overall capacity to make arrests and apprehensions; therefore, detention needs also immediately increase once new law enforcement personnel are hired, trained, and deployed. Thus, detention is highly vulnerable to inadequate planning. When additional law enforcement resources are deployed without a reciprocal increase in detention resources, the system quickly becomes out of balance.

Because detention is a function in direct support of law enforcement activities, it is inevitably reactive to law enforcement initiatives. Although the reactive nature of detention cannot necessarily be changed, the coordination of law enforcement and detention resources and the adoption of comprehensive, proactive detention planning strategies can ensure a proper balance.

Post-September 11, 2001 Initiatives

The terrorist attacks of September 11, 2001 significantly changed the focus of federal law enforcement and detention.

The events of September 11th are expected to increase federal detention demands in the long run.⁷ As new law enforcement initiatives are put in place to secure U.S. borders, track down illegal aliens in the U.S. interior, and enhance data sharing efforts between all levels of law enforcement, detention needs are likely to increase. For example, while the *USA PATRIOT Act of 2001* was recently signed into law and provides additional resources for FBI, USA, U.S. Customs Service, INS, and the Central Intelligence Agency, specific detention resources were not included in the enacted legislation.

While the actual numbers of terrorist-related detainees are expected to be fairly small in relation to the total number of federal detainees, additional law enforcement agents and prosecutors are being deployed. Also, in the aftermath of the September 11th attacks, law enforcement personnel (federal, state and local) are expected to be even more alert to crime, thus potentially increasing the number of apprehensions, prosecutions, and overall detention needs. **As past initiatives (e.g., *Project Exile*, *Operation Gatekeeper*, *Hold the Line*, etc.) have demonstrated, adding resources to law enforcement operations will increase detention demand accordingly.**

“[INS] Commissioner [James] Ziglar recently announced an initiative to enter the names of all aliens with final orders who fail to appear for removal into the [FBI] National Crime Information Center (NCIC). Entering the names of all absconders into NCIC will allow for increased ... apprehension of all those who fail to comply after completing the judicial process ...”

INS statements before the House of Representatives regarding a review of DOJ immigration detention policies

December 19, 2001

⁷ The number of INS apprehensions dropped after the September 11 attacks, however, recent INS detention data (as of 3/22/02) are revealing an increase in detention quickly approaching pre-9/11 levels (the data also show a higher percentage of criminal aliens in detention).

Law and Policy Revisions

Enacted laws and revisions to policies have been important drivers of detention demand. One recent law that significantly affected alien detention was the *Illegal Immigration Reform and Immigration Responsibility Act of 1996*, which created new criminal sanctions and INS enforcement strategies. This law dramatically increased the number of apprehended aliens who are subject to mandatory detention, leading to significant growth in both the number of aliens detained and the proportion of detainees with criminal histories (currently approximately 65% of all INS detainees have prior criminal convictions).

Between 1994 and 2001, the number of defendants ordered detained pending adjudication increased from 39% to 52%.

Changes in laws and policies have also affected detainees awaiting criminal trials. As federal jurisdiction has expanded to include numerous drug and violent offenses traditionally prosecuted at the state level, the overall number of federal detainees has increased, and the detention population has become increasingly more violent. Additionally, between 1994 and 2001, the federal courts were increasingly more likely to order defendants detained. Between that time period, the pretrial detention rate increased from 39% to 52%. Other major changes that have influenced prisoner detention needs include modifications to the Federal Sentencing Guidelines (which strengthened criminal penalties), the Bail Reform Act(s) (which expanded judicial pretrial responsibilities), and policy changes pursued by individual United States Attorneys, who have considerable autonomy in setting prosecution guidelines.

Historically, detention demand has grown due to an increase in law enforcement personnel driven by initiatives or based on changes to laws and policies. **The potential effects of each new proposed legislative initiative and/or statutory requirement must be carefully reviewed and an impact analysis performed that reveals the implications on detention requirements to ensure appropriate budgetary resources are requested in a timely manner.**

Chapter 5. Managing Detention Demands

Growth in Non-Federal Facilities (State, local, and private)

The previous chapters of this report and the attached *Compendium for Detention Statistics: Trends from 1994 to 2001*: (1) illustrate how federal detention must react to several important external drivers; and (2) describe how the demand for federal detention has grown significantly in the past several years. Because detention is an important function of law enforcement initiatives, the manner in which the detention infrastructure responds to shifts in the supply of and demand for detention space is critical to the justice system's overall performance.

When demand in response to one or more drivers (e.g., the hiring of new law enforcement agents, Assistant United States Attorneys, etc.) increases, additional detention resources (e.g., bed space, personnel, vehicles, etc.) should be ideally provided in a timely manner to manage the expanded workload. Since detention resources have typically not been provided in accordance with drivers, detention personnel must regularly devise "short-term management strategies" that allow for the management of a larger number of detainees with the same level of resources. Several of these strategies are summarized below.

As mentioned previously, the USMS does not operate detention facilities. Rather, the organization houses detainees in facilities operated by state, local governments, private providers, and BOP. Conversely, INS does maintain a portion of its own facilities – nine SPCs nationwide. The SPCs provide approximately 20% of the beds needed to house the entire INS detainee population. Therefore, as with the USMS, INS utilizes substantial bed space in non-federal facilities.

The USMS has not pursued the construction or operation of federally-owned detention facilities as a part of its organizational mission. Instead, the USMS has relied upon the BOP to construct and operate federal facilities for detention (FDCs, MDCs, or MCCs), mostly in urban areas. Such facilities provide space for detainees near major court locations, and the USMS manages the remainder of the detainee population in non-federal facilities. However, the detainee population is growing at a faster rate than the bed space available in federal facilities. In 1994, the USMS housed 34% of its detainees in BOP facilities and 66% in non-federal facilities. In 2001, only 28% of detainees were housed in BOP facilities, compared to 72% housed in non-federal facilities.⁸

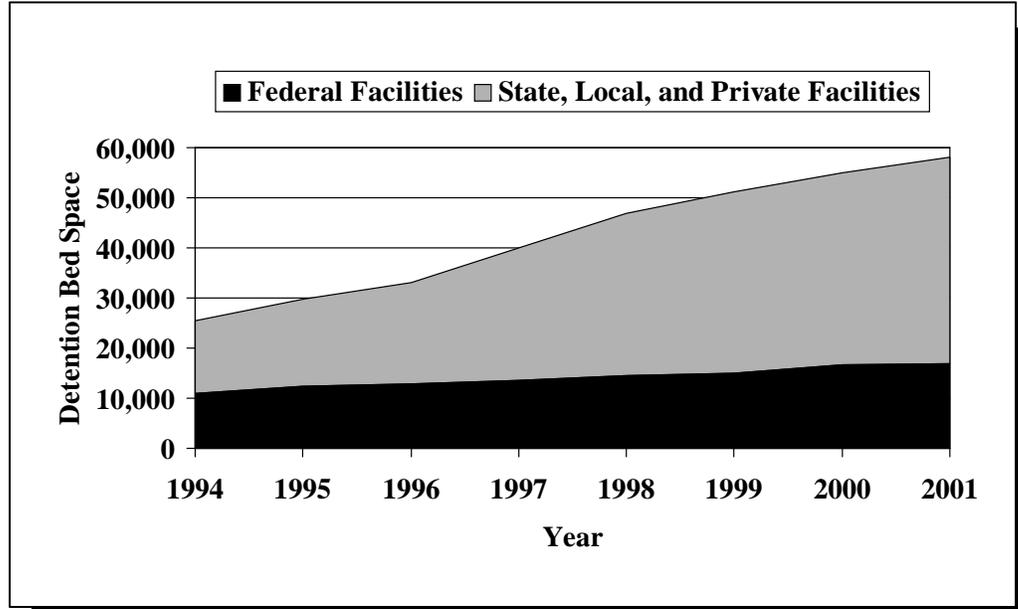
Extensive use of the existing "surplus" state and local detention facilities, combined with competitive sourcing, should minimize the need for new capitalized federal construction projects.

The INS trend is similar. In 1994, 63% of INS detainees were located in either SPCs or BOP facilities while 37% were located in non-federal facilities. By 2001, these figures more than reversed; only 32% of INS detainees were housed in federal facilities, with the remaining 68% housed in non-federal facilities.

When combining USMS and INS figures in the chart on the following page, it is apparent that the increase in housing federal detainees in non-federal facilities has far outpaced the growth in housing federal detainees in federally-owned-and-operated facilities.

⁸ Of the 72% USMS detainees housed in non-federal facilities, approximately 15% are housed in private facilities and 85% are housed in state and local facilities. Of the 68% of INS detainees housed in non-federal facilities, 75% are housed in state or local facilities, 24% are housed in private facilities, and 1% is housed in other facilities (e.g. medical).

Figure 5. Growth in Detention Bed Space
Federal Detainees Housed in Federal vs. Non-Federal Facilities



Federal detention facilities are designed to house larger numbers of detainees in fewer facilities, while non-federal facilities typically house smaller numbers of detainees in numerous detention locations throughout a geographic area. BOP has implemented a large-scale building program to construct new facilities for “incarcerated” offenders. A program of this magnitude is not suggested for federal detention. The effectiveness of current housing arrangements needs to be analyzed on a geographic basis to ensure operational efficiency and the optimal use of federal funds.

Concerns Associated with the Increasing Reliance on Non-Federal Facilities

Certainly, many individual non-federal facilities provide acceptable housing, and quality services, and foster productive partnerships with federal detention authorities. However, the following operational considerations and risk factors illustrate the issues associated with the overall reliance on non-federal facilities as the primary conduit for expanding federal detention capacity:

Distance – Similar to federal facilities, state and local jails located in cities and accessible suburban areas attain bed space capacity quickly. Once a facility reaches maximum capacity, federal detainees must be housed further and further from the courts or removal locations – frequently in distant states.

Oversight and Standards – In non-federal facilities, federal detainees are frequently intermingled with individuals detained by state and local authorities. This intermingling can cause problems related to detainee handling. For example, many INS detainees are “administrative” detainees and should not be housed alongside criminals.

The use of non-federal facilities may create a situation in which two or more sets of detention standards (conditions of confinement) apply to detainees inside the same facility. The USMS and INS standards are similar but not identical, and may be quite different from state or local standards in a given location. In fact,

an internal review of 40 non-federal facilities (which collectively house approximately 30% of all federal prisoner and alien detainees) revealed numerous instances in which medical, sanitation, and safety practices failed to meet the detention standards. The review also identified many significant security breaches in these facilities, including eight escapes (one with a weapon), 10 suicides, 271 detainee assaults on staff (seven with weapons), and 1,585 detainee assaults on other detainees (43 with weapons).⁹ While security breaches also occur in federal facilities, these incidences suggest that consistent performance measures and adequate monitoring on a DOJ-wide basis are needed.

Availability – Although beds in federal facilities are not always available for federal detainees (e.g., the BOP occasionally cannot accommodate detainees or aliens due to lack of bed space, conduct issues, etc.), there is an even lesser degree of control over potentially available bed space in state and local facilities. Historically state and local facilities require that federal prisoners be relocated if there is an influx of prisoners from the local jurisdiction. This, of course, is not the case when the non-federal facility is completely devoted to federal detention.

Competition – In areas with high demand for both prisoner and alien detention, the USMS and INS could find themselves competing for the same scarce detention beds in non-federal facilities. In one particular jail located in suburban Chicago, the USMS cannot obtain necessary bed space because their contracted per diem rate is lower than that of INS. As a result, the jail allocates more beds to the INS. Although these cases are comparatively rare, their existence underscores the need for more centralized federal detention planning.

Contract Staff (supplement to agency FTEs)

USMS law enforcement personnel have a broad range of duties, only one of which is detention, and INS Detention Enforcement Officers are frequently assigned to handle deportation services out of necessity and expend thousands of work hours on escort duties. The escort responsibilities significantly reduce the manpower available for facility detention duties and oversight. As a result, growing proportions of the USMS and INS budgets are dedicated to hiring contract staff to help relieve agency officers of detention-related duties, such as transportation to and from increasingly remote non-federal jails. For example, contract staff presently outnumber INS federal employees in five of the nine INS-owned and operated SPCs.

Technology

As the preceding chapter illustrates, hiring contract detention officers is one method the USMS and INS detention personnel employ to manage the dual challenge of remote facility locations and staff shortages. However, recent technological advances in the areas of video-conferencing, electronic monitoring, and voice recognition may permit the USMS and INS to more efficiently manage the increasing number of detainees or persons subject to federal detention. Moreover, the Internet provides the opportunity to automate many administrative tasks associated with managing federal detainees. Additionally, OFDT expects to provide a mechanism to assist U.S. Marshals and INS District Directors with identifying and obtaining available detention space for federal use through the development and implementation of the National Clearinghouse for Detention Space Availability project.

⁹ These statistics represent a summary of incidents during the calendar year preceding the review of the facilities.

Video-conferencing

The expanded use of video-conferencing can enhance the efficiency of federal detention and reduce the otherwise necessary transportation of detainees by allowing detainees to be housed in less costly facilities. Between fiscal years 1994 and 2001, the distance U.S. Marshals transported criminal detainees increased from 46 to 70 miles per scheduled court appearances, on average. Further, during the 1994-2001 period, the number of prisoner productions increased from 15 to 22 per day per district, on average. While housing prisoners closer to the federal courts would reduce transportation costs, a higher per diem charge is typically incurred for housing detainees closer to the federal courts – particularly those courts in urban areas. For instance, during fiscal year 2001, the average daily rate paid to house detainees was approximately \$82 in urban areas compared to \$60, on average, in rural areas. Collaboration between the Federal Judiciary and OFDT to expand video-conferencing to criminal proceedings in the 94 judicial districts could result in additional cost savings.

While it is commendable that the Executive Office for Immigration Review (EOIR) has placed immigration courts in many detention facilities housing large numbers of illegal aliens awaiting adjudication and/or removal, the expanded use of video-conferencing may also result in substantial savings both in terms of transportation costs and housing costs associated with alien detention.

Video-conferencing of criminal proceedings is not a novel concept. Video-conferencing has been approved for use in certain proceeding by the criminal courts in several states including Michigan, New Jersey, Wisconsin, Florida, Iowa, and Texas. Additionally, Congress, as part of the Prison Litigation Reform Act of 1996, authorized the use of video-conferencing in federal prisoner civil rights proceedings; and, at its September 2001 meeting, the Judicial Conferences of the United States amended Rules 5, 10, and 43 of the Federal Rules of Criminal Procedure to permit, with the consent of the defendant, initial appearances to be conducted by video-conference. (These amendments are currently pending Congressional approval; absent specific action by the Congress, these amendments will become effective December 31, 2002.)

Electronic Monitoring

Ten years ago, the Judicial Conference of the United States recognized “that there is a national pretrial detention crisis which is severely straining the efficiency and effectiveness of the federal court system.” As part of a resolution submitted to Congress, the Judicial Conference implored the development and use of alternatives to pretrial detention that would ensure that sufficient space would be available to detain those whom the courts have little or no choice to detain. However, since 1994, the federal courts have not significantly increased the use of electronic monitoring for criminal defendants. During fiscal year 2001, the federal criminal courts detained approximately 52% of persons charged with a federal offense (up from 39% during 1994). Preliminary research by the Federal Judicial Center suggests that certain criminal defendants, defendants who the courts would otherwise detain, could be released pending adjudication if the conditions of their release included an order of electronic monitoring and/or home confinement. While the Federal Judiciary does have an electronic monitoring program, the courts in many judicial districts could perhaps expand the use of electronic monitoring as a release mechanism in more instances. For instance, during FY 2001, 3,528 of approximately 75,000 criminal defendants were released with a condition of electronic monitoring; approximately 39,000

were detained pending adjudication. The use of electronic monitoring varied greatly across judicial districts: 5 of the 94 judicial districts accounted for 12% of all defendants released with a condition of electronic monitoring; in 15 districts less than 3% of defendants charged were placed on electronic monitoring. The expanded use of electronic monitoring would, as suggested by the Judicial Conference, permit a more efficient use of limited detention bed space.

The Immigration and Naturalization Service (INS) also has some experience with community supervision and electronic monitoring of aliens awaiting adjudication. As part of a demonstration project in the New York City area, the INS evaluated the effectiveness of releasing (as opposed to detaining) aliens awaiting adjudication into the community. As reported by the Vera Institute of Justice (the organization conducting the demonstration project), aliens participating in the demonstration project appeared in immigration court at significant higher rates than comparison groups. At the conclusion of the project period, 91% of study participating appeared for all of the required hearings compared to 71% of the comparison groups.

The use of electronic monitoring, as a supplement to detention, has the potential to maximize the utility of limited detention bed space, i.e., help ensure adequate space is available for those high-risk individuals who must be detained, and assist with cost containment. The placement of the 3,528 defendants onto electronic monitoring during fiscal year 2001 resulted in a costs savings to the USMS detention program of approximately \$20 million. Accordingly, if approximately 5% of the 13 million criminal detention days could be converted to release days, with a condition of electronic monitoring, an additional cost savings of approximately \$28 million could be realized and approximately 2,000 jail beds would be available for ongoing federal law enforcement priorities.

While similar savings could be realized with respect to alien detention, as a result of the 1996 Illegal Immigration Reform and Immigration Responsibility Act, the INS currently has limited flexibility to make release/detention decisions. The Act mandated detention for certain groups of aliens for whom INS District Directors previously exercised discretion over release/detention decisions. Expanding the electronic monitoring program to such aliens would require statutory changes.

National Clearinghouse for Detention Space Availability

As part of the FY 2003 budget, \$5 million was requested to be appropriated to OFDT for the development of an Internet-based National Clearinghouse for Detention Space Availability project. The primary objective of the Clearinghouse will be to permit state, local and private detention space providers to post on the internet, detention availability, daily rates, and services available so that such services can be quickly identified for federal use and utilized in a cost-effective manner. Additionally, the Clearinghouse will enable federal law enforcement agencies to quickly identify locations where federal detainees can be housed in their area, as needed; it will establish a centralized database describing available detention locations, ancillary services, and direct costs associated with the detention and transportation of specific detainees; and will consolidate and automate the processing and payment of invoices for detention services. The Clearinghouse will allow the OFDT to monitor and better manage detention space usage and to more comprehensively project future detention resource needs.

Coordination

OFDT has met with the Federal Judicial Center (FJC) (the education, research, and evaluation arm of the Federal Judiciary) to discuss collaborative research efforts to evaluate the effectiveness and efficiency of video-conferencing and electronic monitoring technologies in the federal courts and to communicate the merits of video-conferencing and electronic monitoring with the Federal Judiciary. In coordination with the FJC, OFDT will work with the National Center for State Courts (NCSC) to identify and describe best practices relating to the use of video-conferences and electronic monitoring technologies in the state courts.

It is anticipated that costs associated with the implementation and evaluation of video-conferencing and electronic monitoring of criminal defendants would be shared between the Federal Judiciary and the OFDT.

Additionally, OFDT is working in cooperation with the DOJ Chief Information Officer and the American Jail Association to develop and implement the National Clearinghouse for Detention Space Availability. It is anticipated that the American Jail Association will assist with the outreach to the more than 3,000 local jail administrators.

Current projections indicate that there will be increasing requirements for detention bed space in specific geographic locations, particularly in urban areas close to the federal courts. While these needs can potentially be met by federal and non-federal facilities, it is essential that improvements occur in budget planning to ensure that bed space is available before a detention crisis occurs in a particular area. Such budget planning becomes even more complex if existing bed space is not available and facility(ies) expansion is required. The OFDT needs to improve DOJ-wide budget planning for all DOJ detention programs and attempt to ensure that resources are available when required.

The use of non-federal facilities most likely will continue to increase. DOJ oversight and monitoring of the conditions of confinement in these facilities is essential. The recent DOJ review of 40 non-federal facilities constitutes an excellent beginning. This process will be institutionalized and maintained by the OFDT.

The competition for detention bed space between the USMS and INS is not surprising. Each agency is only supporting its core mission and seeking to meet its individual requirements. This fact, however, impedes effective DOJ-wide detention planning even though several sincere attempts to improve coordination have occurred in the past. The OFDT must undertake a leadership role in all detention planning and coordination. These efforts need to result in consensus whenever possible, but at a minimum must reflect overall DOJ priorities.

While sufficient detention beds are currently acquired independently by each component in the short term, such practices can result in operational inefficiencies, increasing transportation costs, and security risks. Advanced planning, including the early identification of bed space needs, coordination with law enforcement and court processes, and use of competitive sourcing options, will allow for broad-based efficiencies and improvements.

Need for Coordinated Oversight

Such long-term planning and coordination will result in detention space closer to courthouse and removal locations, better values to the government, and enhanced operational effectiveness. These objectives are best accomplished through consolidating resources under OFDT, whose core mission is the safe, secure and humane housing of detainees, as well as achieving the best value for the government in pursuit of DOJ goals and objectives.

Chapter 6. Areas of Critical Detention Bed Space Need

As shown in the previous chapters, federal detention is a large and rapidly growing component of the criminal justice and immigration systems. However, detention growth does not occur in all parts of the nation at once. Law enforcement initiatives and prosecutorial efforts vary dramatically from region to region. Also, the recent transition of the Administration and changing of United States Attorneys is not yet complete. Therefore, it is speculative to predict precisely where the next “hot spots” for detention needs will develop. The events of September 11, 2001 have added even more volatility to the federal detention environment. Closely observing developments within the federal detention population and frequently surveying field managers is essential. The assessment that follows is the result of such surveys conducted recently to determine areas that are in critical need of additional detention bed space.

USMS Detention Needs

The 2001 USMS prisoner detention status survey found that 72 of 318 federal court cities (43 USMS districts of 94 total districts) surveyed reported serious detention issues, primarily difficulty in locating detention bed space within a reasonable commuting distance to federal courthouses. Following a review of its most critical needs, requested by OFDT, the USMS identified the following six areas:

Location of Critical Detention Needs	Description
Northern Illinois (Chicago)/Northern Indiana (Hammond)	The two cities have reached capacity at the BOP Metropolitan Correctional Center in Chicago, and are currently being required to compete with each other over the allotted beds available at that facility. Local jails are at or near capacity as well. Attempts to find additional bed space within the district and in adjoining districts have not been successful.
Western Texas (El Paso)/New Mexico (Las Cruces)	Due to the extremely high and increasing population numbers in these two federal court cities (currently 2,300 detainees), the USMS believes that a detention facility located between the two cities would provide a long-term solution to this geographic location.
District of Columbia (DC) Metropolitan Area/Baltimore (as one collective need)	<p>District of Columbia - In September 2000, the federal prisoner population for D.C. District Court was 523. By September 2001, that population had almost doubled, to a level of 1,073. This unprecedented population growth was caused by the influx of D.C. parole violators, now processed by D.C. District Court, as a result of the D.C. Revitalization Act of 1997.</p> <p>Alexandria, VA - This U.S. Court location has become the venue of choice for an increasing number of high profile federal prosecutions, including the recent terrorist trials and several espionage cases. This development requires not only additional space, but also specific security measures and accommodations not typical of most federal proceedings.</p> <p>Baltimore, MD - Locating detention space close to Baltimore continues to plague the District of Maryland, which is now being impacted by the D.C. Revitalization Act as well. The conversion of D.C. parole violators to U.S. parole violators has had a spillover effect in Maryland.</p>

Arizona (Tucson/Phoenix)	The USMS detainee population currently exceeds 2,500. Approximately 75 % of Arizona’s current population is housed in a single private facility. This facility supports both Tucson and Phoenix, and is located halfway between the two cities (over an hour away from each).
Southern Texas (Brownsville/McAllen)	The prisoner population in Brownsville/McAllen is approaching 1,200. Due to the lack of local jail facilities to accommodate this ever-growing population, approximately 50 % of the Brownsville/McAllen prisoners must be housed in facilities located more than 100 miles away.
Middle Florida	Due to the increased number of prisoners, the USMS office must travel greater distances from the court to more outlying jails to locate housing for a minimum of 50 prisoners daily. The Chief Judge for the Middle District of Florida has expressed strong concerns over this detention situation.

INS Detention Needs

OFTD surveyed each INS region to determine those areas with the greatest detention bed space need. The following INS districts regularly house detainees as far as 200 miles from the source district office or sub-office:

Eastern Region	Central Region	Western Region
Boston, Massachusetts	Kansas City, Kansas/Missouri	San Francisco, California
New York, New York	Chicago, Illinois	Portland, Oregon
Portland, Maine	El Paso, Texas	Anchorage, Alaska
Washington, D.C.	Houston, Texas	
Atlanta, Georgia	Harlingen, Texas	
	Omaha, Nebraska	
	St. Paul, Minnesota	

Presently, one of the mechanisms being used by INS to help facilitate housing detainees is to frequently transport detainees from one city with detention facilities to another, (e.g., from Omaha to Houston, Albuquerque to Tucson, etc.). This situation results in additional costs in overtime and personnel needs for transportation.

Pilot Project Site Selection

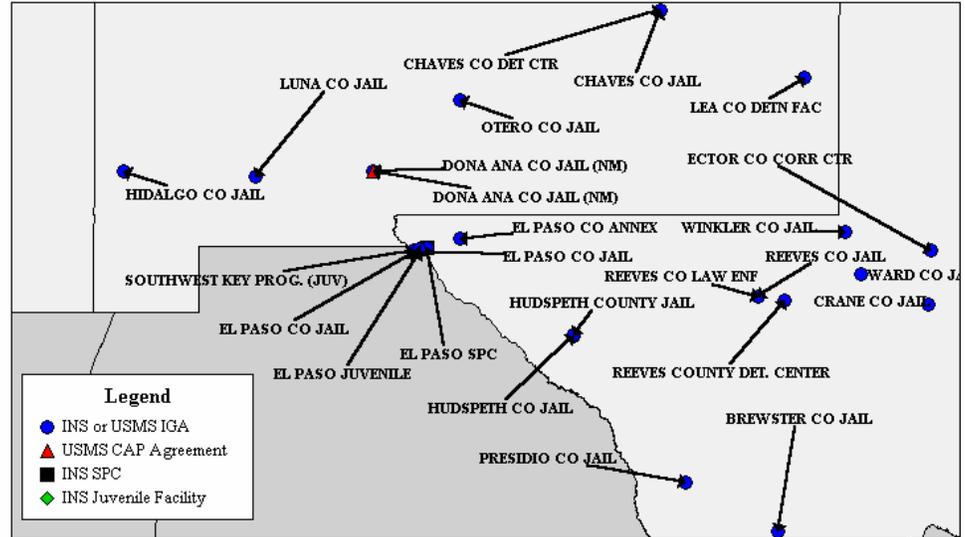
The selection of two pilot project locations was based on geographic guidance provided by Congress in combination with data analysis, anecdotal information gathered through site visits, and the above survey of USMS and INS detention concerns. Each agency indicated that El Paso, TX and Chicago, IL are “hot spots” for immediate detention needs and concerns. The DOJ also has immigration courts, administered by the Executive Office for Immigration Review (EOIR), located in both El Paso and Chicago. The location of immigration courts, timely notification to EOIR of an alien’s detention status, and the availability of legal representation can impact the length of detention. In its pilot projects, OFDT will examine the affect of these factors on detention costs.

The following discussion highlights the operational concerns in each pilot project area.

El Paso, TX

The DOJ Southwest Border Initiative has contributed greatly to federal law enforcement growth in the area. As the map below presents, numerous detention locations serve the El Paso, TX and Las Cruces, NM area.

Figure 6. Locations Available for Federal Detention in El Paso and Las Cruces



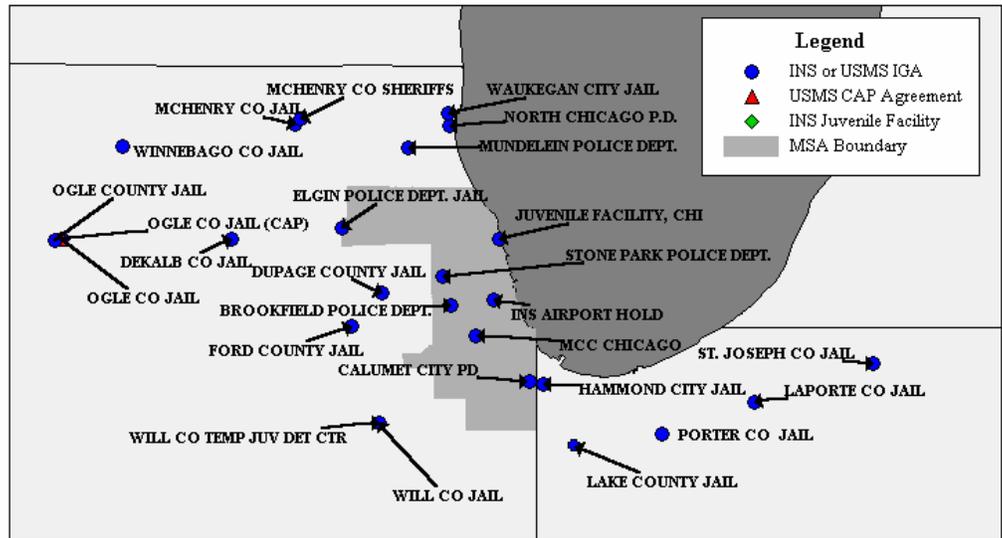
USMS – The detainee population in both El Paso and neighboring Las Cruces is growing rapidly in the wake of the Southwest Border Initiative. The USMS houses prisoners in various state and local facilities. A total of 800 beds are available in the El Paso County Jail and Annex (across the street from the U.S. Courthouse). The remaining detainees are housed in facilities outside the greater El Paso area. The closest facility, in Hudspeth County, is 93 miles away; the farthest, in Waco County, is 696 miles from El Paso. In addition to the El Paso needs, neighboring Las Cruces, NM (approximately 70 miles away) houses detainees up to 255 miles away. The total number of USMS detainees in the El Paso/Las Cruces area has reached 2,300.

INS - The primary detention facility used by INS is the agency-owned El Paso Service Processing Center (SPC), which contains 784 beds. INS also uses several county jails throughout the region, housing juveniles, families, and detention overflow in these facilities. The El Paso SPC also receives a large number of detainee transfers from other INS districts.

Chicago, IL

The Chicago area reached capacity for detention beds years ago. Like El Paso, the map of the Chicago area also reveals numerous federal detention locations. The large number of detention locations creates system inefficiencies due to the additional time required for transportation and detainee management.

Figure 7. Locations Available for Federal Detention in Chicago



USMS – Operations in the Chicago, Illinois and Hammond, Indiana USMS offices generate enough detainees to fully saturate the available bed space at the Chicago MCC (BOP facility). These offices are now being forced to compete with each other over the allotted beds available at that facility. The MCC regularly houses 750 prisoners in a facility constructed for 395 prisoners. The USMS in Chicago has had to resort to housing “overflow” detainees (i.e., detainees that are over the capacity limits at the MCC) as far away as Indiana and Wisconsin.

INS – The Chicago area lacks an INS-owned SPC, and space is not available for INS at MCC Chicago to house detainees. Currently, INS uses 33 different non-federal facilities to house approximately 8,300 detainees. Approximately 40% of the population is detained in Tri-County Jail, which is in southern Illinois, seven hours away from the INS district office in Chicago. The three largest IGAs in addition to the Tri-County Jail (one of which is in Wisconsin) hold another 42% of Chicago’s INS detainees. The remaining 18% are scattered throughout 28 non-federal facilities.

Accordingly, both Chicago and El Paso are targeted for OFDT regional pilot projects. In pursuing these projects, an implementation plan will be produced by OFDT, including:

- Full needs assessment of each location,
- Consolidation of services,
- Implementation of detention business practice improvements,
- Location-specific performance measures to evaluate OFDT success.

OFDT anticipates commencing the pilots in November 2002 and reporting preliminary results in May 2003. Specific business practice improvements will be developed for the initial assessments stated in the next chapter.

Chapter 7. Business Practice Review

The principal objective of the OFDT is to ensure that sufficient detention space is available in the appropriate locations in the most cost-effective and timely manner. Increased planning and coordination of federal detention needs likely will lead to consolidation of requirements and potential cost reductions as a result of economies of scale; however, understanding that the OFDT also has a responsibility to ensure that all facilities holding federal detainees meet constitutional standards is important. In some instances, this responsibility may require the expenditure of funds that will increase “per diem” detention costs at selected facilities. Such additional costs for improving the conditions of confinement in some facilities also has the important component of cost avoidance, since these actions may preclude costly litigation.

In reviewing current federal detention practices, OFDT has identified several initiatives to improve federal detention. In addition to ensuring policy consistency and consolidating management functions for cost-effectiveness, OFDT will work to improve the process for assessing, acquiring, and monitoring critically needed detention space by working with USMS, INS, and BOP; state and local governmental authorities; and the private sector. Other responsibilities for OFDT include redesigning processes for overall detention population management; resolving issues involving Inter-Governmental Agreements and competitive private contracts; and ensuring that detention facilities meet DOJ standards for safe, secure, and humane confinement. These issues and plans are discussed below.

OFDT will address the need for new detention bed space by pursuing a wide range of cost-containment and cost-avoidance strategies. These strategies include the use of excess state and local facilities where practicable. In addition, OFDT will identify and monitor areas for cost savings in the housing of federal detainees, support detention alternatives, work to reduce processing delays that impact average length-of-stay, improve financial and medical business practices, and advocate cost-effective improvements in prisoner transportation.

OFDT has completed a preliminary assessment of the overall conditions of federal detention. The assessment was based on:

- Feedback from headquarters and field staff of the USMS, INS, and BOP;
- Site visits to the southwest border and other field locations for observation of detention operations and transportation, including JPATS;
- Participation in DOJ discussions on terrorism and detention matters;
- Feedback from three multi-organizational workgroups established to review issues of detention acquisition, program operations, and management and budget;
- Analytical review of statistical data (*Compendium of Federal Detention Statistics: 1994 to 2001 Trends*);
- Feedback from detainees serving OFDT from the USMS, INS, and BOP;
- Reviews of previous studies and plans conducted on federal detention (Appendix A - Annotated References).

OFDT will work to integrate federal detention management, resources, and information, consolidate oversight functions, and elevate the priority and accountability of the federal detention mission within DOJ. As a result, OFDT will be in a better position to accomplish four major initiatives:

- 1) **Strategic and long-range planning;**
- 2) **DOJ-wide policy development;**
- 3) **Acquisition of detention services and bed space;**
- 4) **Conditions of confinement and quality assurance.**

These four primary OFDT objectives are explored below beginning with a brief identification of a problematic detention issue followed by an OFDT strategic opportunity for action.

Strategic and Long-Range Planning

Develop Strategic Long-Range Plan

Detention Issue: The DOJ organizations have had difficulty coordinating long-term detention planning efforts among components, complicated by the different means and methods used to accurately predict prisoner and detainee populations.

OFDT Opportunity: OFDT will pursue a common methodology and statistical approach for predicting detention needs that rely on factors such as population and demographic trends, number and type of criminal cases processed, average processing time per type of case, and authorized positions of federal law enforcement, United States Attorneys, U.S. District Court judges, and Immigration judges. These methods will allow the development of impact scenarios that address proposed legislation and DOJ law enforcement initiatives.

Establish Centralized Database

Detention Issue: While substantial federal detention data is available from several sources, minimal integrated data analysis of the overall criminal and alien processing has been conducted. The USMS, INS, and BOP have separate systems supporting their portions of federal detention. The USMS does not have a centralized database or centralized locator system for federal prisoners, and uses a district level database configuration, the Prisoner Tracking System (PTS), to track prisoners. The Detained Alien Control System (DACCS) is a centralized system but only tracks detained aliens. Neither system tracks costs. In addition, INS has difficulty isolating financial data. Both agencies are in the process of developing new data systems, but are not coordinating with each other or BOP.

OFDT Opportunity: OFDT will work with both INS and USMS to develop a centralized information system for federal detention that will track detainees and provide analytical reports on the processing and flow of federal detention (e.g. National Clearinghouse project).

DOJ-Wide Policy Development

DOJ-Wide Detention Standards

Detention Issue: There is no DOJ policy establishing consistent detention standards that apply to non-federal facilities utilized by each component. The absence of such policy has led to inconsistent practices, confusion among providers, and lack of accountability.

OFDT Opportunity: OFDT will establish and implement conditions of confinement standards that address both broad areas of safe, secure, humane confinement, as well as facilitating the development of supplemental standards addressing the unique needs of detainee types.

Provide Uniform Policy

Detention Issue: No uniform federal detention policy or detention policy review process currently exists that ensures consistency of approach. The focus on federal detention issues and policy formulation has been fragmented. Clear and concise direction will be vital in implementing the President's management initiatives and the AG's strategic plan.

OFDT Opportunity: OFDT will establish federal detention policy and will work to overcome the current federal detention situation as cited in the DOJ Detention Plan (February 2000--representing the opinions of senior management of USMS, INS, and BOP). The Detention Planning Committee concluded, "...**certainly, the current state of federal detention must change in order to avoid a detention crisis.**"

Acquisition of Detention Services and Bed Space

Promote Timely Acquisition of Federal Detention Bed Space

Detention Issue: Acquiring bed space has been difficult for both USMS and INS. There has not been a systemic method of identifying or coordinating needs on an operational level. Developing and presenting clear and concise "performance-based" requirements that would facilitate competitive sourcing has been absent. USMS and INS have acquired detention services and bed space independently. The lack of consolidated requirements have precluded DOJ from capitalizing on the combined "best value" approach realized through economies of scale.

OFDT Opportunity: OFDT will facilitate a business practices model with field law enforcement personnel by establishing a quantitative needs assessment methodology for determining when and where detention bed space is needed. This process will include the following steps:

- Comprehensive mapping of detention need by area based on the current detention bed space availability and projected near-term future needs;
- Coordinated review of BOP detention space allocation;
- The OFDT is a member of the **State and Private Prison Assessment Committee** established by the Deputy Attorney General. The Committee reviews state, local, and private detention bed space availability;

- Impact analysis of recently enacted (and proposed) law enforcement legislation;
- OFDT is proposing the development of an Internet-based National Clearinghouse for Detention Space Availability project. This Clearinghouse will permit state, local and private detention space providers to post detention availability, daily rates, and services available so that such services can be quickly identified for federal use and utilized in a cost-effective manner. Using the Clearinghouse, U.S. Marshals and INS District directors will be able to quickly identify the location of available detention space and ancillary services in the area.

Resolve Issues Regarding Inter-Governmental Agreements (IGAs)

Detention Issue: Inter-Governmental Agreements are the most common vehicle for obtaining detention services and the largest provider of bed space. The DOJ Office of the Inspector General (OIG) has voiced concerns regarding the overcharging of the USMS and INS by some local governments. As a result, the OIG has helped to identify the nature and extent of federal detention cost-control issues.

OFDT Opportunity: OFDT will consolidate IGA needs to achieve “best value” results through DOJ-wide negotiations (i.e. economies of scale) and monitoring of state and local facilities.

Provide Effective Monitoring of Detention Services

Detention Issue: Non-federal facilities have not been adequately monitored to ensure safe, secure, and humane conditions of confinement. Few subject matter experts exist among USMS and INS inspection staffs to conduct comprehensive reviews and administer contracts. Historically, minimal effort has been made to develop corrective action plans and policy to follow up on deficiencies disclosed during jail inspections. No integrated DOJ policy or concerted effort to establish specific actions to be taken for non-compliance currently exists.

OFDT Opportunity: OFDT will implement a comprehensive quality assurance/quality control program that will consist of establishing and implementing DOJ core detention standards and a detention monitoring policy. Such plan will avoid duplication of inspection; ensure a professional, thorough, and independent review; schedule corrective action follow-up reviews; and prescribe how to respond to levels of non-compliance and corrective action delays.

Conditions of Confinement and Quality Assurance

Chapter 8. Performance Measures

The DOJ, pursuant to the requirements under the Government Performance and Results Act (GPRA) of 1993 (P.L. 103-62) recently prepared and submitted the *FY 2001 Performance Report* and *FY 2002 Revised Final, FY 2003 Performance Plan* to Congress. In this document, performance measures relating to detention are cited under DOJ's *Strategic Goal 6: Protect American Society by Providing for the Safe, Secure, and Humane Confinement of Persons in Federal Custody*.

The FY2001 *Performance Report* states:

“The OFDT is responsible for the direction of the USMS and INS with respect to the exercise of detention policy setting and operations for the DOJ. The Federal Detention Trustee has the authority and is responsible for management of DOJ detention resource allocations, financial management of detention operations, coordinating with the components involved in detention on important issues ... and ensuring the implementation of efficiency and effectiveness improvements in DOJ detention operations.”

Within Strategic Objective 6.1: Detention (“Provide for the safe, secure, and humane confinement of detained persons awaiting trial, sentencing, or immigration proceedings.”), two performance assessments are identified:

- The first, “...ensure adequate, cost effective detention capacity” has been measured in the past by using jail day (USMS) and per capita (INS) costs.
- The second assessment, “...operate facilities that are safe and secure” has previously been reported only by INS, which has used the number of INS detention facilities with American Correctional Association (ACA) accreditation and the reduction of significant events (i.e., assaults, escapes and thefts) as performance measures.

New Performance Measures

The OFDT will further study and evaluate federal detention and devise appropriate performance measures addressing the following functional areas:

- **Uniform Detention Standards.** Following an extensive review of 40 non-federal detention facilities used by the USMS and INS, the OFDT is in the process of examining and revising the DOJ core detention standards. Based on the result of such examination (and subsequent revision of the core detention standards), the OFDT will devise performance goals relating compliance with the core standards. While it is not anticipated that every facility will be 100% compliant with the DOJ standards, the OFDT expects to increase the proportion of facilities that are fully compliant. The above referenced 40 detention facilities reviewed were fully compliant with only 65% of the core detention standards.
- **Average Length-of-Stay.** The OFDT will work with the Federal Judiciary, BOP, and JPATS to reduce the amount of time that criminal detainees are detained in non-federal facilities following their conviction and sentencing. Between 1994 and 2001, the amount of time criminal detainees were detained following conviction and sentencing increased by 34%, from 32 days to 43 days.

- **Distance between detention facilities and court facilities and prisoner movements for court appearances.** Detention-related transportation costs are an integral component of federal detention expenditures. The OFDT has determined that between 1994 and 2001, the distance criminal detainees are being housed from federal court facilities has substantially increased, from 46 to 70 miles, on average. Additionally, as a result of the increased number of criminal prosecutions, the average number of prisoner movements has increased from 15 to 22 per day per district. The OFDT will examine the availability of detention space to both the USMS and INS to determine whether such detention space can be acquired within a more efficient proximity to court locations or the use of technologies such as video-conferencing could be utilized to reduce the number of daily prisoner movements.
- **Medical costs.** Medical costs have increased during the 1994-2001 period. The OFDT will examine medical services provided (particularly those services provided under “in-patient” status) and identify more cost effective methods for providing necessary medical services.
- **Detention rate and alternatives to detention.** Between 1994 and 2001 the detention rate, (i.e., the proportion of those apprehended who were ordered detained) for both criminal and alien detainees has increased substantially. For criminal detainees the detention rate increased from 39% to 52%; for alien detainees, the detention rate increased from 3% to 9%. The OFDT will continue to track the detention rate and will work with the Federal Judiciary, the INS, and Congress to enhance appropriate uses of alternatives to detention (e.g. electronic monitoring, voice recognition, etc.) for certain groups of criminal defendants and aliens awaiting adjudication. The use of alternatives could reduce expenditures for detention space.
- **Guaranteed bed space.** Both the USMS and INS rely on bed space guaranteed to be available by the BOP, various local jurisdictions through CAP grants, and private detention space providers. For example, during fiscal year 2001, approximately 67% of the bed space needs of the USMS were guaranteed bed spaces. The OFDT will continue to monitor the proportion of detention beds that are guaranteed to the USMS and INS. The OFDT will work towards increasing the proportion of bed space that are guaranteed through performance-based intergovernmental agreements and competitive sourcing.

Additionally, the OFDT will work closely with the USMS and INS to assess availability of detention space and services in the various districts and the results of business process improvements initiated by the OFDT. For example, the USMS reported that 82 cities had a serious need of which 10 expressed an emergency need for additional bed space. The OFDT will work with the INS to initiate an evaluation of the availability of detention space and services by INS District Directors.

Through the use of these performance measures, OFDT will be able to improve cost-effectiveness of federal detention, implement cost-containment and cost-avoidance measures, meet detention bed space needs, and reduce life safety issues in the conditions of confinement.

Appendix A. Annotated References

DOJ Studies

Critical Influences on INS Detention. 2001. DOJ: U.S. Immigration and Naturalization Service. This contracted study for the INS Detention and Removal Program describes the workflow associated with INS apprehensions, detention, EOIR proceedings, and alien removals, and compares INS detention to that of the USMS and BOP. Internal and external influences on detention are discussed, and it concludes that improved planning and balancing of resources to include detention in law enforcement initiatives is needed.

A Review of USMS Detention And Security Needs at the Southwest Border. 2000. DOJ: Management and Planning Staff. On the request of the USMS, this study complimented the USMS on its hard work and innovative efforts in their response to the increased workloads. The study team concluded the USMS had a shortage of detention staff and detention space along the SWB court cities and that Congress needed to address these requirements and its DOJ-wide detention management implications.

U.S. Department of Justice Detention and Incarceration Study. 1998. DOJ: Management and Planning Staff. This study responded to a Congressional request noted in the Appropriations Bill (for 1997) supporting DOJ efforts to overcome duplication of functions. Congress directed the Attorney General to study consolidation in the area of federal prisoner and alien detention and to develop recommendations for consolidation of management of operations where possible. The study explored the duplication of effort in detention bed space management, medical care, transportation, information resources management, and in the planning, management, and oversight areas.

Cost-Benefit Analysis of Detention Consolidation Options. 1998. DOJ: Management and Planning Staff. This report explored three options for consolidating detention of USMS, INS, and BOP into either BOP or the USMS, or consolidating the USMS detention functions into BOP.

A Management Review of the USMS Jail Inspection Program. 1994. DOJ: Management and Planning Staff. The USMS requested this management review of its jail inspection program to determine if current policies and standards were adequate; if they are applied consistently; and what actions are needed to improve the program. In addition to recommendations in these areas, the USMS was advised to maintain close communication with INS and BOP on plans, inspections, and correction action follow-up, as each may be using the same jails.

Study on the Possible Consolidation of Federal Detention Management Responsibility. 1992. DOJ: Management and Planning Staff. Initiated at the request of Congress to assess the resources committed to detention in the Bureau of Prisons, Immigration and Naturalization Service, and U.S. Marshals Service. The study identified several areas where additional joint planning and coordination would result in systemic improvements and efficiencies.

A Management Review of the USMS Cooperative Agreement Program (CAP). 1989. DOJ: Management and Planning Staff. This study was conducted on the request of the Assistant Attorney General/Administration. It examined CAP expenditures and the USMS management of the program. The study explored the growing detention problems and recommended continued support for CAP, the pursuit of privatization of detention facilities, and more coordinated planning through the establishment of the Detention Planning Committee.

Developing an Integrated Resource Planning System for the INS and the Executive Office of Immigration Review. 1985. DOJ: Evaluation Staff. This report provides a basic methodology and formulas for the measurement of inter-program impacts. This study details the nature of impacts on 23 program and administrative areas (including detention) affected through any change in resources for the Border Patrol or the Investigations programs.

Federal Short-Term Detention Study. 1981. DOJ: Evaluation Staff. This study was requested by the Deputy Director, Office of Management and Budget and was the first nationwide study of federal short-term detention. It defined the scope and magnitude of the problems and developed a Departmental strategy to address them. The study recommended the creation of a “formal, standing Management Team, with representatives of the USMS, BOP, INS” to oversee and more quickly and effectively respond to federal detention problems.

Federal Short-Term Detention Problems (Phase I): A Case Study. 1981. DOJ: Evaluation Staff. This report consisted of a comprehensive review of detention problems facing the Western District of Washington. The study identified the extent of the problem, assessed the impact of contract suspension with the King County Jail, and presented alternative solutions and costs. The study was the first to document the operational and procedural adjustments made by various elements in the federal justice system to alleviate the detention problems.

Short-Term Detention in the Central District of California. 1979. DOJ: Program Review and Budget Staff. This study was the first Departmental “policy study” on short-term detention. This report demonstrates DOJ’s exhaustive attempts and difficulty in finding reasonable alternatives to the construction of a Metropolitan Correctional Center (MCC). (The Attorney General had made his intentions clear before Congress (in 1978) that the Justice Department generally opposed the establishment of additional MCCs.)

DOJ Reports

FY 2001 Performance Report and FY 2002 Revised Final FY 2003 Performance Plan. 2002. DOJ. Prepared pursuant to the requirements under GPR, combines the *DOJ Annual Performance Report for FY 2001*, the *Final Revised Annual Performance Plan for FY 2002* and the *Annual Performance Plan for FY 2003*.

DOJ Plans

Federal Detention Plan 2000-2002. 2000. DOJ: JMD Budget Staff with support of USMS, INS, and BOP. Detention costs exceed \$2.2 billion and 9% of the entire DOJ budget. The Plan calls for the need for improved DOJ planning, coordination, and population projections.

Highest Priority Critical Detention Areas. 1998. DOJ: USMS. This report provides detailed background of areas where critical detention problems are present and calls for long-term solutions to be implemented.

Federal Detention Plan 1997-2001. 1997. DOJ: Coordinated effort with USMS, INS and BOP. This report is the first update of the Federal Detention Plan and takes into account the rising population along the Southwest Border and the projected impact of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996.

Federal Detention Plan 1993-1997. 1992. DOJ: Coordinated effort with USMS, INS and BOP. This report for the Detention Planning Committee presents a multi-year coordinated plan that is designed to meet detention bed space needs

through the least possible cost to the federal government. Detention needs are proposed to be reevaluated annually or as requirements change.

GAO Studies

Federal Prison Expansion: Overcrowding Reduced But Inmate Population Growth May Raise Issue Again. 1993. General Accounting Office Report. A review of the Federal Bureau of Prisons response to GAO recommendations for reducing overcrowding and increasing capacity at existing and new facilities and BOP's progress in meeting its expansion plans.

Federal Jail Bed space: Cost Savings and Greater Accuracy Possible in the Capacity Expansion Plan. 1992. General Accounting Office Report. Provides information on the 5-year detention bed space plan developed by the U.S. Marshals Service and the Bureau of Prisons and identifies opportunities for cost savings and more reliable planning.

Sentencing Guidelines: Central Questions Still Remain Unanswered. 1992. General Accounting Office Report. Evaluates the impact of sentencing guidelines and compares the operation of the new system with the old.

Articles

Liberating Private Prison Contracting. 2002. Contract Management. Traditional government contracts have hampered private contractors' access to affordable capital. Alternatives under Section 119 of the 2001 DOJ Appropriations Act may solve this problem by allowing the AG to enter into contracts or other agreements of any reasonable duration for detention.

The Federal Detention Crisis: Causes and Effects. March 1993. Daniel B. Ryan. FEDERAL PROBATION This article provides background on pretrial detention and release alternatives and pretrial services.

Federal Detention: The United States Marshals Service's Perspective. December 1993. Linda Caudell-Feagan. FEDERAL PROBATION. A general overview of United States Marshals Service detention including challenges of locating adequate jail space for detainees and predicting future workload.