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The Obama Administration's 2011 Budget: More Policing, Prisons, and Punitive Policies

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Introduction

The President's proposed FY2011 Department of Justice (DOJ) budget asks for \$29.2 billion. This is on top of \$4 billion provided to DOJ through the American Reinvestment and Recovery Act (ARRA), much of which will continue to fund activities through 2011 and beyond. Although the budget has some specific allocations for juvenile justice that it had removed last year, it still reduces spending on juvenile justice programs, while allocating hundreds of millions to hire or retain police officers through the Byrne Justice Assistance Grants or Community Oriented Policing Services (COPS) and increasing federal prison spending.

This continued funding pattern will likely result in increased costs to states for incarceration that will outweigh the increased revenue for law enforcement, with marginal public safety benefits. While "re-entry" programs such as the Second Chance Act will help reduce recidivism, too little funding is targeted towards "no-entry" programs that keep people from ending up in the criminal justice system in the first place. As states struggle with tough economic times and burgeoning prison populations, research shows that the most cost-effective ways to increase public safety, reduce prison populations, and save money are to invest in community-based programs and policies that positively impact youth and more substance abuse treatment and mental health treatment services in the community.

Highlights from the President's FY 2011 Budget and past enacted budgets, U.S. Department of Justice (in millions)

Selected U.S. DOJ Budget Items	FY08	FY09	FY10	ARRA	FY11
Byrne/JAG**	\$373.9	\$754.5	\$744	\$2,225	\$589
COPS	\$587	\$582	\$791	\$1,000	\$690
COPS Hiring	\$20	\$0	\$298	\$1,000	\$600
Juvenile Justice Programs	\$384.5	\$374	\$423	\$97.5*	\$290
Title II State Formula Grants	\$74.3	\$75	\$75		\$72
Title V Local Delinquency Prevention	\$61.1	\$62	\$65		\$62
Promising New Initiatives	\$93.8	\$82	\$91		\$0
Justice Accountability Incentive Block Grants (JABG)	\$51.7	\$55	\$55		\$40
Mentoring	\$70	\$80	\$100	\$97.5	\$45
Second Chance Act/Re-entry Demonstration	11.75	\$25	\$100		\$100
Prisons and Detention	\$5,700		\$6,172		\$6,800
Drug, Mental Health, Problem Solving Courts	\$21.7	\$50	\$57		\$57
Adam Walsh Act					\$20

Sources: www.justice.gov/02organizations/bpp.htm; www.whitehouse.gov/omb/budget/fy2011/assets/jus.pdf; and www.justice.gov/jmd/2010justification/pdf/fy10-ojp.pdf

*excludes funding for internet crimes against children which was placed in the OJJDP budget.

** Byrne discretionary grants were eliminated in the FY2011 budget, down from \$180 million in FY2009.

Byrne Justice Assistance Grants

Under the Administration's proposal, Byrne Grants would receive over \$500 million in federal funds in FY2011 for law enforcement activities, including many that are shown to increase prison populations. This is in addition to over \$2 billion in Byrne Grants awarded through ARRA, which can be spent over a four-year period and are not allocated as part of the FY11 budget.¹ Byrne grants can be used for a number of different purposes, including multi-jurisdictional task forces, prevention and education, technology and evaluation, and prosecution. While grants are available for all of these purpose areas, recent history shows that most of the money goes to law enforcement, rather than prevention, drug treatment, or community services.²

¹ U.S. Department of Justice, "Recovery Act: Edward Byrne Memorial Justice Assistance Grant (JAG) Program Frequently Asked Questions," February 16, 2010. www.ojp.usdoj.gov/BJA/recoveryJAG/JAGrecoveryFAQ.pdf

² National Criminal Justice Association, Factsheet: *Restore Funding for The Byrne/Justice Assistance Grant Program* (Washington, D.C.: NCJA, 2008) www.ncja.org/Content/NavigationMenu/GovernmentAffairs/Appropriations/JAGCutsResources/RestoreJAGFunding-4pgs.pdf

- **Likely result:** Research shows that localities that spend more on law enforcement have higher drug imprisonment rates than localities that spend less.³ This emphasis on the “supply side” of the drug problem has not been successful in reducing drug use: the rate of current illicit drug use among persons aged 12 or older in 2007 (8 percent) has remained relatively stable since 2002.⁴ Focusing resources on the law enforcement side rather than prevention or treatment often results in increased prison populations, without necessarily improving public safety. The increase in funding for law enforcement is likely to significantly increase the number of people in prisons and jails, leading to increased federal, state, and local incarceration costs.

“Reductions in crime may have as much to do with demographic changes and the strength of the economy as with the efforts of a federal crime-prevention program.”
-- Congressional Budget Office⁵

Community Oriented Policing Services (COPS) Funding

The Administration has requested \$690 million, including \$600 million in hiring and retention grants. This is in addition to \$1 billion in COPS funding awarded through ARRA, which can be spent over three years, making it impossible to allocate to the 2011 budget.⁶

“Factors other than COPS funds accounted for the majority of the decline in crime during this period [of funding for the program]. For example, between 1993 and 2000, the overall crime rate declined by 26 percent, and the 1.3 percent decline due to COPS, amounted to about 5 percent of the overall decline. Similarly, COPS contributed about 7 percent of the 32 percent decline in violent crime from 1993 to 2000.”

-- United States Government Accountability Office⁷

The Office of Management and Budget Federal Budget factsheet for the Department of Justice indicates that hiring and retaining police officers “will help states and communities prevent the

³ Phil Beatty, Amanda Petteruti, and Jason Ziedenberg, *The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Counties* (Washington, D.C.: Justice Policy Institute, 2007)

⁴ Substance Abuse and Mental Health Services Administration, Office of Applied Studies (2008). *Results from the 2007 National Survey on Drug Use and Health: National Findings* (NSDUH Series H-34, DHHS Publication No. SMA 08-4343). Rockville, MD.

⁵ Congressional Budget Office, *Budget Options*, Appendix A, February 2001, at www.cbo.gov

⁶ 2009 COPS Hiring Recovery Program Post-Award Frequently Asked Questions, www.cops.usdoj.gov/Default.asp?Item=2265

⁷ United States Government Accountability Office, “COPS Grants Were a Modest Contributor to Declines in Crime in the 1990s,” (October 2005) www.gao.gov/highlights/d06104high.pdf

growth of crime as the nation's economy recovers."⁸ However, evidence suggests that protecting public safety and supporting continued economic growth can be more cost-effectively accomplished by investing in positive community services and jobs that do not lead to more incarceration. And there are many other areas (housing, education, treatment) in which the Administration could spend \$600 million to create jobs in ways that will have a positive impact on public safety.

- **Likely result:** In the 1990s, COPS grants were part of the reason for the growth in the prison population by 45 percent over 7 years and state corrections spending by 76 percent.⁹ Re-invigorating this program is likely to further increase the prison population, without a significant drop in crime. It will also likely increase the disproportionate contact communities of color have with the criminal justice system due to concentrated policing in neighborhoods with a high Latino and/or African American composition.

Juvenile Justice Programs

Juvenile justice programs received \$546.9 million in FY 2002. Funding has been dropping almost consistently since then, and the Administration has proposed another \$133 million decline in the proposed FY2011 budget, down to \$290 million. ARRA funding for juvenile justice was confined to mentoring, and while this is one strategy for reducing delinquent behavior, it does not address the broad range of needs currently facing the country's juvenile justice system. Administration officials have stated that funds for the Office of Juvenile Justice and Delinquency Prevention (OJJDP) are included in their request for Title II state formula grants that support development and implement comprehensive state juvenile justice plans. However, their request is \$3 million less than last year's enacted amount, potentially leaving the Office without sufficient resources to fulfill its mission.

Title V Local Delinquency Prevention continues to be funded at \$62 million, and the Administration should be applauded for doing away with the earmarks of past budgets, which takes away from the core purpose of Title V: to provide resources to local government for a broad range of delinquency prevention programs and activities to benefit youth who are at risk of having contact with the juvenile justice system. Investments in juvenile justice delinquency prevention programs are associated with improved public safety and better life outcomes for youth. Evidence-based

⁸ Office of Budget Management, "The Federal Budget, Fiscal Year 2011: Department of Justice," February 3, 2011. www.whitehouse.gov/omb/factsheet_department_justice/?print=1

⁹ U.S. Department of Justice, Bureau of Justice Statistics, *Corrections Populations at a Glance*, <http://ojp.usdoj.gov/bjs/glance/tables/corr2tab.htm>; National Association of State Budget Officers, State Expenditure Reports, www.nasbo.org

programs for youth have been shown to produce up to \$13 in benefits for every one dollar spent, in terms of improved public safety.¹⁰

- **Likely result:** There are nearly 100,000 youth currently locked up in juvenile detention and in secure confinement across the country.¹¹ Evidence shows that youth who spend time incarcerated have decreased educational attainment and employment prospects.¹² Reducing the amount of money spent on prevention, and in innovative programs that rely less on incarceration, may result in reduced public safety, more justice-involved youth, increasing racial disparities and diminished life outcomes for these youth, which will impact not just themselves and their families but the health and well-being of communities and the nation as a whole.

Second Chance Act – Re-entry Programs

Research shows that nearly two out of every three people released from prison will be re-arrested within three years of release.¹³ These shameful recidivism rates call for intervention to ensure the safe and constructive return of individuals into the community and to improve public safety. The FY2011 budget repeats the \$100 million in funds proposed in 2010 to implement the Second Chance Act of 2007 through OJP. If these funds are well-invested in evidence-based programs, the continued focus on re-entry should significantly improve the outcomes of people leaving prisons.

- **Likely result:** Investing in re-entry programs that support people returning to the community by helping them find meaningful employment, educational opportunities and substance abuse treatment will improve public safety and lower recidivism rates, thereby reducing prison populations and saving money in the long run. This impact would be even greater if accompanied by policies that reduce the collateral impacts of criminal conviction, such as prohibiting people from living in subsidized housing and allowing employers to discriminate in hiring even when a person's past offense is unrelated to the job being offered.

¹⁰ Elizabeth Drake, *Evidence-Based Juvenile Offender Programs: Program Description, Quality Assurance and Cost*. (Olympia WA: Washington State Institute for Public Policy, 2007). www.wsipp.wa.gov/rptfiles/07-06-1201.pdf

¹¹ Melissa Sickmund, T.J. Sladkyand, and Wei Kang, *Census of Juveniles in Residential Placement Databook* (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 2008) www.ojjdp.ncjrs.gov/ojstatbb/cjrp/

¹² Barry Holman and Jason Ziedenberg, *Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, (Washington, D.C.: Justice Policy Institute, 2006).

¹³ Patrick A. Langan and David J. Levin, *Recidivism of Prisoners Released in 1994* (Washington, D.C.: Bureau of Justice Statistics, 2002) www.ojp.gov/bjs/pub/pdf/rpr94.pdf

Drug, Mental Health and Problem-Solving Courts

For FY2011 the Administration combined previous drug and mental health court funding into one section, adding problem solving courts to the grant. These courts will receive \$57 million in funding, the same level as the FY10 enacted budget for the individual grants.

- **Likely result:** The federal government's interest in treatment as an option for people with substance abuse problems who are involved in the criminal justice system is a step toward developing a public health response to drug use and supporting alternatives to incarceration for people with low-level offenses. However, these courts are still a long way from a public health and treatment approach, and may even widen the net of people involved in the criminal justice system, leading to more people being incarcerated, and increased costs associated with corrections. Drug and specialty courts also tend to be very expensive, and may result in a false sense that the issue of addiction can be satisfactorily addressed by the justice system.

Adam Walsh Act

While the federal government has in the past allocated some funding to encourage states to come into compliance with the Sex Offender Registry and Notification Act (SORNA), which is part of the Adam Walsh Act (AWA), the institutionalization of this funding through an explicit \$20 million appropriation is troubling.

As a number of reports and studies have highlighted,¹⁴ there is little correlation between keeping children safe from victimization and the policies that are contained in SORNA. About 93 percent of sexual assaults of young children are by family members or acquaintances. Additionally, registration, notification, and other policies aimed at people in the community who have a sex offense conviction on their record can reduce public safety by making it hard to meet even basic needs such as employment and housing.

Using federal dollars to entice states to come into compliance with SORNA will likely make many state policymakers feel they "must" enact the SORNA provisions of the AWA, particularly if they are also threatened with the loss of Byrne Grant funding as well. However, even the additional funds from the federal government, which are about \$400,000 per state if appropriated equally across all

¹⁴ Justice Policy Institute, *Registering Harm: How Sex Offense Registries Fail Youth and Communities* (Washington, D.C., 2008) www.justicepolicy.org; Tracy Velázquez, *Pursuit of Safety: Sex Offense Policies in the United States* (New York: Vera Institute of Justice, 2008) www.vera.org

states, are only a small portion of what it will cost states to come into compliance with the Adam Walsh Act.

- **Likely result:** An increased reliance on sex offense registries, notification and other punitive policies related to sex offenses will have a marginal impact at best in making children and the general population safer. However, it will increase the number of people who cannot meet their basic needs (housing, employment, etc.), and lose the foundation on which to achieve positive life outcomes and stay out of prison. Youth who are subjected to registration requirements will have diminished life outcomes, as they may be barred from pro-social activities that can have a crucial positive impact on their futures.

Prisons and Detention

The Federal Bureau of Prisons (BOP) currently confines more than 200,000 people.¹⁵ The additional \$628 million over last year's enacted budget for the BOP and judicial security will result in new prisons and more people who rely on the imprisonment of others for their livelihood. Included in the budget is a plan to purchase two new prisons, one of which will be a super-maximum security facility in Illinois for the people currently held at Guantanamo Bay, Cuba.¹⁶ The United States already spends more than \$800 million on federal contract beds, including private prison beds and space in local jails and prisons that is used largely for the detention of people in this country without documentation.

- **Likely result:** Increasing funding for more prison beds has been shown to be a self-fulfilling prophecy: If you build it, they will come. Adding two new prisons and a thousand contract beds will lead to higher prison populations and expenses, without significantly improving public safety.¹⁷ In addition, this infusion of funds is out of step with states' efforts to reduce prison populations and cut spending on corrections and sets a bad example for continued positive investments in intervention, prevention, and alternatives.

¹⁵ Heather C. West and William J. Sabol, *Prison Inmates at Midyear 2008* (Washington, D.C.: Bureau of Justice Statistics, 2009) <http://bjs.ojp.usdoj.gov/content/pub/pdf/pim08st.pdf>

¹⁶ Kevin Johnson, "2011 budget gives federal prisons \$528M," *USA Today*, February 4, 2010. www.usatoday.com/news/washington/2010-02-03-prison-budget_N.htm

¹⁷ Justice Policy Institute, *Factsheet: Percent Change in Incarceration and Crime Rates, 1998-2007* (Washington, D.C., 2008) www.justicepolicy.org/images/upload/07-02_FAC_StatebyStateIncarceration_AC-PS.pdf

Recommendations to Congress and the Administration

There are currently more than 2.4 million people incarcerated in U.S. prisons and jails, the highest per capita rate in the world.¹⁸ The DOJ considers “successful law enforcement policies” as those that increase the number of people arrested and imprisoned. Unfortunately, with this as the measure of success, rather than increases to public safety, the Administration is shortchanging the public in regards to public safety at a very high cost. Attempting to improve public safety through increased law enforcement and correctional spending is a failed approach.

If the Administration and Congress want to spend scarce federal dollars to improve public safety, they should invest in programs and policies that have been shown to have positive and long-lasting effects on individuals and communities. These programs include:

- community-based substance abuse and mental health treatment;
- evidence-based prevention and early intervention programs for youth and families;
- employment, job skills, and education resources for underserved communities;
- diversion programs that keep people from entering the corrections system; and
- better evaluation, training and technical assistance to states so that they continue to improve practices and learn more about what really works to reduce crime and incarceration rates.

Putting resources toward these positive opportunities is the most efficacious and cost-effective way of increasing public safety.

¹⁸*World Prison Brief*, International Centre for Prison Studies, Kings College, London, U.K., www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_stats.php?area=all&category=wb_poprate