

BRENNAN
CENTER
FOR JUSTICE
at New York University School of Law

**REFORMING FUNDING TO REDUCE MASS INCARCERATION:
A POLICY FRAMEWORK AND PROPOSAL**

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Foreword by Peter Orszag

This proposal lays out a policy framework to reform federal criminal justice funding practices. The new approach would reorient criminal justice incentives toward effectively fighting crime while also reducing mass incarceration. It then proposes concrete reforms to the largest nationwide criminal justice grant program.

SUCCESS-ORIENTED FUNDING: A POLICY FRAMEWORK

The criminal justice system in the United States is vast. As with all complex enterprises, this system is honeycombed with incentives that steer or deter behavior, for good or ill. These incentives can spur creative, modern law enforcement policies. But today’s fiscal incentives often guide them away from sensible policy. The result: a system that, despite some recent reforms, continues on autopilot.

The proposal would use funds to steer actors toward modern criminal justice practices that reduce mass incarceration while improving public safety. Termed “Success-Oriented Funding” by this report, it uses the power of the purse to promote more effective and just practices by conditioning government dollars on specific, measureable goals. The goals for state and local agencies would drive toward a system that reduces crime and alleviates mass incarceration, while making more efficient use of taxpayer money. It can be applied to all criminal justice funding streams – federal, state, and local.

Success-Oriented Funding would:

- *Reorient incentives* toward a more modern system.
- *Fight crime more effectively*, focusing on programs that work.
- *Ensure that government invests wisely*, holding grant recipients accountable.
- *Reduce mass incarceration* by explicitly providing goals that reduce unnecessary punishment.

It can be implemented in three ways, ranging from the most to least direct:

1. *Directly condition funding on success.* Funding could be conditional; tied directly to achievement of specific goals. This would be the strongest version.
2. *Provide “prize” dollars for success.* Provide additional dollars for meeting goals.
3. *Indirectly “nudge” actors toward success.* Measurement can change behavior. Robust “performance measures” can steer recipients toward goals. Measures would accompany funding, though funding would not be directly conditioned on meeting them.

Success-Oriented Funding can be implemented broadly across the justice system. Key areas include:

- Congressional appropriations for federal agencies (e.g., Bureau of Prisons).
- Federal grant programs for federal, state, or local activities.
- State and local budgets providing funding for agencies (e.g., prisons and courts).
- State and local grant programs for criminal justice agencies.
- Government contracts to private prisons or privately run programs.

It works best when agencies are given a few clear goals, such as:

- Reducing recidivism,
- Reducing crime,
- Reducing prison sentences, or
- Reducing incarceration.

SUCCESS-ORIENTING JAG: A POLICY PROPOSAL

This proposal applies Success-Oriented Funding to the federal government’s largest criminal justice funding stream: the Edward Byrne Memorial Justice Assistance Grant (JAG) program. Reforms to JAG can help create a nationwide shift in criminal justice policy.

JAG has an outsize influence on criminal justice activity. It provides funding to all states and thousands of localities. It goes to police, prosecutors, public defenders, and reentry programs. JAG was created almost 30 years ago at the height of the national crime wave. It does not currently align with modern criminal justice goals.

The U.S. Department of Justice manages JAG. By statute, the Justice Department cannot condition funding based on whether recipients meet specified goals. However, recipients must report on whether the use of funds meets certain performance measures. Measures signal federal priorities to recipients. The proposal could be implemented by the Justice Department – without legislation. This would reflect the indirect approach of Success-Oriented Funding.

Current measures inadvertently incentivize unwise policy choices. Federal officials ask states to report on the number of arrests, but not whether the crime rate dropped. They measure the amount of cocaine seized, but not whether arrestees were screened for drug addiction. They tally the number of cases prosecuted, but not whether prosecutors reduced the number of low-level

offenders sent to prison. In short, today’s JAG performance measures fail to show whether the programs it funds have achieved “success:” improving public safety without needless social costs.

Even more, the measures encourage a widening of the pipeline to prison. They signal to states and localities that the federal government desires more arrests, more drug busts, and more prosecutions – at the expense of other activities proven to be more effective at reducing crime.

New measures would attempt to drive toward reducing unnecessary punishment and promoting the most effective modern crime control policies. Appendix A of the proposal provides an array of performance measures as a starting point for states and localities to fashion measurable objectives.

Sample of Current and Proposed JAG Performance Measures

CURRENT POLICE PERFORMANCE MEASURES	PROPOSED POLICE PERFORMANCE MEASURES
<ul style="list-style-type: none"> • Number of arrests • Number of people charged with gun crimes • Number of judicial warrants • Number of new task force cases 	<ul style="list-style-type: none"> • What is your violent crime rate? • What percent of arrests were for violent crimes? What percent of those arrests resulted in violent crime convictions? • What percent of misdemeanor offenses were issued desk appearance tickets or citations instead of booked and jailed? • What percent of people arrested for drugs were screened for drug addiction or abuse?
CURRENT PROSECUTOR PERFORMANCE MEASURES	PROPOSED PROSECUTOR PERFORMANCE MEASURES
<ul style="list-style-type: none"> • Number of cases prosecuted • Number of cases involving indigent defendants. 	<ul style="list-style-type: none"> • What percent of trials were for violent crimes? • What is the yearly percent change in the number of defendants sentenced to incarceration? • What percent of drug charges were diverted to treatment?

DOJ should institute Success-Oriented performance measures, require grant recipients to report on behalf of sub-recipients, and penalize recipients who do not report. It should make data in those reports publicly available.

To read the full proposal visit: www.brennancenter.org/justicereform

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