

Written Testimony
Of
Brennan Center for Justice
House Appropriations Committee
Subcommittee on Commerce, Justice, Science
March 28, 2014

Chairman Wolf, Ranking Member Fattah, and distinguished members of the House Appropriations Subcommittee on Commerce, Justice and Science, thank you for the opportunity to submit written testimony before the committee to discuss fiscal year 2015 budget priorities. The testimony is offered to the Committee for use during its consideration of Department of Justice criminal justice funding.

The Brennan Center for Justice at New York University School of Law¹ is a nonpartisan law and policy institute that seeks to improve the national systems of democracy and justice. The Brennan Center for Justice was created in 1995 by the clerks and family of the late Supreme Court Justice William J. Brennan, Jr. to improve our systems of justice and democracy. The Justice Program at the Brennan Center is dedicated to ensuring a rational, effective, and fair justice system. Our priority initiative is to reduce mass incarceration by reducing the criminal justice system's current size and severity; while still protecting public safety.

The Department of Justice (DOJ) administers dozens of criminal justice grants, which total over \$1 billion each year. In 2012, the Community Oriented Policing Services and Violence Against Women Act grants received more than \$1.45 billion. Most notably, the Edward J. Byrne Memorial Justice Assistance Grant (Byrne JAG), the largest nationwide criminal justice grant program administered by DOJ, receives between \$300 million to \$500 million each year. It retains an enormous influence on criminal justice policies and priorities. JAG dollars reach across the entire criminal justice system. They reach all states, territories, and thousands of localities, mainly flowing to law enforcement. These funds support local police departments, drug courts, prosecutor and public defender offices, courts, and more. While important, the structure was created more than thirty years ago, based on criteria and priorities at a time of rising and seemingly out of control crime. Decades after its inception, the criminal justice system that JAG dollars were created to support has spiraled into one that now supports the world's largest population of incarcerated people and all of the inherent problems that come with this distinction.

It is time for a change. A better approach, termed "Success-Oriented Funding" would use the power of the purse to steer the criminal justice system toward the twin goals of reducing crime *and* reducing mass incarceration – goals research shows are not in conflict. The Brennan Center for Justice recently published a report highlighting a way to align fiscal and policy priorities.² Grounded in economic principles and built on discrete models in other policy areas, Success Oriented Funding ties government dollars as closely as possible to whether agencies or programs meet specific, measureable goals. These goals would drive toward what policymakers

¹ This letter does not represent the opinions of NYU School of Law.

² Chettiar, Inimai; Eisen, Lauren-Brooke, Fortier, Nicole; *Reforming Funding to Reduce Mass Incarceration*, Brennan Center for Justice, Nov. 2013.

https://www.brennancenter.org/sites/default/files/publications/REFORM_FUND_MASS_INCARC_web_0.pdf

and researchers increasingly see as a new, modern, and more effective justice system. The model imports private sector business principles and applies it to public dollars.

Economic theory indicates that actors provided with clear positive rewards will usually alter their behavior to match these incentives. Former Chairman of President George W. Bush's Council of Economic Advisors and Harvard University Professor N. Gregory Mankiw articulates this fundamental tenet in "Principles of Economics" — one of the most widely-used introductory economics textbooks. He defines the discipline in this way: "People respond to incentives. The rest is commentary."³ By setting clear goals for success or failure of government agencies and programs, Success-Oriented Funding would fund "success," achieving results-driven government. This cost-effective framework ensures that the government is getting a good return on its investment. Broad goals for funding recipients include reducing recidivism and crime, or reducing unnecessary prison sentences and incarceration. Grant-specific goals would vary depending on the agency or program funded. For example, grants for police could focus on reducing violent crime or diverting drug addicted arrestees to treatment.

Illinois has seen great success with its investment and support of the Adult Redeploy Illinois program, which diverts non-violent offenders from prison into more effective community-based services. Adult Redeploy Illinois provides financial incentives to local jurisdictions that design evidence-based services to supervise and treat non-violent offenders in the community instead of sending them to state prisons. Since 2011, Adult Redeploy Illinois sites have diverted more than 1,000 non-violent offenders. These sites spent an average of \$4,400 per program participant, compared to the annual per capita incarceration cost of \$21,500 in state fiscal year 2011. This represents more than \$18.5 million in potential corrections savings.⁴ By investing in programs like Adult Redeploy Illinois, Congress can make inroads in achieving better taxpayer accountability while using funding to improve criminal justice outcomes.

Earlier this month, President Obama introduced his FY 2015 Budget proposal for the Department of Justice, which requests \$27.4 billion for the Justice Department, of which \$173 million is set aside for targeted investments for criminal justice reform efforts. The budget also calls for an investment of \$173 million to support the Attorney General's *Smart on Crime* initiative, which is intended to promote fundamental reforms to the criminal justice system that will ensure the fair enforcement of federal laws, improve public safety, and reduce recidivism by successfully preparing inmates for their re-entry into society.

The President's budget provides a needed boost to the types of competitive, evidence-based grant programs that make better use of taxpayer dollars. His budget also improves the Byrne JAG program, by calling for an additional \$45 million to be funded through competitive grants that are conditioned on potential Byrne JAG program recipients making a good case for how they will use the money. The budget also creates a \$15 million incentive grant program, essentially bonus money for which states and localities can compete.

By increasing funding for competitive, evidence-based programs, the Administration is communicating its desire to move away from blindly funding legacy programs without strong

³N.Gregory Mankiw, *Principles of Economics* 7 (6th ed. 2012) (quoting Steven E. Landsburg, *The Armchair Economist* 3 (2012)).

⁴http://www.icjia.org/public/redeploy/pdf/articles/Adult_Redeploy_Illinois_media_stories_011714.pdf

records of success, and towards modern programs that work at reducing crime and incarceration and improving public safety. Members on both sides of the aisle also support criminal justice funding reform. House Judiciary Committee Chairman Robert W. Goodlatte (R-VA) stated “grant programs are not always designed or administered as efficiently as they should be – which means that less money is actually sent to help the boots on the ground.” Congressman Robert Scott (D-VA) expressed a similar concern about the need to ensure successful returns on our investments in grant dollars.

The Brennan Center supports these efforts because they move budgeting and funding toward Success-Oriented Funding by holding recipients of federal dollars accountable for their spending choices by implementing direct links between funding and proven results. This allows Congress to ensure the criminal justice system is producing results while not increasing unintended social costs. Success-Oriented funding principals improve the use of taxpayer money, promote accountability and reduce government waste.

Restructuring the way taxpayer dollars are sent to law enforcement and other criminal justice agencies nationwide can do a great deal to modernize our outdated criminal justice system. Funding these incentive based grants would mark an important shift in how the federal government spends dollars on criminal justice. Because these dollars travel across the country, changing incentives for these grants can create change that reverberates nationwide.

We encourage you to fully fund the Byrne Incentive grant program, the Byrne Innovation grant program, and the Byrne Competitive grant program.

Respectfully submitted,

Danyelle Solomon
Policy Counsel, Washington Office
Danyelle.Solomon@nyu.edu

Lauren-Brooke Eisen
Counsel, Justice Program
lbeisen@nyu.edu

Brennan Center for Justice at
NYU School of Law
1730 M Street, NW 4th floor, Suite 413
Washington, DC 20036
(202) 249-7190