



June 2016

FEDERAL PRISON SYSTEM

Justice Has Used
Alternatives to
Incarceration, But
Could Better Measure
Program Outcomes

GAO Highlights

Highlights of [GAO-16-516](#), a report to Congressional committees

Why GAO Did This Study

Since 1980, the federal prison population increased from about 25,000 to almost 200,000, as of March 2016. In part to help reduce the size and related costs of the federal prison population, DOJ has taken steps to slow its growth by pursuing alternatives to incarceration at various stages of the criminal justice process for nonviolent, low-level offenders. Senate Report 113-78 included a provision for GAO to review DOJ's management of the federal prison population.

This report (1) describes factors criminal justice stakeholders consider when using incarceration alternatives at or before sentencing and identifies the extent to which those alternatives are used, (2) describes factors BOP considers when using incarceration alternatives for inmates and the extent of their use, and (3) assesses the extent DOJ has measured the cost implications and outcomes of using the alternatives.

GAO analyzed DOJ and federal judiciary branch data and documents from fiscal years 2009 through 2015, and interviewed DOJ and judiciary officials at headquarters and in 11 selected nongeneralizable judicial districts about the use of alternatives. GAO selected districts to provide geographic diversity and a mix of districts using and not using the alternatives.

What GAO Recommends

GAO recommends that DOJ enhance its tracking of data on use of pretrial diversions and that DOJ and BOP obtain outcome data and develop measures for the alternatives used. DOJ concurred.

View [GAO-16-516](#). For more information, contact Diana C. Maurer at (202) 512-9627 or maurerd@gao.gov.

June 2016

FEDERAL PRISON SYSTEM

Justice Has Used Alternatives to Incarceration, But Could Better Measure Program Outcomes

What GAO Found

Department of Justice (DOJ) and federal judiciary officials reported considering numerous factors when using alternatives to incarceration at or before an offender's sentencing, but DOJ does not reliably track the use of some alternatives. A variety of alternatives can be used for offenders at or before sentencing, such as referral to state and local prosecutors, pretrial release, and probation. Other such alternatives include pretrial diversion programs which divert certain offenders from the traditional criminal justice process into a program of supervision and services or into court-involved pretrial diversion practices, such as drug courts, that provide offenders an opportunity to avoid incarceration if they satisfy program requirements. DOJ and judiciary officials most commonly reported considering the presence of violence and the offender's role in the crime when determining use of an alternative at or before sentencing. Based on DOJ and judiciary data on referrals to other jurisdictions, pretrial release, and alternatives at sentencing, the overall use of such alternatives across districts was largely consistent during the periods for which data were available from fiscal years 2009 to 2015. However, DOJ data on the use of pretrial diversion is unreliable because DOJ's database does not distinguish between the types of pretrial diversions. Further, when and whether the use of the pretrial diversion is recorded into the database varies across DOJ staff responsible for entering the data. By revising its system to track the different types of pretrial diversion programs, and issuing guidance as to when staff are to enter their use into its database, DOJ would have more reliable and complete data.

DOJ's Bureau of Prisons (BOP) considers statutory requirements and risk levels when placing inmates into incarceration alternatives such as residential reentry centers (RRCs, also known as halfway houses) and home confinement, and has increased its use of alternatives, particularly home confinement, in the past seven years. In addition to the basic eligibility requirements, BOP evaluates inmates' needs for reentering society, risk for recidivism, and risks to the community if placed in RRCs or home confinement. For low-risk and low-need inmates, home confinement is the preferred alternative according to BOP and BOP increased its use by 67 percent for minimum security inmates and 58 percent for low security inmates from fiscal years 2009 through 2015. Relative to home confinement, use of RRCs grew at a slower pace for low security inmates and declined for minimum security inmates.

DOJ has tracked some data on the cost implications of using incarceration alternatives, but could better measure their outcomes. For example, DOJ conducted a survey in 2014 and 2015 of U.S. Attorneys to obtain district-level information about the use of court-involved pretrial diversion practices. However, the data collected do not measure the outcomes or cost implications of the alternatives. For alternatives used at the end of inmates' sentences, BOP maintains data on the costs, such as average daily costs, of placing inmates in RRCs and home confinement. While BOP has measures in its strategic plan to monitor the use of RRCs and home confinement and has contracted for an analysis of its use of RRCs and home confinement that is expected to be completed during the summer of 2016, BOP, does not currently track the information needed to help measure the outcomes of these alternatives. By taking steps to obtain outcome data and developing performance measures for the alternatives used, DOJ and BOP would be better able to determine the extent to which the alternatives are achieving their goals and objectives and what adjustments may be necessary to make them more effective.

Contents

Letter		1
	Background	7
	Selected Stakeholders Reported Considering a Number of Factors When Using Alternatives at or before Sentencing, but DOJ Does Not Track the Use of Some Alternatives	14
	BOP Considers Statutory Requirements and Inmate Risk Levels when Deciding Whether to Use Incarceration Alternatives and Has Increased Use of Such Alternatives for Minimum and Low Security Inmates	25
	DOJ Has Tracked Some Data on the Cost Implications of Alternatives to Incarceration, but Could Better Measure Outcomes	35
	Conclusions	47
	Recommendations for Executive Action	48
	Agency Comments and our Evaluation	49
Appendix I	Comments from the Administrative Office of the U.S. Courts	53
Appendix II	GAO Contact and Staff Acknowledgments	55
Tables		
	Table 1: Key Department of Justice (DOJ) and Federal Judiciary Stakeholders Involved in the Federal Criminal Justice Process	8
	Table 2: Pretrial alternatives to incarceration in the federal criminal justice process and role of federal stakeholders	11
	Table 3: Alternatives at Sentencing and Incarceration in the Federal Criminal Justice Process and Role of Federal Stakeholders	12
	Table 4: Number and Percentage of Inmates in the Custody of Bureau of Prisons (BOP), by Institutional Security Level, as of February 27, 2016	14
	Table 5: Examples of Factors Stakeholders Reported Considering When Determining Use of Alternatives to Incarceration at or Before Sentencing	16
	Table 6: Estimated Cost Savings of Court-involved Pretrial Diversion Programs, by Federal Judicial District	38

Table 7: Pretrial Services Data on Some Federal Judicial Districts' Use of Court-involved Pretrial Diversion Practices, August 2015

Figures

Figure 1: Steps in the Federal Criminal Justice System Process with Alternatives to Incarceration	10
Figure 2: Rates of Use of Alternatives to Incarceration within Federal Criminal Justice System before Trial and at Sentencing	21
Figure 3: Bureau of Prisons' Process for Placing Inmates into Residential Reentry Centers (RRC) and Home Confinement	27
Figure 4: Number of Bureau of Prisons Inmates Placed in Incarceration Alternatives, by Security Level, Fiscal Years 2009 through 2015	29
Figure 5: Types of Incarceration Alternatives Used for Bureau of Prisons' Minimum and Low Security Inmates, by percent, Fiscal Years 2009 through 2015	30
Figure 6: Number of Inmates Placed into the Federal Location Monitoring (FLM) Program, by Security Level, Fiscal Years 2009 through 2015	32
Figure 7: Daily Cost per Inmate of Bureau of Prisons Facilities and Residential Reentry Centers, Fiscal Year 2015	43

Abbreviations

AOUSC	Administrative Office of the U.S. Courts
BOP	Bureau of Prisons
DOJ	Department of Justice
EOUSA	Executive Office for United States Attorneys
FLM	Federal Location Monitoring Program
GPRAMA	GPRA Modernization Act of 2010
LIONS	Legal Information Office Network System
PPSO	U.S. Probation and Pretrial Services Office
RRC	Residential Reentry Center
RRM	Residential Reentry Management
USAO	U.S. Attorneys' Office
USSC	U.S. Sentencing Commission

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



July 23, 2016

Congressional Committees

As of March 2016, the Department of Justice’s (DOJ) Federal Bureau of Prisons (BOP) was responsible for managing almost 200,000 inmates in 122 institutions, more than half of whom are housed in low and medium security facilities. Despite a decline of about 8,400 inmates since the end of fiscal year 2015, BOP’s inmate population is seven times the population it managed in 1980. BOP’s inmate population increased by about 700 percent from 1980 to 2016—from 24,640 to almost 200,000. Given the increase in population, BOP’s annual appropriations have increased from \$330 million in fiscal year 1980 to almost \$7.5 billion for fiscal year 2016. According to DOJ’s Inspector General, the rising costs for BOP threaten the department’s ability to fulfill its mission in other areas, including maintaining national security, enforcing criminal law, and defending civil rights.

In 2013, in part to help reduce the size and costs of the federal prison population, DOJ implemented the Smart on Crime Initiative, the goals of which include prioritizing prosecutions to focus on the most serious cases, and pursuing alternatives to incarceration for low-level, nonviolent offenders.¹ DOJ and its components, such as BOP and the U.S. Attorneys’ Offices (USAO), in conjunction with the federal judiciary and its components, such as the U.S. Probation and Pretrial Services Office (PPSO), have made use of a variety of alternatives to incarceration for

¹According to officials with U.S. Probation and Pretrial Services, an individual going through the criminal justice process is considered a “defendant” until they are adjudicated and sentenced, after which they become an “offender.” We recognize that there are two distinct terms to describe an individual who has been accused of committing a federal crime and is going through the federal criminal justice process, as compared to an individual that has gone through the adjudication process and been sentenced for committing a federal crime. However, for the purpose of this report, we use “offender” as a general reference to an individual at any stage of the process to simplify the terminology used.

federal offenders and inmates.² These include alternatives on the front-end of the criminal justice process, such as releasing offenders pretrial and allowing offenders to participate in pretrial diversion programs and specialty courts, such as drug courts, which provide offenders an opportunity to avoid incarceration if they satisfy program requirements. For those offenders who are convicted of a criminal offense, judges may use alternatives to incarceration during sentencing, such as sentencing an offender to probation without a period of incarceration. After an inmate has been incarcerated, BOP has alternatives available that would allow the inmate to serve out a period of his or her sentence outside of a BOP institution, such as in a Residential Reentry Center (RRC, also known as a halfway house) or on home confinement, both of which are designed to supervise inmates in a community setting to facilitate an inmate's reentry into society.³

We previously reported that BOP's population size is driven by factors beyond BOP's control, such as law enforcement policies and sentencing laws.⁴ In the last few years, DOJ has implemented targeted initiatives to address the concerns of overcrowding and costs of federal prisons. Senate Report 113-78 included a provision for us to conduct a review of

²The U.S. Probation and Pretrial Services Office (PPSO) is the component of the United States Courts that is responsible for carrying out probation and pretrial services functions in the U.S. district courts. Probation officers supervise offenders who are sentenced to a term of probation by the court or who are on parole or supervised release after release from prison to the community. Probation officers also prepare presentence investigation reports in which they recommend sentences based on the sentencing guidelines of the U.S. Sentencing Commission. Pretrial services officers conduct pretrial investigations and prepare bond reports for the courts, and supervise defendants released to the community before trial to help ensure they do not commit any new crimes and return to court as required. For the purposes of this report, we refer to the U.S. Probation and Pretrial Services Office and its staff generally as PPSO or PPSO officers, as appropriate.

³According to BOP, it does not view inmates' placement in RRCs and home confinement as "incarceration alternatives." Pursuant to BOP's statutory authority (18 U.S.C. §§ 3621 and 3624), BOP may place inmates into RRCs and home confinement as a means to serve, continue serving, or conclude serving, federal terms of imprisonment. Additionally, according to BOP officials, RRCs are a type of programming made available to inmates at the end of their term of incarceration to facilitate their reentry into society. We acknowledge the legal basis for BOP's distinction; however, for the purposes of this report, we consider RRCs and home confinement as alternatives to incarceration as they allow inmates to serve a portion of their sentence outside of a prison environment under alternative confinement restrictions.

⁴GAO, *Bureau of Prisons: Information on Efforts and Potential Options to Save Costs*, [GAO-14-821](#) (Washington, D.C.: September 2014).

these recent efforts, including whether incarceration and prevention programs are being used effectively, given DOJ's department-wide approach.⁵

This report addresses the following questions:

1. What factors have selected criminal justice stakeholders reported considering when determining whether to use alternatives to incarceration when charging, litigating, or sentencing offenders, and to what extent have these alternatives been used?
2. What factors has BOP considered when determining whether to use alternatives to incarceration for minimum and low security inmates, and to what extent has it used these alternatives?
3. To what extent has DOJ measured the cost implications and outcomes of alternatives to incarceration?

To answer the first question, we reviewed federal policies such as the U.S. Attorney's Manual used by federal prosecutors and federal sentencing guidelines used by judges when determining whether to use an alternative. To determine the extent to which districts use the alternatives at or before sentencing, we obtained and analyzed available data for the fiscal year 2009 through 2015 time period from DOJ on referrals to other jurisdictions and the use of pretrial diversion; the U.S. Sentencing Commission (USSC) on the use of incarceration alternatives (e.g., probation) at sentencing; and the Administrative Office of the U.S. Courts (AOUSC) on pretrial release rates to identify trends in the use of

⁵S. Rep. No. 113-78 (2013). Also in response to Senate Report 113-78, we conducted a review of DOJ's recent initiatives to address the growing federal prison population. See GAO, *Federal Prison System: Justice Could Better Measure Progress Addressing Incarceration Challenges*, [GAO-15-454](#) (Washington, D.C.: June 19, 2015).

those alternatives, if any, over time.⁶ We selected this time period because we believe that 7 years is sufficient time to provide an adequate understanding of recent trends in the use of those alternatives. We assessed the reliability of these data and generally determined them to be sufficiently reliable for our purposes of reporting trends in use of the alternatives. This reliability assessment included reviewing relevant documentation and interviewing or obtaining information about the data from knowledgeable officials from DOJ's Executive Office for United States Attorneys (EOUSA), the USSC, and the AOUSC. However, we determined that DOJ's data on pretrial diversion were unreliable, for reasons discussed later in this report. We also reviewed DOJ's policies and procedures for tracking its use of alternatives to incarceration and compared those policies and procedures with criteria in Standards for Internal Control in the Federal Government.⁷

Additionally, for our first objective, we interviewed officials at USAOs; court officials, including district and magistrate judges, and probation and pretrial services officers; and defense counsel in 11 selected judicial districts. These districts include 6 districts that reported using alternatives such as a court-involved pretrial diversion practice—Central District of California, Southern District of California, Western District of Washington, Central District of Illinois, Eastern District of New York, and District of South Carolina—and 5 districts that do not—District of Nevada, Southern District of Iowa, Eastern District of Michigan, Southern District of Texas, and Northern District of Georgia. We selected the 6 districts based on information available as of August 2015 from DOJ, the USSC, and U.S. District Court for the Eastern District of New York that identified which districts used court-involved pretrial diversion practices such as drug

⁶The U.S. Sentencing Commission (USSC) is an independent agency in the judicial branch of government created by the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1976. Among other things, the USSC's principal purposes are: (1) to establish sentencing policies and practices for the federal courts, including guidelines to be consulted regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress and the executive branch in the development of effective and efficient crime policy; and (3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues. The Administrative Office of the U.S. Courts (AOUSC) is the agency within the judicial branch that provides a broad range of legislative, legal, financial, technology, management, administrative, and program support services to federal courts.

⁷GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: Nov. 1, 1999).

courts, veterans' courts, or other specialty courts. In addition, we selected all 11 districts using a mix of other criteria such as geographic location, geographic characteristics (i.e., along a border or body of water), and demographics (i.e., urban and rural). We interviewed officials from these districts to discuss the alternatives to incarceration they have used at or before sentencing and the most frequently used factors that stakeholders considered in their decisions whether to use these alternatives. Information from the interviews with officials in our 11 selected districts cannot be generalized across all federal judicial districts. However, the information we obtained from these districts provides insight into what alternatives are being used and how they are used in practice. We are not taking a position on whether these alternatives to incarceration should be used, but rather present information on stakeholders' perspectives about deciding whether to use alternatives.

To answer the second question, we reviewed BOP policy and guidance related to the process for identifying and placing eligible inmates into RRCs and home confinement, including home confinement through the Federal Location Monitoring Program (FLM), a joint program between BOP and PPSO. Additionally, to determine the extent to which BOP uses these alternatives, we analyzed BOP data on the number and type of inmates placed in RRCs and home confinement alternatives from fiscal years 2009 through 2015 to identify trends in the use of these alternatives, if any, over time. We selected this time period because we believe that 7 years is sufficient time to provide an adequate understanding of recent trends in the use of those alternatives. We assessed the reliability of these data and determined them to be sufficiently reliable for our purposes. This reliability assessment included obtaining information about the data from knowledgeable officials at BOP. We also compared BOP's and PPSO's policies and procedures for carrying out the FLM program against practices that we have identified in prior work to enhance and sustain collaboration among federal agencies and Standards for Internal Control in the Federal Government.⁸

For our second objective, we also interviewed BOP officials in the Reentry Services Division at headquarters, which provides management

⁸See GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005); and [GAO/AIMD-00-21.3.1](#). To identify these practices, we reviewed relevant literature, including our prior reports, and interviewed experts in the area of collaboration.

and oversight of BOP's use of RRCs and home confinement, as well as wardens and other BOP staff located at selected minimum and low security institutions to discuss the factors they consider when deciding whether to place an inmate into an RRC or home confinement. Within our 11 selected districts discussed above, we selected all 4 of BOP's minimum and low security institutions located within those districts—Federal Correctional Institution Lompoc and Federal Correctional Institution Terminal Island in the Central District of California, Federal Prison Camp Bryan in the Southern District of Texas, and Federal Correctional Institution Milan in the Eastern District of Michigan. We also interviewed BOP residential reentry management (RRM) officials, who are responsible for managing the placement of inmates in RRCs and home confinement, and RRC contractors within the 3 districts above where BOP minimum or low security institutions were located to better understand the key factors they consider in decisions to use incarceration alternatives. We also interviewed BOP RRM officials and an RRC contractor in the Western District of Washington in our initial work on the engagement before we had made our selections of BOP institutions. Even though this office was outside of the districts where the selected BOP institutions were located, we included its officials' responses in order to be comprehensive in our analysis. We also interviewed officials with PPSO in the 11 districts mentioned above about their role and factors they consider when accepting inmates into the FLM Program.

To answer the third question, we reviewed results from a 2014 survey conducted by EOUSA of USAOs regarding the implementation of the department's "Smart on Crime" initiative—the first such survey conducted—which included their use of court-involved pretrial diversion practices, such as a presentence diversion court, and, if they used such a court, whether the court was evaluated or assessed. We also reviewed available cost estimates and program measures compiled by PPSO officials from some districts using court-involved pretrial diversion practices, such as the data compiled by the Eastern District of New York. Additionally, we analyzed BOP daily cost data for inmates at BOP facilities and RRCs for fiscal year 2015 to determine the cost of BOP facilities compared to RRCs. We selected this year because it is the most current data available. We assessed the reliability of these data and determined them to be sufficiently reliable for our purposes. This reliability assessment included reviewing relevant documentation and interviewing and obtaining information from knowledgeable officials from EOUSA and BOP. We also reviewed DOJ's Strategic Plan, Smart on Crime Initiative goals, and BOP's Strategic plan to identify any relevant measures for the performance of the alternatives and compared those against the

characteristics of measures as called for in Standards for Internal Control in the Federal Government and the GPRA Modernization Act (GPRAMA) of 2010.⁹ We interviewed officials at EOUSA and BOP to better understand how or whether they measure cost implications and the effectiveness of using alternatives to incarceration.

We conducted this performance audit from March 2015 to June 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Key Stakeholders in the Federal Criminal Justice Process

Various DOJ and federal judiciary stakeholders play key roles in the federal criminal justice process, and as such, they can also have key roles in considering whether to use incarceration alternatives for a given offender or inmate. For example, in the course of the federal criminal justice process, a U.S. attorney is involved in the process of investigating, charging and prosecuting an offender, among other responsibilities. Federal defenders are called upon to represent defendants who are unable to financially retain counsel in federal criminal proceedings. PPSO, an office within the judiciary, also has responsibilities including supervising an offender pretrial or after conviction. Likewise, federal judges are responsible for determining an offender's sentence, and, in the case of incarceration, BOP is responsible for caring for the inmate while in custody. Table 1 describes these roles in more detail.

⁹Pub. L. No. 111-352, 124 Stat. 3866 (Jan. 4, 2011).

Table 1: Key Department of Justice (DOJ) and Federal Judiciary Stakeholders Involved in the Federal Criminal Justice Process

Federal Stakeholder	Branch of Federal Government	Mission of Federal Stakeholder
Federal law enforcement agencies	Executive	A federal law enforcement agency carries out the principle functions of prevention, detection, and investigation of crime and the apprehension of alleged offenders. Examples of federal law enforcement agencies include the Drug Enforcement Administration, Federal Bureau of Investigation, U.S. Marshals Service, and the Bureau of Alcohol, Tobacco, Firearms and Explosives.
U.S. Attorney's Office/U.S. Attorneys	Executive	Under 28 U.S.C. § 547, United States Attorneys are responsible for prosecuting offenses against the United States. 93 U.S. Attorneys serve as the nation's principal litigators under the direction of the Attorney General for 94 judicial districts. ^a Each U.S. Attorney is the chief federal law enforcement officer of the United States within his or her particular jurisdiction.
Defender Services program	Judiciary	The mission of the Defender Services program is to ensure that the right to counsel guaranteed by the Sixth Amendment, the Criminal Justice Act (18 U.S.C. § 3006A), and other congressional mandates is enforced on behalf of those who cannot afford to retain counsel and other necessary defense services. Accordingly, the Defenders Services program has the responsibility to represent defendants who are unable to financially retain counsel in federal criminal proceedings. ^b
U.S. Probation and Pretrial Services Office ^c	Judiciary	The U.S. Probation and Pretrial Services Office carries out probation and pretrial services functions in the U.S. district courts and serves as the community corrections arm of the federal judiciary.
Federal Judges	Judiciary	In federal district courts, generally, at an initial appearance, a judge who has reviewed arrest and post-arrest investigation reports advises the defendant of the charges filed, considers whether the defendant should be held in jail until trial, and determines whether there is probable cause to believe that an offense has been committed and that the defendant has committed it. Generally, if the defendant pleads guilty, the judge may impose a sentence, but more commonly will schedule a later hearing to determine the sentence. If the defendant pleads not guilty, generally the judge will schedule a trial. Generally, after trial, if a defendant is determined to be guilty, a judge determines the defendant's sentence. During sentencing, the court may consider U. S. Sentencing Commission guidelines, evidence produced at trial, and also relevant information provided by the pretrial services officer, the U.S. attorney, and the defense attorney.
Federal Bureau of Prisons (BOP)	Executive	BOP is responsible for the custody and care of federal inmates and offenders. It is also responsible for providing work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.

Source: GAO analysis of DOJ and federal judiciary information. | GAO-16-516

^aOne U.S. Attorney is assigned to each of the 94 judicial districts, with the exception of Guam and the Northern Mariana Islands where a single U.S. Attorney serves in both districts.

^bAccording to the Administrative Office of the U.S. Courts, the Criminal Justice Act (18 U.S.C. § 3006A, or CJA) provides representation to financially eligible criminal defendants through federal defender organizations (FDO) and CJA panel attorneys. There are two types of FDOs: federal public defender organizations and community defender organizations. Federal public defender organizations are federal entities, and their staffs are federal employees. Community defender organizations are non-profit defense counsel organizations incorporated under state laws which receive federal grants to fund their operations. CJA panel attorneys are qualified lawyers in private practice appointed by federal courts to represent financially eligible defendants in criminal cases, typically when an FDO is unable to represent the defendant. Panel attorneys provide representation in approximately 40 percent of all CJA cases.

^cU.S. Probation and Pretrial Services Offices are combined in some districts.

Federal Criminal Justice Process

Federal laws and guidelines determine what, if any, incarceration is appropriate for offenders. Prior to passage of the Sentencing Reform Act of 1984, federal judges generally had broad discretion in sentencing.¹⁰ Most criminal statutes provided only broad maximum terms of imprisonment. Federal law outlined the maximum sentence, federal judges imposed a sentence within a statutory range, and the federal parole official eventually determined the actual duration of incarceration. The Sentencing Reform Act of 1984 changed the federal sentencing structure by abolishing parole for federal offenders sentenced after its effective date, and subsequent legislation established mandatory minimum sentences for many federal offenses.¹¹

The Sentencing Reform Act of 1984 also established the independent USSC within the judicial branch and charged it with, among other things, developing federal sentencing guidelines.¹² The guidelines specify sentencing guideline ranges—a range of time (in months) that offenders should serve given the nature of their offense and other factors—but also permit sentences to depart upward or downward from guideline ranges because of aggravating or mitigating circumstances. In 2005, the Supreme Court found the Sentencing Guidelines, which had previously been binding for federal judges to follow in sentencing criminal defendants, to be advisory in nature.¹³ Regardless of the guidelines' advisory nature, judges are still required to calculate them properly and to consider the guideline ranges as well as the nature and circumstances of the offense, the defendant's history, and the need for deterrence, among other sentencing goals.¹⁴

However, sentencing and, if appropriate, incarceration, are two of multiple potential steps in the federal criminal justice process. There are also opportunities to use alternatives to incarceration for certain offenders throughout the process, as illustrated in figure 1.

¹⁰Pub. L. No. 98-473, 98 Stat. 1987.

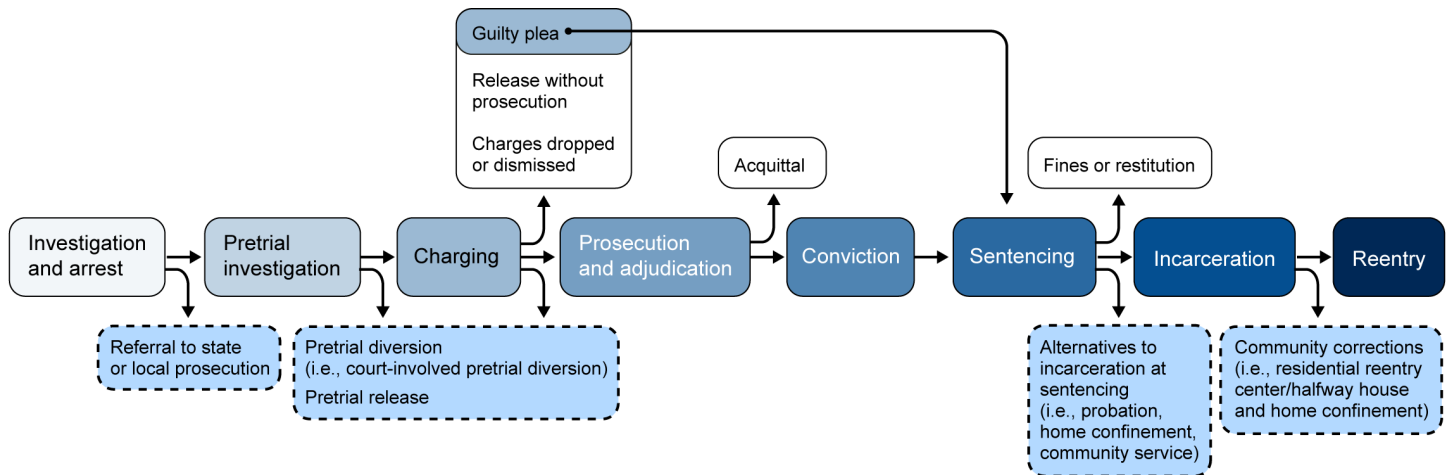
¹¹The act was effective for offenses committed on or after November 1, 1987.

¹²Pub. L. No. 98-473, § 217, 98 Stat. 1987, 2017.

¹³See *United States v. Booker*, 543 U.S. 220 (2005).

¹⁴18 U.S.C. § 3553(a).

Figure 1: Steps in the Federal Criminal Justice System Process with Alternatives to Incarceration



Source: GAO analysis of Department of Justice component roles and responsibilities. | GAO-16-516

Note: Alternatives to incarceration are shown in the bottom row. Except for the referral to state and local prosecutors, defendants can still be incarcerated federally after being provided these alternatives if they fail to meet the specific terms and conditions of the alternative.

As figure 1 shows, alternatives to incarceration are available at various steps in the federal criminal justice process from charging and prosecution through incarceration—the steps in the process included in the scope of our review. Multiple DOJ components, as well as the federal judiciary, have specific roles and responsibilities in providing these alternatives.¹⁵ Of the various incarceration alternatives that can be exercised at the charging and prosecution or at sentencing and incarceration stages, the use of court-involved pretrial diversion practices, specifically, can be exercised solely in those districts that have decided to adopt such practices.

Tables 2 and 3 provide details on the pretrial alternatives to incarceration and those available at sentencing and after incarceration, respectively, as well as the federal stakeholders or entities involved, and their role.

¹⁵We scoped our review to focus on alternatives available once the case is considered by the U.S. Attorney's Office; therefore, we did not review alternatives pre-arrest, or those used by law enforcement.

Table 2: Pretrial alternatives to incarceration in the federal criminal justice process and role of federal stakeholders

Alternative to Federal Incarceration	Stakeholder(s)	Role
Referral of case to state and local prosecutor	DOJ's United States Attorneys' Offices (USAOs)	Prosecutor may decide not to pursue federal charges against the offender, or instead refer to state or local prosecutors to prosecute. ^a
Title 9 Pretrial Diversion Program	USAOs; federal judiciary's U.S. Probation and Pretrial Services Office (PPSO)	Title 9 of the U.S. Attorneys' Manual permits USAOs to divert, at the discretion of the U.S. Attorney, certain federal offenders from prosecution into a program of supervision and services administered by the PPSO, an office of the federal judiciary. ^b The PPSO officer also conducts an investigation to determine suitability in the diversion program and supervise defendants accepted into the program. If the offender fulfills the terms of the program, the offender will not be prosecuted, or, if the offender has already been charged, the charges will be dismissed.
Pretrial Release	Federal judge; federal judiciary's PPSO; USAO; defense counsel	After arrest but before trial, federal defendants may be released, if appropriate. Generally, pretrial release is determined by a magistrate judge with input from the USAO, the offender's defense counsel, and PPSO officers. The PPSO officers complete an interview of the defendant, excluding illegal aliens, and prepare a written report to the court with an assessment of the defendant's risk of danger to the community and failure to appear. If release is recommended by the PPSO officer, appropriate conditions of supervision are identified.
Court-involved Pretrial Diversion Practices	PPSO; Federal Judges; USAOs; defense counsel	In addition to the Title 9 Pretrial Diversion Program, federal criminal justice stakeholders within some judicial districts have voluntarily established court-involved pretrial diversion practices. Court-involved pretrial diversion allows certain federal offenders the opportunity to participate in a pretrial diversion program of supervision and services, such as a drug court to address criminal behavior that may be linked to addiction to drugs or alcohol. Generally, participation is determined by the program judge, USAO, defenders, and PPSO. Program participants meet regularly with court officials including a judge and pretrial services officer to discuss their progress in the program. If the offender satisfies program requirements, the offender will not be prosecuted, charges may be dismissed, or the participant will receive a reduced sentence.

Source: GAO analysis of DOJ and federal judiciary documents. | GAO-16-516

^aThe U.S. Attorneys Manual states that federal prosecutors have wide discretion with respect to determining when, whom, how, and even whether to prosecute for apparent violations of Federal criminal law.

^bUnited States Attorneys' Manual Section 9-22.100.

Table 3: Alternatives at Sentencing and Incarceration in the Federal Criminal Justice Process and Role of Federal Stakeholders

Alternative to Federal Incarceration	Stakeholder(s)	Role
Alternative sentences	Federal judge; federal judiciary’s U.S. Probation and Pretrial Services Office (PPSO); federal defenders; United States Attorneys’ Offices (USAO); and DOJ’s Bureau of Prisons (BOP)	Under the Federal Sentencing Guidelines—which are advisory—judges may consider the use of alternatives to incarceration, if appropriate. These alternatives include: (1) probation, under which the defendant is supervised by the PPSO; (2) intermittent confinement, in which the defendant remains in the custody of BOP during nights, weekends, or other intervals of time; ^a (3) home confinement, in which the defendant is subject to confinement and supervision that restricts him or her to his or her place of residence, except for authorized absences, under surveillance by the PPSO; ^b (4) community confinement, in which the defendant resides in a community facility, such as a treatment center or halfway house, and participates in facility-approved programming, such as employment or employment search efforts, during non-residential hours; and (5) community service. ^c
Residential Reentry Centers (RRC, also known as a halfway house)	BOP; PPSO	Toward the end of inmates’ periods of incarceration, BOP may place inmates in RRCs, in which inmates are housed outside a prison environment prior to their release in the community; authorized to leave for approved activities, such as work; monitored 24 hours a day, such as through sign-out procedures; required to work or be actively seeking work; and required to pay a percentage of their salaries as a subsistence fee to cover some of their expenses at the RRC. According to Administrative Office of the U.S. Courts officials, PPSO officers may also recommend the use of RRCs as a temporary sanction for offenders that have violated their supervision conditions and recommend to the judge that the offenders be placed in the RRC for a period of time rather than back in prison.
Home confinement, including the Federal Location Monitoring (FLM) Program	BOP; federal judiciary’s PPSO	BOP may also place inmates in home confinement toward the end of their sentences, whereby inmates serve a portion of their sentences while residing at their homes. The inmates are required to remain in their homes when not involved in approved activities, such as employment, and are supervised and monitored, such as through curfews, random staff visits, or electronic monitoring. RRC staff may provide the supervision or, through an interagency agreement, BOP and the PPSO established the FLM Program, through which PPSO officers provide supervision for BOP inmates on home confinement under certain conditions. Among other things, inmates ordinarily must be classified as minimum security level; seek and maintain employment; and pay for all or part of the costs of the FLM program.

Source: GAO analysis of DOJ and federal judiciary documents. | GAO-16-516

^aAccording to the Sentencing Guidelines, intermittent confinement may be imposed as a condition of probation during the first year of probation. See 18 U.S.C. § 3563(b)(10).

^bThe defendant is required to be in his place of residence at all times except for approved absences for gainful employment, community service, religious services, medical care, educational or training programs, and such other times as may be specifically authorized.

^cAccording to the Sentencing Guidelines, judges are generally not to impose community service requirements in excess of 400 hours as longer terms of community service can impose heavy administrative burdens relating to the selection of suitable placements and the monitoring of attendance.

Overview of BOP's Population and Institutions

BOP is responsible for the custody and care of federal inmates. According to BOP data, eighty-one percent of these inmates are confined in BOP-operated correctional institutions or detention centers. The remainder are confined in secure privately managed or community-based facilities, local jails or in home confinement.¹⁶ BOP itself houses inmates in its 122 federal institutions and about 180 RRCs. The institutions operate at different security-level designations—minimum, low, medium, and high for institutions housing male inmates, and minimum, low, and high for institutions housing female inmates.¹⁷ Of BOP's 122 facilities, 39 are minimum and low-security institutions. The security-level designation of a facility depends on the level of security and staff supervision that the institution is able to provide, such as the presence of security towers; perimeter barriers; the type of inmate housing, including dormitory, cubicle, or cell-type housing; and inmate-to-staff ratio. Additionally, BOP designates some of its institutions as administrative facilities, which house male and female inmates and specifically serve inmates awaiting trial, those with intensive medical or mental health conditions, or those who are deemed extremely dangerous, violent, or escape-prone, regardless of the level of supervision these inmates require.

Table 4 depicts the number and percentage of inmates in the custody of BOP, by security level of the institution, as of February 27, 2016. As table 4 shows, more than half of BOP's inmates are incarcerated in low and medium security institutions.

¹⁶According to BOP officials, privately operated secure contract facilities are low security and primarily house non-U.S. citizens convicted of crimes while in this country legally or illegally. According to BOP data, as of September 2014, non-U.S. citizens represent 41.2 percent of the total low security inmate population and none of the minimum security inmate population. For the purposes of this review, we did not include non-U.S. citizen inmates in our scope because they are not eligible for incarceration alternatives due to their status as non-U.S. citizens.

¹⁷According to BOP's fiscal year 2017 congressional budget justification, BOP notes that based on research, female offenders generally do not require the same degree of security as male offenders; therefore, a modified classification system is used for female inmates.

Table 4: Number and Percentage of Inmates in the Custody of Bureau of Prisons (BOP), by Institutional Security Level, as of February 27, 2016

Institutional Security Level	Number of Inmates Incarcerated	Percentage of Inmates Incarcerated
Minimum	32,839	16.8
Low	74,078	38.0
Medium	58,372	29.9
High	23,100	11.8
Unclassified ^a	6,790	3.5
Total^b	195,179	100

Source: GAO analysis of Federal BOP data. | GAO-16-516

^aInmates that have not yet been assigned a security level are considered "Unclassified."

^bTotal inmates include those incarcerated in BOP institutions, privately-managed facilities, and other facilities such as local jails.

Selected Stakeholders Reported Considering a Number of Factors When Using Alternatives at or before Sentencing, but DOJ Does Not Track the Use of Some Alternatives

Selected Stakeholders Reported Considering Presence of Violence and Offender’s Role in the Crime, Among Other Factors, When Determining Use of Alternatives to Incarceration

DOJ and court officials we interviewed told us they consider various factors when deciding whether to use an alternative to incarceration for certain federal offenders in the early stages of the federal criminal justice process. Across all the alternatives available at or before sentencing, the 63 federal stakeholders in the 11 selected districts with whom we spoke (11 federal prosecutors, 25 judges, 12 defense counsel, and officials in 15 PPSOs) most commonly reported that they considered whether the crime involved any acts of violence and the offender’s role in the crime. These stakeholders reported that such alternatives are generally targeted to non-violent, low-level offenders.¹⁸ These stakeholders also reported that other factors, such as the nature of the crime, offender’s criminal history, and mental health or drug abuse issues influenced their decisions, but the extent to which these specific factors were considered varied by the type of alternative under consideration.¹⁹ Table 5 below and the discussion that follows identify and describe the most commonly considered factors among the federal stakeholders we interviewed, by type of alternative.

¹⁸In some districts, U.S. Probation and Pretrial Services Offices are combined. For example, these services are combined in some of our selected districts such as the Northern District of Georgia and Southern District of Iowa. For the purposes of this review, we counted each meeting we held with U.S. Probation and Pretrial Services Offices officials. Also, examples of low-level offenses may include offenses outside of United States Attorneys’ district-specific priorities or below thresholds established for specific offenses such as fraud-related offenses under a certain amount and drug offenses which do not involve violence, firearms, or large scale trafficking conspiracies.

¹⁹To obtain perspectives on the types of factors considered when deciding whether to use an alternative to incarceration before or at sentencing, we selected a limited number of judicial districts to represent two different groups of judicial districts—those that use court-involved pretrial diversion alternatives and those that do not.

Table 5: Examples of Factors Stakeholders Reported Considering When Determining Use of Alternatives to Incarceration at or Before Sentencing

Factor Cited	Case Referral to State and Local Prosecutors	Pretrial Release	Title 9 Pretrial Diversion	Court-Involved Pretrial Diversion	Sentencing Alternatives ^a
Nature or seriousness of the crime committed	Y	Y	Y	Y	Y
Non-violent, low-level offender	Y	Y	Y	Y	N
Offender has drug abuse or mental health issues	N	Y	N	Y	Y
Offender's criminal history	N	Y	Y	N	Y
Offender's family and community ties	N	Y	N	N	Y
Offender's education level or employment status	N	Y	N	N	Y
Time and resources required to prosecute low-level, non-violent cases	Y	N	N	Y	N
Recommendations or information from other stakeholders (ex. Probation and Pretrial Service Officers, United States Attorneys, or federal defenders)	N	Y	N	N	Y
Offender's past conduct while on supervised release	N	Y	N	N	N
Availability of court-involved diversion practice	N	N	Y	N	N
Federal Sentencing Guidelines	N	N	N	N	Y
Professional judgment	N	N	N	N	Y

Legend: Y = Yes; N = No

Source: GAO analysis of information provided by United States Attorney Offices, federal defenders and associated criminal justice panel attorneys, and federal judiciary branch officials in selected federal judicial districts. | GAO-16-516

Note: Factors listed are not exhaustive and reflect responses provided by stakeholders. In obtaining this information, we did not explicitly ask about specifically defined factors but rather asked stakeholders to generally describe the factors they consider when choosing to use an alternative for an offender. Consequently, stakeholders may also potentially consider other factors not identified.

^aFor this analysis, we specifically asked district judges about factors they consider when using probation. However, other sentencing alternatives include community service, community confinement, home confinement, and intermittent confinement.

Case referral to state and local prosecutors: Eleven federal prosecutors in 11 districts with whom we spoke reported that they consider the seriousness of the offense, as federal prosecution is typically reserved for cases that are considered higher level or more serious cases, such as those involving drug cartels, racketeering, and conspiracy. Prosecutorial guidelines establish the thresholds for prosecution which are set at the district level; therefore, thresholds may vary from district to district. Some prosecutors also reported considering the amount of time and resources that would have been required to prosecute these low-level, nonviolent cases. For example, four federal prosecutors noted that

the amount of time used to prepare for a trial can be time-consuming, so referrals to state prosecutors can help reserve resources for the higher level or more serious cases.

Pretrial Release: The 12 magistrate judges with whom we spoke most frequently reported considering the nature of the crime when considering whether to release an offender before trial. Magistrate judges also frequently reported factors such as offender's criminal history (11 of 12), supporting ties of family and community (11 of 12), past conduct while on supervised release, such as probation (11 of 12), offender's employment status (10 of 12), and offender's drug addiction or abuse and mental health issues (9 of 12). For example, 2 of these 9 judges indicated that if the offender has a drug or mental health problem, they consider alternatives such as a drug or mental health treatment program instead of incarceration, or they establish conditions such that the offender is regularly tested for drugs or counseling while on pretrial release. Some magistrate judges (6 of 12) also stated they rely on recommendations from the PPSO officer in making their decision related to pretrial release. For example, 4 magistrate judges with whom we spoke stated that they rely heavily on these recommendations when deciding to release or detain an offender because the PPSO officer generally conducts a thorough pretrial investigation of the offender. Three magistrate judges also reported using information provided by others, such as the USAO or federal defenders, on the nature and severity of the crime or any extenuating circumstances, such as mental illness or drug addiction, in their decisions.

Title 9 Pretrial Diversion Program: Ten of the 11 federal prosecutors with whom we spoke—who have discretion over whether to use Title 9 pretrial diversion for offenders—noted that they most frequently consider the offender's criminal history and the nature or seriousness of the offense. In particular, they reported that, generally, the program is used for first-time offenders and offenders who have committed low-level, nonviolent offenses or white collar crimes such as Social Security or mail fraud. In districts that have other alternatives, such as court-involved pretrial diversion practices, 2 of the 6 prosecutors we interviewed stated that they prefer to use these other alternatives because they provide more intensive services and supervision compared to Title 9 Pretrial Diversion. For example, a prosecutor with whom we spoke indicated that Title 9 Pretrial Diversion is not widely used because the court-involved practice provides more rigorous supervision such as weekly contacts with offenders.

What is a court-involved pretrial diversion practice?

In addition to Title 9 Pretrial Diversion, federal criminal justice stakeholders within some judicial districts have voluntarily established court-involved pretrial diversion practices or specialty courts that handle specific offender populations such as veterans, or those with specific problems such as substance abuse or mental health issues that appear to be the root cause of their criminal activity.

Unlike traditional diversion, court-involved pretrial diversion practices vary in structure and do not uniformly result in the avoidance of a federal conviction upon successful completion. While some provide for a full dismissal of charges, others may provide for a sentence of probation or little to no incarceration. Also, unlike Title 9 Pretrial Diversion, courts are primary actors in these practices and must participate in their creation.

Source: GAO analysis of Department of Justice information. | GAO-16-516

Court-Involved Pretrial Diversion Practices: As described earlier, to obtain perspectives on court-involved pretrial diversion practices, we spoke with stakeholders in 6 districts that use such practices, and 5 districts that do not. Within the 6 selected districts that use court-involved pretrial diversion practices, the 13 judges, 6 prosecutors, 6 defense counsel, and officials in 9 PPSOs with whom we spoke identified a number of factors that led their districts to adopt such practices. Most frequently, they reported that three particular factors influenced their decision to adopt such alternatives. First, they reported that an awareness of effective state-level pretrial alternative programs influenced their decision. For example, 5 judicial branch officials (3 judges, 1 federal defender, and 1 PPSO officer) with whom we spoke in 3 of the 6 districts explained that their awareness of state-level pretrial diversion programs helped them understand how to replicate a similar program at the federal level. Further, 4 of the stakeholders with whom we spoke in 2 districts indicated that some federal judges who were former state judges involved in state pretrial diversion programs brought their past experience to the federal judicial system. Second, 11 stakeholders representing a mix of judges, federal defenders, PPSO, and USAO staff with whom we spoke in 5 of the 6 districts indicated there is a perception that offenders may commit crimes as a result of addiction to drugs, and that if the addiction were addressed, they would be unlikely to continue to commit crimes. For instance, among the judges with whom we spoke in the 6 districts, 3 indicated that many of the offenders they see in court have a substance abuse problem, which is generally linked to the crimes they commit. Given this, these judges explained that they believe that incarcerating these offenders would probably not resolve that problem. Third, 3 defenders and 3 prosecutors with whom we spoke identified a perception that continuing to prosecute and incarcerate low-level, nonviolent repeat offenders drains limited federal resources as a factor influencing their decision to establish a pretrial diversion program. These stakeholders explained that trial preparation for such prosecutions can be time-consuming and costly. Five of these 6 stakeholders noted that court-involved pretrial diversion practices can be mutually beneficial to the offender and the district by providing an opportunity for the offender to get help to change their lives for the better while helping the district to focus resources on the most serious crimes.

While stakeholders in our 6 selected districts that use court-involved pretrial diversion practices identified common reasons for adopting such practices, we found that the factors stakeholders in these districts consider when determining whether to use this alternative for a given offender may vary depending on the specific criteria and design of the

respective practices. For example, in the Western District of Washington, stakeholders reported that they consider factors including whether the offender's criminal behavior is motivated by substance abuse issues, whether the offender is a resident of the district, and the number of prior felony convictions they have had, but admission to the program is not limited to a specific type of crime.²⁰ In contrast, stakeholders in the Southern District of California reported that they consider similar factors but their program is specifically targeted to young offenders charged with alien smuggling and drug trafficking offenses.

Within the 5 districts that have not adopted court-involved pretrial diversion programs, 3 judges, 2 prosecutors, 3 defense counsel, and officials in 2 PPSOs with whom we spoke most frequently identified a lack of interest or need for such programs as reasons why their districts have not adopted them. Some stakeholders also reported not having eligible or qualified offenders (5 prosecutors and 2 judges), a lack of resources to operate such programs (2 judges, 1 PPSO, and 2 prosecutors), or having other alternative programs available (2 prosecutors and 2 defenders). For example, stakeholders in all 5 districts explained that they do not have enough low-level, nonviolent offenders who would qualify for a court-involved pretrial diversion program to make operating a program worthwhile. Furthermore, according to 5 prosecutors and 2 judges we met with in these districts, their districts' prosecutorial priorities focus on higher level offenders who would not qualify for this type of program. Additionally, 2 judges, 2 prosecutors, and 1 PPSO officer in 4 districts cited a lack of resources to operate a court-involved pretrial diversion program as current caseloads are already extensive.

Sentencing Alternatives: For those offenders who do not go through a pretrial diversion program and are instead convicted through the normal criminal justice process, district judges may hand down sentences that involve incarceration or alternatives to incarceration, such as probation. When asked about what factors they consider when determining sentencing for an offender, 8 of 13 district judges we spoke with in our selected districts stated that they consider the federal sentencing

²⁰The program is open to offenders that have committed any offense except possession of a firearm during the commission of the alleged offense, felon in possession, sexual offenses or history thereof, or a serious violent offense or history thereof.

guidelines in their decisions.²¹ The sentencing guidelines generally take into account the seriousness of the offense and the offender's criminal history, however, because the guidelines are advisory, 6 of 13 judges noted they may choose to deviate from the guidelines and instead consider other options for sentencing, such as probation. Other common factors the judges reported considering included the offender's personal situation, such as family and community ties (8 of 13 judges), whether the offender had a drug addiction problem (7 of 13 judges), education level and employment status (6 of 13 judges); and the recommendation from PPSO officers (6 of 13 judges).

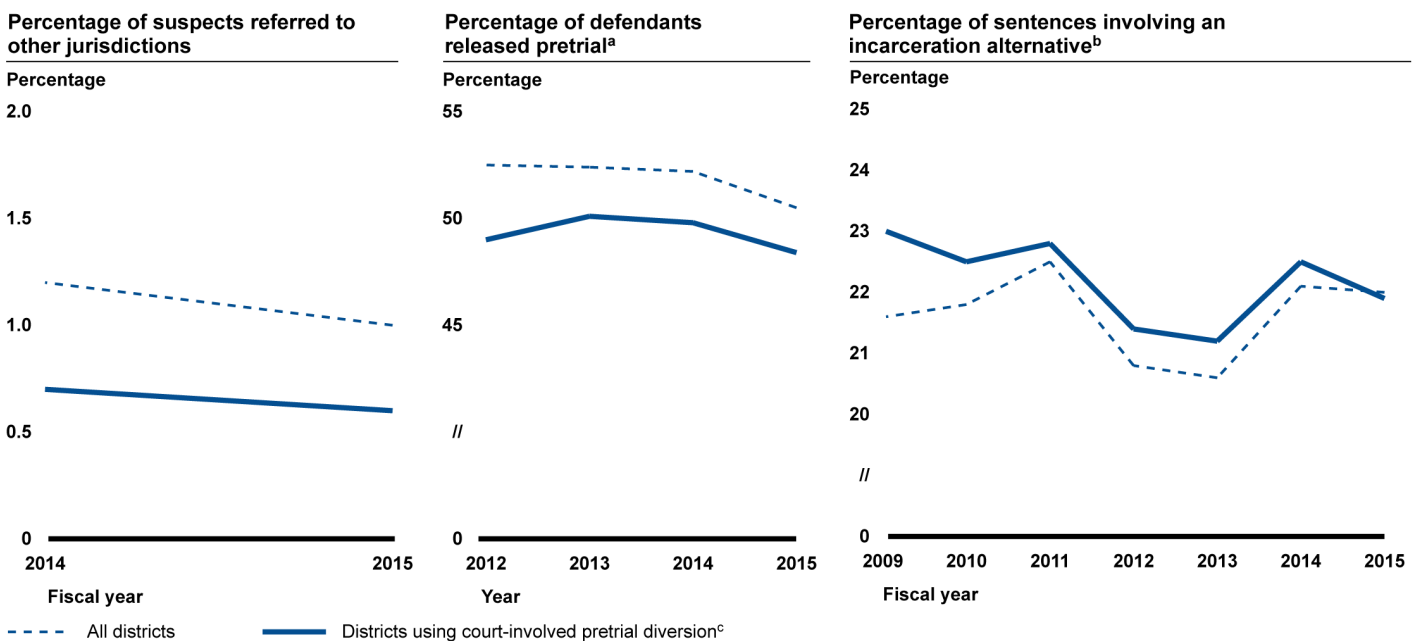
The judges also reported that the manner in which they consider these factors are very case specific and individualized. For example, of the 8 judges that consider family support as a factor in deciding whether to use a sentencing alternative, 3 explained that if the offender has strong family ties, probation would probably be a better sentence than incarceration so that the offender could get the needed support from family. Additionally, when asked a general question about what factors they consider when deciding on a sentence for an offender, 7 district judges explained that they base decisions of whether to sentence offenders to incarceration alternatives on their professional judgment regarding whether the offenders seem receptive to changing their criminal ways and working toward a better life without crime. For example, one district judge explained that he considers whether imposing a minimum of 12 months of incarceration will help to rehabilitate or deter an offender from committing future crimes as compared to offering them greater leniency through an alternative, such as probation.

²¹The federal sentencing guidelines provide judges with a set of consistent sentencing ranges to consult when determining a sentence. The other 5 judges did not report that they did not consider the guidelines; rather, we asked judges to identify the factors they consider, and 8 of these judges specifically named the sentencing guidelines, while the other 5 did not specifically identify the guidelines in the discussion.

Use of Alternatives to Incarceration has Largely Remained Consistent, but DOJ Lacks Reliable Data on the Use of Pretrial Diversion

As figure 2 shows, based on data from AOUSC, DOJ, and the USSC on the use of alternatives to incarceration at or before sentencing, the overall use of these alternatives nationally and across the subset of districts that have adopted court-involved pretrial diversion practices has been largely consistent during the respective time periods for which they are available—from fiscal years 2009 to fiscal years 2015 for alternatives at sentencing; from fiscal years 2012 to 2015 for pretrial release; and from fiscal years 2014 to 2015 for referrals to another jurisdiction.

Figure 2: Rates of Use of Alternatives to Incarceration within Federal Criminal Justice System before Trial and at Sentencing



Source (left to right): GAO analysis of Department of Justice data; GAO analysis of Administrative Office of the U.S. Courts data; GAO analysis of U.S. Sentencing Commission data . | GAO-16-516

Notes: According to Executive Office for U.S. Attorneys officials, due to a change in coding processes, comparable data on referrals to another jurisdiction from fiscal years 2009 through 2013 is not available. According to Administrative Office of the U.S. Court officials, pretrial release data for years prior to 2012 are not available.

^aData excludes illegal alien cases.

^bThese values reflect the percentage of all cases in which an offender's sentence included one or more alternative to incarceration (i.e., home confinement, community confinement, probation, or community service).

^cThe districts that have adopted court-involved pretrial diversion practices include the following: Central District of California, Eastern District of California, Southern District of California, Central District of Illinois, District of Massachusetts, Eastern District of New York, District of Arizona, District of Connecticut, District of New Hampshire, District of Oregon, District of South Carolina, Eastern District of Missouri, District of Utah, Southern District of Ohio, Western District of Texas, Western District of Virginia, and the Western District of Washington.

However, in performing our analysis of the data on the use of alternatives over time, we found that DOJ's data on pretrial diversions were unreliable for two reasons. First, DOJ's pretrial diversion data do not distinguish between Title 9 pretrial diversions and diversions that were the result of a court-involved pretrial diversion practice. As previously described, Title 9 pretrial diversions are at the discretion of the U.S. Attorney, divert offenders from prosecution into a program of supervision by the PPSO, and, if successful completed, can result in the offender not being prosecuted or a dismissal of charges. Court-involved diversion practices involve additional stakeholders—including federal judges and defense counsel—with participation generally determined by all stakeholders. Unlike Title 9 pretrial diversions, participants in court-involved diversions generally meet regularly with court officials to discuss progress. Moreover, if successful, participants in court-involved diversions may avoid prosecution or have charges dismissed, like those in Title 9 pretrial diversion, but may also receive a reduced sentence. Therefore, given the differences between these types of diversion in terms of the stakeholders involved, the level of supervision provided to offenders, and the outcomes successful completion can lead to, they are each unique types of diversion. Given DOJ's current data entry process, however, while DOJ has data on the counts of cases that were diverted pretrial overall, DOJ cannot determine whether the diversions were through Title 9 pretrial diversion or a court-involved pretrial diversion practice.

According to EOUSA officials, DOJ lacks detailed data on the type of pretrial diversion used because DOJ's data entry processes do not allow for USAO staff to make entries according to the type of pretrial diversion used. According to EOUSA officials, the Legal Information Office Network System (LIONS)—EOUSA's case management system—is set up so that only a single disposition code can be used by USAO staff when entering a diversion case into the system. Consequently, both Title 9 pretrial diversion cases and cases that have been diverted through court-involved pretrial diversion programs are recorded simply as pretrial diversion. EOUSA officials stated that given the volume of complex data that is already required to be entered into the system for any given case, it can be difficult to add new codes into the data entry process and ensure they are being entered correctly and consistently across all districts where the data is being entered. However, while the officials noted that they recognized the need to revise the system to improve the data and make it more specific and useful they did not identify any specific actions or plans to do so.

Second, DOJ's pretrial diversion data has limited reliability due to potential variability as to when and whether the pretrial diversion code is entered into LIONS by a USAO. According to EOUSA officials, while DOJ has established some coding policies for pretrial diversion in LIONS, it has not provided specific guidance as to when in the process USAOs are to enter the cases under the pretrial diversion disposition code. Therefore, this could result in inconsistent and unreliable data on the use of pretrial diversion. For example, according to officials, some USAOs may enter the pretrial diversion code into the system for a case when the offender enters into a diversion program, while other USAOs may wait until the offender has completed the program. The officials noted that there may not be a record of all instances in which an offender enters a pretrial diversion program, but does not successfully complete it. For instance, if an offender does not successfully complete the pretrial diversion program and the USAO subsequently files charges against the offender, the USAO may solely enter the charges filed against the offender in LIONS, but never indicate that the offender first entered a pretrial diversion program, but then did not successfully complete it. As a result, EOUSA's data may not consistently capture the total number of instances in which such diversion is offered. EOUSA officials stated that they have not provided specific guidance on when to enter pretrial diversion codes in LIONS because of the relatively small number of diversion cases relative to the total cases handled by USAOs that would require such coding and to mitigate the likelihood of further complicating the data entry process for USAO staff. However, EOUSA officials recognized the potential value in being able to comprehensively track the data to help it determine what types of pretrial diversion are being used and in what districts.

One of the key principles of the Smart on Crime Initiative is for DOJ to pursue alternatives to incarceration for low-level, nonviolent offenders, and DOJ has specifically recommended the use of court-involved pretrial diversion practices as a means of putting this principle into action. According to Standards for Internal Controls in the Federal Government, management should ensure that events are being recorded in an accurate and timely manner.²² Further, the standards also state that information should be recorded and communicated in a form and within a time frame that enables them to carry out their responsibilities. In addition, the recently updated standards that went into effect at the start

²²[GAO/AIMD-00-21.3.1.](#)

of this fiscal year further clarify that agency management should use quality information to achieve the entity's objectives, which can include obtaining relevant data from reliable sources that are reasonable, free from error and bias, and faithfully represent what they purport to represent.²³ The updated standards also state that management should process the data into quality information, and use the information to make informed decisions and evaluate the entity's performance in achieving key objectives.

By taking steps to revise its case management system to separately track the use of Title 9 diversion and court-involved pretrial diversion programs, and issuing guidance to USAOs as to how and when to use them—for instance, when the offender enters the program, completes the program, or both—DOJ would have more reliable and complete data to determine what types of pretrial diversion are being used, in what districts, how frequently, and how successfully. In turn, DOJ would also be better positioned to revise its guidance and direction, as necessary, to USAOs on how they might use pretrial diversion alternatives to more effectively support the Smart on Crime initiative.

²³GAO, Standards for Internal Control in the Federal Government, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014). GAO recently revised and reissued its Standards for Internal Control in the Federal Government. These updated standards became effective October 1, 2015. Because these standards were not in effect for the specific time period of our analysis, we used the updated standards as context for the type of data and information to include as part of an effective internal control system in the future, not as criteria to evaluate the current controls.

**BOP Considers
Statutory
Requirements and
Inmate Risk Levels
when Deciding
Whether to Use
Incarceration
Alternatives and Has
Increased Use of
Such Alternatives for
Minimum and Low
Security Inmates**

**BOP Guidance and Policy
Identifies Key Statutory
Requirements and Risk
Levels when Deciding
Whether to Place Inmates
into Incarceration
Alternatives**

According to BOP officials, when placing inmates into incarceration alternatives they consider factors that are in accordance with BOP policy and guidance which also provides for the overall process for identifying and placing eligible and appropriate inmates into the incarceration alternatives of RRCs and home confinement. In particular, according to this policy and guidance, the eligibility requirements for an inmate's placement into the alternatives have been set by the Second Chance Act of 2007.²⁴ Moreover, according to BOP guidance, in addition to considering the basic eligibility requirements, BOP staff must consider the appropriateness of placing inmates into RRCs and home confinement as well as evaluate each inmate for their individual reentry needs, risk for

²⁴The Second Chance Act of 2007, Pub. L. No. 110-199, § 251(a), 122 Stat. 657, 692-93, amended 18 U.S.C. § 3624(c) to enable BOP to place inmates in community corrections for up to 12 months (previously limited not to exceed 6 months, or 10 percent of an inmate's sentence), and home confinement for the shorter of 10 percent of the term of imprisonment or 6 months. The statute does not guarantee an inmate a 1-year RRC placement or placement in home detention for any portion of the inmate's sentence, but directs BOP to consider placing an inmate in a RRC for up to the final 12 months of the sentence, and to consider using home detention as part of an inmate's reintegration into the community.

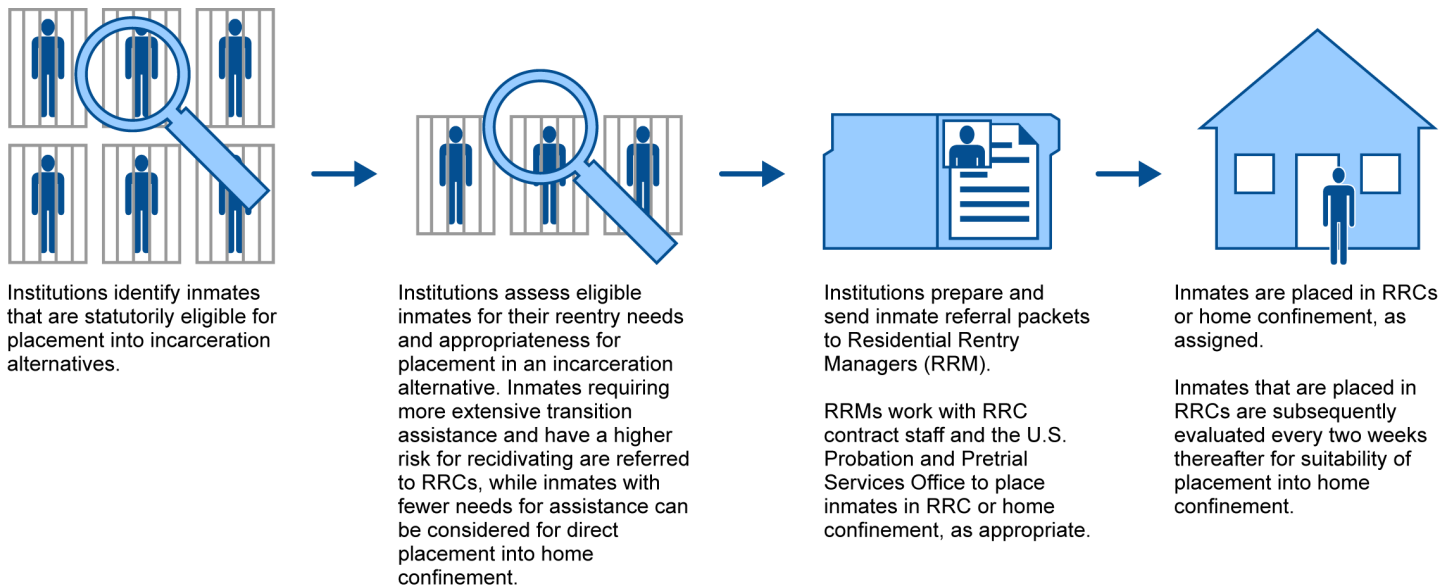
recidivism, and risks posed to the community for placing them in RRCs or home confinement. For example, BOP guidance states that research has shown inmates with low reentry needs and a low risk of recidivating do not benefit from placement in a RRC and could become more likely to recidivate than if they were not placed.²⁵ Therefore, according to BOP guidance, home confinement is BOP's preferred option for inmates with low needs and of low risk.²⁶

BOP's policy and guidance lays out a multistep process for placing inmates into the alternatives once eligible inmates are identified. A variety of BOP and other officials are involved in the process such as BOP officials at the institution, Residential Reentry Managers (RRMs), contract staff at RRCs, and PPSO officials, depending on the type of alternative being considered. Figure 3 summarizes BOP's process for placing inmates into RRCs and home confinement.

²⁵BOP's primary risk prediction instrument for identifying the risk levels for inmates, among other things, considers the inmate's criminal history, the severity of their offense, age, education levels, history of escape attempts, living skills, family and community ties, and public safety factors such as whether the inmate is a sex offender or deportable alien. In addition to the risk assessment, as part of their evaluation to determine if an inmate is appropriate for placement, BOP guidance states that officials are also to consider the inmates' skill development plan, which is a tool that can be used to identify skill deficits that may contribute to recidivism.

²⁶For placement in home confinement, BOP guidance lays out additional requirements inmates must meet. For example, according to BOP guidance, the basic criteria for placement in home confinement includes: the inmate having an appropriate release residence (e.g., positive environment free from criminal/drug use activity and a reasonable distance from the RRC, typically less than 100 miles); no recent major disciplinary issues; and medical or mental health needs of the inmate can be met in the community and funded by the inmate or other resources. For placement directly into home confinement, BOP guidance states that additional factors to be considered include: a lack of public safety factors, excellent institutional adjustment, a stable residence with a supportive family, confirmed employment (if employable), and little or no need for the services of an RRC.

Figure 3: Bureau of Prisons' Process for Placing Inmates into Residential Reentry Centers (RRC) and Home Confinement



Source: GAO analysis of BOP data. | GAO-16-516

BOP officials and RRC contractors with whom we spoke reported that they consider factors identified in BOP policy and guidance when attempting to place inmates into incarceration alternatives. In addition to the eligibility and appropriateness of an inmate for placement in an alternative, staff with 3 of the 4 BOP institutions and three of the four RRM offices we spoke with stated that they take into account factors such as whether the inmate has committed a sexual offense because they must consider whether the locality of the RRC the inmate may be placed in has any zoning restrictions that prohibit sex offenders from locating there. Officials at 3 BOP institutions and two RRM offices we spoke with also mentioned that they consider whether an inmate has any medical issues that may be difficult to manage in an RRC environment. Staff at all four RRM offices we spoke with indicated that another key factor they consider when placing an inmate into an RRC is the availability of bedspace within their desired placement area. Officials at three of the four contracted RRCs we met with indicated that when reviewing referrals for possible placement they also pay attention to public safety factors such as whether the inmate is a sexual offender, a member of a gang, or might otherwise pose a threat to RRC staff in general.

In addition to placing home confinement eligible and appropriate inmates with contracted RRCs for monitoring, BOP's process also allows RRMs

the option to refer inmates into home confinement through a joint BOP - PPSO program known as the Federal Location Monitoring (FLM) Program. If accepted into the program by PPSO, the inmate is supervised by a PPSO officer instead of RRC staff while on home confinement. PPSO officials in six of the nine districts among our selected districts that were participating in the FLM program stated that they considered factors such as the inmate's potential risks for public safety, such as whether the inmate is a sex offender, as well whether the inmate's proposed living arrangement met program requirements when determining whether to accept the inmates into the program.²⁷

BOP Use of Incarceration Alternatives for Inmates Increased Overall from Fiscal Years 2009 through 2015, Particularly in Home Confinement for Minimum and Low Security Inmates

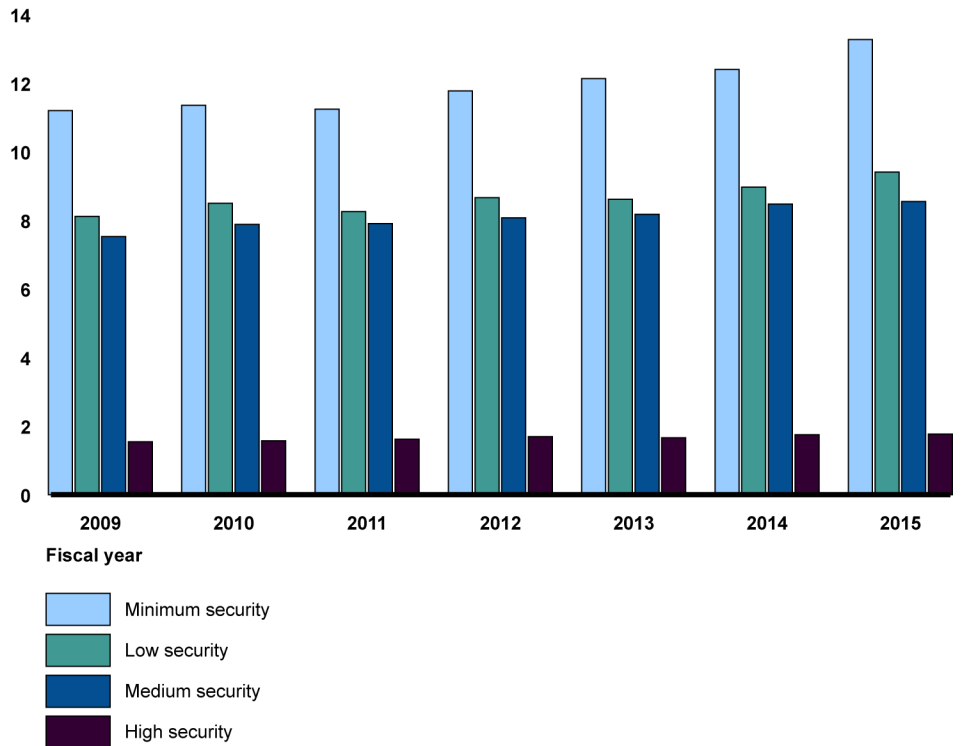
From fiscal years 2009 through 2015, BOP increasingly placed inmates into RRCs and home confinement, with inmates designated as minimum and low security making up the two largest groups of inmates in RRCs and home confinement.²⁸ According to BOP data, the total number of inmates placed into RRCs or home confinement during this period increased by about 16 percent from about 28,400 in fiscal year 2009 to almost 33,000 in fiscal year 2015. As figure 4 illustrates, relative to inmates of other security levels, minimum security inmates represented the largest numbers of inmates being placed in RRCs and home confinement overall with low security inmates representing the second largest inmate group.

²⁷According to the FLM interagency agreement between BOP and the Administrative Office of the U.S. Courts, of which the PPSO is a component, participants selected for the program are to ordinarily be classified as minimum security level and not have any public safety factors such as being a sex offender, a threat to government officials, or having participated in a prison disturbance, among other factors.

²⁸Eligible inmates may also refuse to be placed in an alternative. According to BOP prison officials we spoke with, some inmates refuse placement, especially for placements in RRCs, because they feel that the placement would not be beneficial for them or they have concerns about living with inmates of higher security levels at the RRC, among other reasons.

Figure 4: Number of Bureau of Prisons Inmates Placed in Incarceration Alternatives, by Security Level, Fiscal Years 2009 through 2015

Inmates (in thousands)



Source: GAO analysis of Bureau of Prisons data. | GAO-16-516

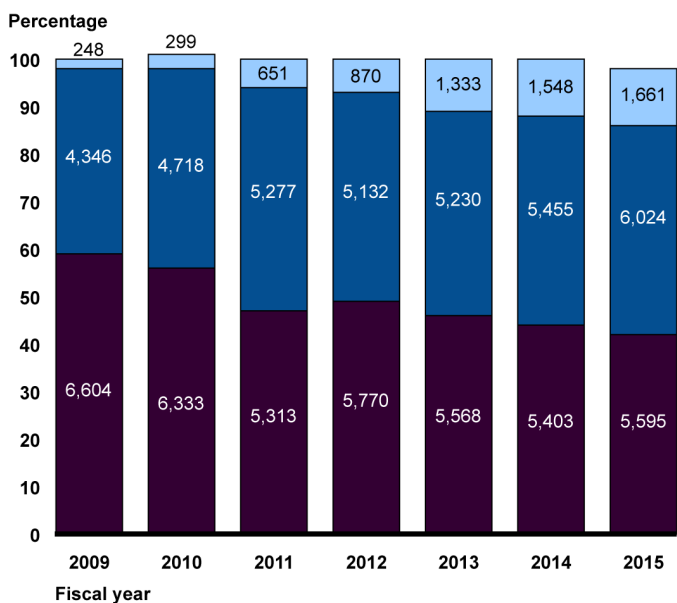
Note: Data shown includes both male and female inmates at the minimum, low, and high security levels. BOP does not place female inmates into the medium security level.

During the seven year period of our analysis, BOP significantly increased its use of home confinement among low and, especially, minimum security inmates. For instance, the placement of inmates into home confinement overall, either directly or subsequent to being in an RRC, increased by 67 percent—from 4,594 to 7,675—for minimum security inmates and 58 percent—from 2,060 to 3,247—for low security inmates from fiscal years 2009 through 2015. Relative to the increased use of home confinement, placement of minimum and low security inmates into RRCs grew more slowly or declined slightly. For example, in fiscal year 2009, 98 percent of minimum security inmates were placed in RRCs at some point, whereas by fiscal year 2015, the percentage had declined to 87 percent. Although the total number of low security inmates placed in an RRC at some point increased from about 8,000 in fiscal year 2009 to

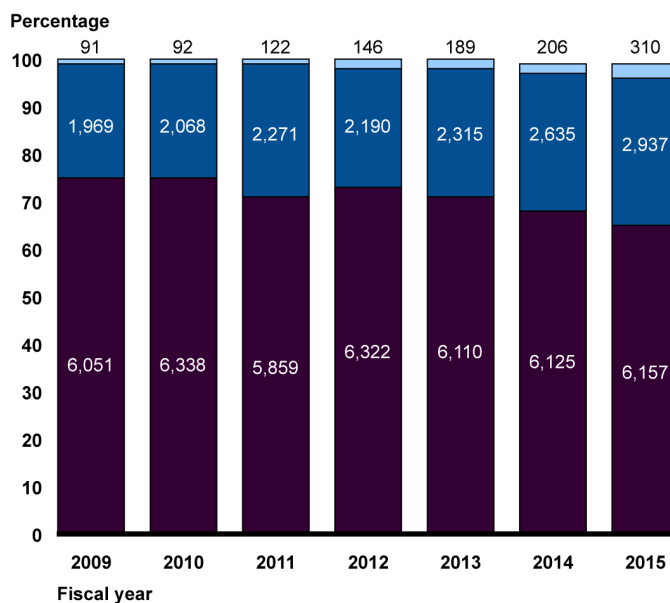
almost 9,100 in fiscal year 2015, the percentage overall of low security inmates placed into RRCs declined from 99 percent in fiscal year 2009 to 97 percent in fiscal year 2015. Figure 5 illustrates the relative changes in the use of RRCs and home confinement among minimum and low security inmates from fiscal years 2009 through 2015.

Figure 5: Types of Incarceration Alternatives Used for Bureau of Prisons' Minimum and Low Security Inmates, by percent, Fiscal Years 2009 through 2015

Minimum security inmates



Low security inmates



Direct home confinement
 Residential reentry center then home confinement
 Residential reentry center

Source: GAO analysis of Bureau of Prisons data. | GAO-16-516

Note: Data shown includes both male and female inmates at the minimum, low, and high security levels. BOP does not place female inmates into the medium security level.

According to BOP officials, the increased use of RRCs and home confinement is consistent with the Second Chance Act, corresponding BOP implementing guidance, and BOP goals. For example, one of the objectives of the Second Chance Act was to expand the use of alternatives as a means to assist offenders overall in reentering society and establishing a self-sustaining and law-abiding life. Similarly, BOP officials also noted that BOP issued guidance in 2010 and 2013

specifically encouraging the use of direct home confinement for lower risk inmates, in order to provide bed space at RRCs for higher risk inmates. Consequently, the officials stated that while more inmates were placed in RRCs and home confinement overall, minimum and low security inmates were specifically targeted for placement in home confinement whenever possible.

Within its strategic plan, BOP has specified two measures to track placement of inmates into RRCs and home confinement. For its RRC measure, BOP aims for its institutions to place at least a certain percentage of their inmates into RRCs, with the specified target percentages varying according to their security level.²⁹ For the first and second quarters of fiscal year 2015, both minimum and low security institutions exceeded the target set for them for this measure.³⁰ For the second measure related to the use of home confinement, BOP aims for its Residential Reentry Management Branch to maintain 40 percent or more of home-confinement eligible inmates in home confinement. BOP has come close to—but not met—this goal. From April 2015 to September 2015, the most recent period for which data were available, the monthly percentage of home confinement eligible RRC inmates in home confinement fluctuated between 36.4 percent and 38.4 percent. According to BOP officials, it has not met its stated goal largely because of factors outside of its control, such as inmates lacking the resources and ability to locate and prepare an acceptable home location to be placed in home confinement in a timely manner.

BOP Increased Use of the Federal Location Monitoring Program

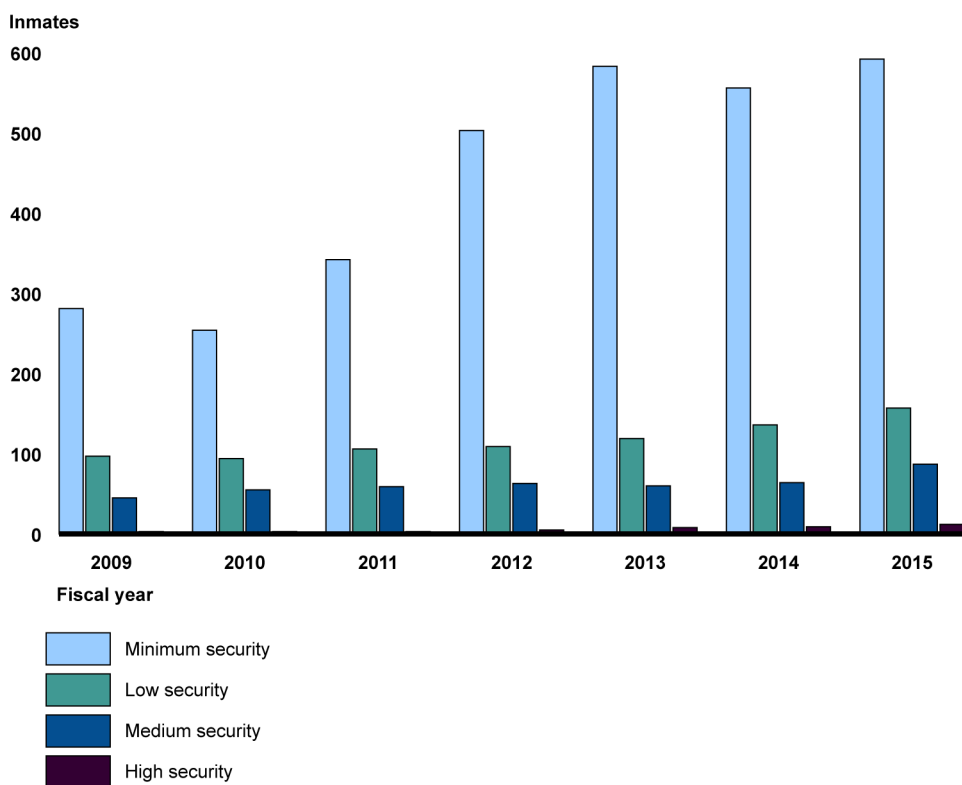
As with the increased use of home confinement in general, BOP has also increased utilization of the FLM program as a means to provide home confinement to inmates, especially for minimum security inmates, as shown in figure 6. For example, the number of minimum security inmates

²⁹According to this goal, within budgetary resources, institutions are to make maximum use of RRC bed space. Accordingly, BOP has established target utilization rates of the RRCs for institutions according to security level: minimum security-85 percent, low security-75 percent; medium security-70 percent; and high security-65 percent.

³⁰According to BOP's strategic plan, in the first quarter of fiscal year 2015, institutions placed 92.4 percent of eligible minimum security inmates and 76.2 percent of eligible low security inmates in RRCs as compared to the stated targets of 85 percent and 75 percent respectively. For the second quarter of fiscal year 2015, institutions placed 93.4 percent of eligible minimum security inmates and 78.4 percent of eligible low security inmates in RRCs.

going into the FLM program increased from 281 in fiscal year 2009 to 592 in fiscal year 2015, a 111 percent increase. During this same time period, the total number of low security inmates going into the FLM program (both directly and subsequent to placement in an RRC) increased from 97 in fiscal year 2009 to 157 in fiscal year 2015, an increase of 62 percent.

Figure 6: Number of Inmates Placed into the Federal Location Monitoring (FLM) Program, by Security Level, Fiscal Years 2009 through 2015



Source: GAO analysis of Bureau of Prisons data. | GAO-16-516

Note: Data shown includes both male and female inmates at the minimum, low, and high security levels. BOP does not place female inmates into the medium security level.

The FLM program is currently available in over half of the federal judicial districts and BOP officials have encouraged the expansion of the program into additional districts, as they noted that the program can provide cost advantages relative to home confinement through an RRC. According to

headquarters PPSO officials, approximately 51 out of the 94 federal judicial districts nationwide were participating in the FLM program in fiscal year 2015, nearly double the number of districts participating in 2010.³¹ To foster further expansion of the program, BOP headquarters officials stated that they continue to discuss and encourage the expansion of the program into additional districts where possible with probation officials both at the headquarters and district level. To encourage its use, in 2013 BOP issued an internal memo for BOP staff regarding RRC and home confinement placements that stated that RRMs should consider using the FLM program for home confinement to the maximum extent possible where it is available. In terms of cost, according to BOP headquarters officials, the average cost to BOP of PPSO supervising an inmate in home confinement under the FLM program is \$15 per day, whereas the average cost for a RRC to supervise an inmate on home confinement is \$40 per day. Consequently, because the daily cost of home confinement through the FLM program is less than half that of home confinement through an RRC, effective utilization of the FLM program can potentially yield cost savings according to the officials.

Despite BOP's increased use of the FLM program in recent years, our interviews with BOP and PPSO officials at headquarters and within our selected districts suggest that usage may vary across districts. For example, the program may be less utilized in some areas depending on the terms of the contracts BOP has with RRC operators. Of the PPSOs in our 11 selected districts, 9 reported participating in the FLM program. Of those 9 districts, 1 reported moderate use of the program while 8 reported that the program was either underutilized relative to available capacity or that BOP had not made any referrals to the program, or if it had, BOP did not ultimately place the inmates in the FLM program. Officials in two of the four BOP RRM offices with whom we spoke noted that the program is generally used as more of a backup option to place inmates into home confinement whose desired home sites are more remote and not within the service area of an RRC.³² According to BOP headquarters officials,

³¹Whether a district participates and the extent of their participation is at the discretion of each district's Chief Probation Officer, according to AOUSC officials.

³²According to a May 2013 BOP memorandum to BOP staff regarding home confinement and RRC placements, RRMs are to consider using the FLM program to the maximum extent possible where available. The memo also states that one of the requirements for an inmate's placement into home confinement, in general, is that he or she has a release residence that is a reasonable distance from the RRC, which the guidance defines as typically less than 100 miles.

RRC contract terms may either require BOP to use the RRCs for home confinement within the RRCs' service areas or they guarantee RRC operators a minimum quota of use of their home confinement services. The officials stated that, consequently, depending on the terms of RRC contracts in place in specific areas, RRCs may generally prefer to use RRCs for home confinement in order to first satisfy RRC contract requirements which may result in less utilization of the FLM program.

BOP has also faced some instances where inmates referred to the FLM program have been rejected by a PPSO. For instance, PPSO officers in 5 of the 9 districts with whom we spoke noted that they had rejected FLM referrals from BOP at some point. The reasons for the rejections varied—2 of the districts noted they rejected referrals because the inmates were unable to secure acceptable living arrangements; 2 of the districts stated that BOP's referrals were deemed to be too high risk to accept (e.g., sex offenders); and 1 district rejected BOP's referrals because they were not made using the appropriate referral process—that is, BOP did not submit the referral through BOP's RRM. Further, an official in one of the four RRMs with whom we spoke stated that he referred inmates to the FLM program, but most were subsequently rejected by the local PPSO which told them the inmates were not appropriate for the program—for instance, because the inmates referred were higher risk than acceptable. BOP headquarters officials stated that the rejection of referrals for risk reasons is likely due to the fact that BOP and PPSO use different risk assessment tools which may result in different risk scores of inmates. The officials also noted that regardless of risk scores, the Chief Probation Officer in each district has the final discretion to accept or reject inmates as he or she deems appropriate for the district.

The fiscal year 2015 interagency agreement between BOP and PPSO for the FLM program calls for BOP and PPSO to jointly develop additional plans for identifying and selecting inmates, which could help reduce rejections. According to BOP and PPSO officials, the interagency agreement itself identifies the basic criteria for identifying and selecting inmates into the FLM. Officials with BOP and PPSO at headquarters stated that they maintain an ongoing dialogue with each other about the FLM program and regularly discuss the referral process including any unique cases as well as any other related process issues or concerns. According to BOP headquarters officials, they have not issued additional formal guidance on the FLM program, beyond the interagency agreement, because the ability to participate in the FLM differs across districts depending on the workload and capacity of the PPSO. However, both BOP and PPSO officials at headquarters stated that they regularly

communicate to promote use and understanding of the program across districts, as well as to help minimize and address any rejections from the program, as envisioned by the agreement.

DOJ Has Tracked Some Data on the Cost Implications of Alternatives to Incarceration, but Could Better Measure Outcomes

DOJ Has Not Measured the Outcomes and Cost Implications of Pretrial Diversion Programs, but the Judiciary Has Collected Some Data

DOJ has not measured the outcomes or identified the cost implications of the Title 9 and court-involved pretrial diversion programs³³ DOJ has decision-making power and expends resources on these incarceration alternatives, which are carried out at or before sentencing. While the department has conducted a survey to identify which USAOs use court-involved pretrial diversion practices and obtain any evaluations that USAOs have conducted, in considering the information obtained, the survey did not result in meaningful information on program outcomes. According to the official, in late 2014, EOUSA surveyed the USAOs regarding the implementation of the department's Smart on Crime initiative. The survey asked about their use of court-involved pretrial diversion practices, such as a presentence diversion court, and, if they used such a court, whether the court was evaluated or assessed.

According to the survey results, 16 out of 93 USAOs responded that their districts were using a court-involved pretrial diversion court practice and

³³The decision to release or detain a defendant prior to trial is made by a judicial officer, not DOJ, as is the decision to sentence a defendant to probation. For this reason, we did not focus on DOJ's efforts to measure their outcomes or cost implications. Further, while DOJ makes the decision to refer a case to state and local entities for prosecution, additional resources expended on such a prosecution are at the state or local level. As a result, we did not focus on DOJ's efforts to measure the outcomes or cost implications of this alternative.

some respondents provided descriptive information on the number of participants and program operations. According to the EOUSA official, when responding to the survey question as to whether the court or practice was assessed or evaluated, only one office provided documentation—a 2013 summary that a PPSO officer compiled of the accomplishments of the district’s pretrial diversion court and the potential cost savings realized through the use of the court.³⁴ EOUSA officials stated they conducted another survey of the USAOs in late 2015 that asked similar questions about the use of court-involved pretrial diversion practices, but did not include the question about whether the practice was evaluated. The officials stated that they expect to have results from the survey in the spring of 2016. According to DOJ officials, the information from these surveys is to inform a key indicator DOJ created for the Smart on Crime Initiative that tracks the number of diversion courts. However, while the data from survey responses may provide information on how many districts are using the practices, the data will not provide systematic information on the costs or outcomes associated with the use of those practices.

Beyond the descriptive information gathered from the survey, DOJ has not obtained data that would help it to measure the outcomes or cost implications of the use of Title 9 and court-involved pretrial diversion programs. According to an EOUSA official, DOJ has not yet measured the outcomes and cost implications of pretrial diversion programs because it lacks the resources that would be required to conduct a comprehensive evaluation. Specifically, the EOUSA official suggested that a third party, such as a research institute, would be best suited to conduct an in-depth evaluation and that hiring such a third party would require resources that are not presently available from DOJ.

Further, of our 6 selected districts that were using court-involved pretrial diversion practices, officials at the USAOs and PPSOs in 2 districts stated that they are in the process of attempting to use outside entities, such as graduate-level students or faculty at local universities, to conduct

³⁴According to the survey results, 24 USAOs responded that their districts’ diversion courts had been evaluated or assessed in fiscal year 2014. According to an EOUSA official familiar with the survey, there appeared to be an overresponse to the question given that only 16 previously responded that their districts were using a pretrial diversion court. The EOUSA official believed this may have been due to confusion in the terminology used in the questions.

evaluations of those practices. For example, officials with the USAO in the Western District of Washington stated that they have requested grant funding to have the academic community work with them to evaluate their court-involved pretrial diversion program to determine how the program can expand. However, the funding had not yet been awarded. In the Central District of California, PPSO officials stated that they were in the process of selecting researchers from a local university to conduct a multi-year evaluation of their district's practice, but they had not yet made the selection.

EOUSA and USAO officials with whom we spoke also reported that DOJ has not yet measured the outcomes and cost implications of pretrial diversion programs because of the lack of sufficient long-term data. According to an EOUSA official, most court-involved pretrial diversion practices are relatively new; consequently, most participants in practices across the districts have not completed the programs and any subsequent supervision period, making it difficult to accurately measure long term outcomes. For example, of the 17 districts using court-involved pretrial diversion practices, 5 districts reported using such practices for 5 years or more.³⁵ According to an EOUSA official, considering the relatively short time most of these practices have been in operation, the length of time required for participants to complete pretrial diversion programs (usually one to two years), and any subsequent period of post-conviction supervision that may be required afterwards, the number of participants available to evaluate who have fully satisfied all of their obligations is relatively limited. Further, according to the USAO staff we met with in the 6 districts using court-involved pretrial diversion practices, they have a general awareness of how many offenders had been placed in the alternatives and how many have successfully completed them, but they do not track these data systematically because such data are not required by DOJ to maintain caseload counts and dispositions.

We recognize that tracking the data necessary and measuring the outcomes and cost implications of pretrial diversion programs would require resources and time. However, measuring and evaluating costs and outcomes would not necessarily require hiring a third party to conduct an assessment of diversion programs across all federal districts. For

³⁵These districts were identified as using court-involved pretrial diversion practices by DOJ components, the Federal District Court of the Eastern District of New York, and the USSC.

example, according to a PPSO official in the Eastern District of New York, judiciary officials in a number of districts that had implemented court-involved pretrial diversion programs have developed mechanisms to obtain data and measure some of the cost implications and outcomes of these programs, and were doing so without the use of a third party. For instance, judiciary officials in some districts have developed estimates of cost savings realized from the use of court-involved pretrial diversion programs, and PPSO officials in the Eastern District of New York compiled and publicly reported on these estimates in August 2015.³⁶ See table 6 for the cost estimates reported by the Eastern District of New York.

Table 6: Estimated Cost Savings of Court-involved Pretrial Diversion Programs, by Federal Judicial District

Judicial District	Reported Cost Savings (approximate)	Program Implementation Year
Eastern District of New York	\$2.1 Million	2012
Central District of California	\$3.9 Million	2012
Central District of Illinois	\$13 Million	2005
District of South Carolina	\$2.8 Million	2010
Southern District of California	\$5.5 Million	2010
District of Connecticut	\$1 Million	2013
District of New Hampshire	\$500,000	2010
District of Oregon	\$1.8 Million	2011

Source: United States District Court for the Eastern District of New York, published August 2015. | GAO-16-516

Note: This data has not been evaluated by the GAO and therefore the estimates have not been confirmed to be reliable.

Additionally, judiciary officials have also tracked data related to the outputs and outcomes of the court-involved pretrial diversion practices. For instance, officials in seven districts have tracked data on the number of offenders successfully completing the programs. This information was collected and compiled by the Eastern District of New York and reported in August 2015, as shown in table 7. We have previously reported that tracking successful completion can be a proxy measure for the effectiveness of deferred prosecution and non-prosecution agreements

³⁶In March 2016, PPSO officials in the Western District of Washington provided cost-savings for their court-involved pretrial diversion program of \$1.6 million.

DOJ has used in lieu of prosecuting corporations for corporate crime.³⁷ Such agreements are similar in function to the type of agreements used in diverting individual offenders through pretrial diversion.

Table 7: Pretrial Services Data on Some Federal Judicial Districts’ Use of Court-involved Pretrial Diversion Practices, August 2015

District	Name of program	Information on number of participants (As of August 2015)
Central District of California	Conviction and Sentence Alternatives	97 defendants selected; 34 graduated; and 4 were unsuccessful in completing the program.
Central District of Illinois	Pretrial Alternatives to Detention Initiative	104 participants (out of a total of 126) had successfully completed the program with 12 currently in the program. ^a
District of New Hampshire	Law Abiding, Sober, Employed and Responsible	Of the 15 pretrial participants, 7 have successfully graduated, 6 did not successfully complete the program, and 2 were still actively participating.
Eastern District of New York	Pretrial Opportunity Program & Special Option Services Programs for youthful offenders	A total of 27 out of 57 participants have concluded their participation in the programs. Of those, 19 successfully ended their pretrial release supervision, while 8 were unsuccessful in completing the program.
District of South Carolina	BRIDGE Program	72 participants entered the program. 27 had graduated; 22 remained active in the program; and 23 have either voluntarily withdrawn or were dismissed from the program.
Southern District of California	Alternative to Prison Solutions	Since 2010, more than 397 participants have reportedly entered the program. ^b
Western District of Washington	Drug Reentry Alternatives Model	Four participants have graduated from the program since December 2013. ^c

Source: GAO analysis of data provided by the United States District Court for the Eastern District of New York. | GAO-16-516

^aReported as of October 2014.

^bIn March 2016, officials from the U.S. Probation and Pretrial Services Office (PPSO) of the Southern District of California reported that 543 participants had entered the program, 423 successfully completed diversion, 65 remained active in the program, and 42 were dismissed from the program.

^cIn March 2016, officials from the PPSO of the Western District of Washington reported to GAO that the number of graduates had increased to 20 while two participants did not successfully complete the program.

³⁷See [GAO-10-110](#). According to DOJ, deferred prosecution agreements and non-prosecution agreements are appropriate tools to use in cases where the goals of punishing and deterring criminal behavior, providing restitution to victims, and reforming otherwise law-abiding companies can be achieved without criminal prosecution. As part of these agreements, companies are generally required to comply with a set of terms for a specified duration in exchange for prosecutors deferring the decision to prosecute or deciding not to prosecute. For example, among other things, these terms may require monetary penalties, improvements to the company’s compliance program, or payment of restitution, among other things.

In addition to these estimates and data, as another means of measuring outcomes, judiciary officials in 3 of our selected 6 districts that use court-involved pretrial diversion practices reported also informally tracking recidivism rates of participants who have successfully completed the practices. For instance, officials from the PPSO in the Southern District of California estimated a recidivism rate of 2.8 percent for individuals who successfully completed the program in their district, while PPSO officials in the Central District of California and the Central District of Illinois reported that individuals who completed the respective practices in their districts had not committed any new crimes to their knowledge.

According to DOJ's current strategic plan, one of its objectives is to reform and strengthen the country's criminal justice system by targeting the most serious offenses for federal prosecution, and expanding the use of diversion programs, among other things. Consistent with that objective, the Smart on Crime Initiative includes, as one of its key principles, the pursuit of alternatives to incarceration for low-level, non-violent crimes. As part of the Initiative, DOJ has encouraged its prosecutors to consider the use of alternatives to incarceration and specifically encouraged more widespread adoption of diversion programs and practices such as drug courts and other specialty courts across the districts. For example, DOJ issued a memorandum in August 2013 to its USAOs that cited as examples several existing court-involved pretrial diversion practices, stated that the use of such programs or practices can be part of an effective prosecution program, and identified the potential for cost savings from the use of these programs based on experiences at various districts.

Given that pretrial diversion programs can help DOJ achieve its strategic objectives and the Smart on Crime Initiative, it is important for DOJ to be able to track data related to their use and cost, and to measure their impacts.³⁸ According to Standards for Internal Control in the Federal Government, among other things, agency management should establish and operate monitoring activities to evaluate results of its efforts and programs.³⁹ We understand that some judicial districts may not have had pretrial diversion programs in place long enough to fully track or assess

³⁸We have previously reviewed DOJ's efforts to implement its Smart on Crime Initiative. See GAO, *Federal Prison System: Justice Could Better Measure Progress Addressing Incarceration Challenges*, [GAO-15-454](#) (Washington, D.C.: July 19, 2015).

³⁹[GAO/AIMD-00-21.3.1](#).

the outcomes of a large number of offenders who have completed the programs. However, according to a resource cited by the Office of Management and Budget on program evaluation, while activities such as performance measurement are useful at all stages of a program's maturity, they can be particularly useful for providing evidence about how programs are working in the early years of a program's history when impacts on program outcomes may not be detectable and rigorous, high-quality impact evaluations are not yet possible.⁴⁰

By obtaining data on the costs and outcomes of pretrial diversion programs and establishing performance measures, DOJ would gain multiple advantages in its ability to manage these programs and optimize their outcomes and cost implications. First, having such data and measures available would better position DOJ to determine if pretrial diversion programs are effectively contributing to the achievement of department goals and initiatives. Second, such data and measures would better position DOJ to manage and provide additional guidance to the districts using the programs and practices, as necessary, to make their use more effective. Third, with information on the outcomes and cost implications of the existing programs, DOJ would be better positioned to determine whether and how it should encourage the use of such programs. Finally, should DOJ decide to pursue a more in-depth evaluation by an outside entity of the long term impacts and outcomes of the programs and practices, having such data and measures in place would better position DOJ to inform and facilitate that evaluation.

BOP Measures the Costs of RRCs and Home Confinement, but Lacks Data and Measures to Identify Their Outcomes

BOP collects data on the costs of RRCs and can measure their costs, but it does not collect data that would help it to measure the outcomes of RRCs, nor does it measure their outcomes. In particular, through the contracts it has with RRC operators, BOP has data on and has the ability to track the cost of placing inmates in RRCs.⁴¹ According to BOP, the total cost of RRCs in fiscal year 2015 was almost \$360 million. Further, BOP can calculate the average daily cost for placing an inmate into an

⁴⁰This resource was originally released as part of the 2014 *Economic Report of the President*. See White House Council of Economic Advisors, *Economic Report of the President*, Washington, D.C.: March 2014.

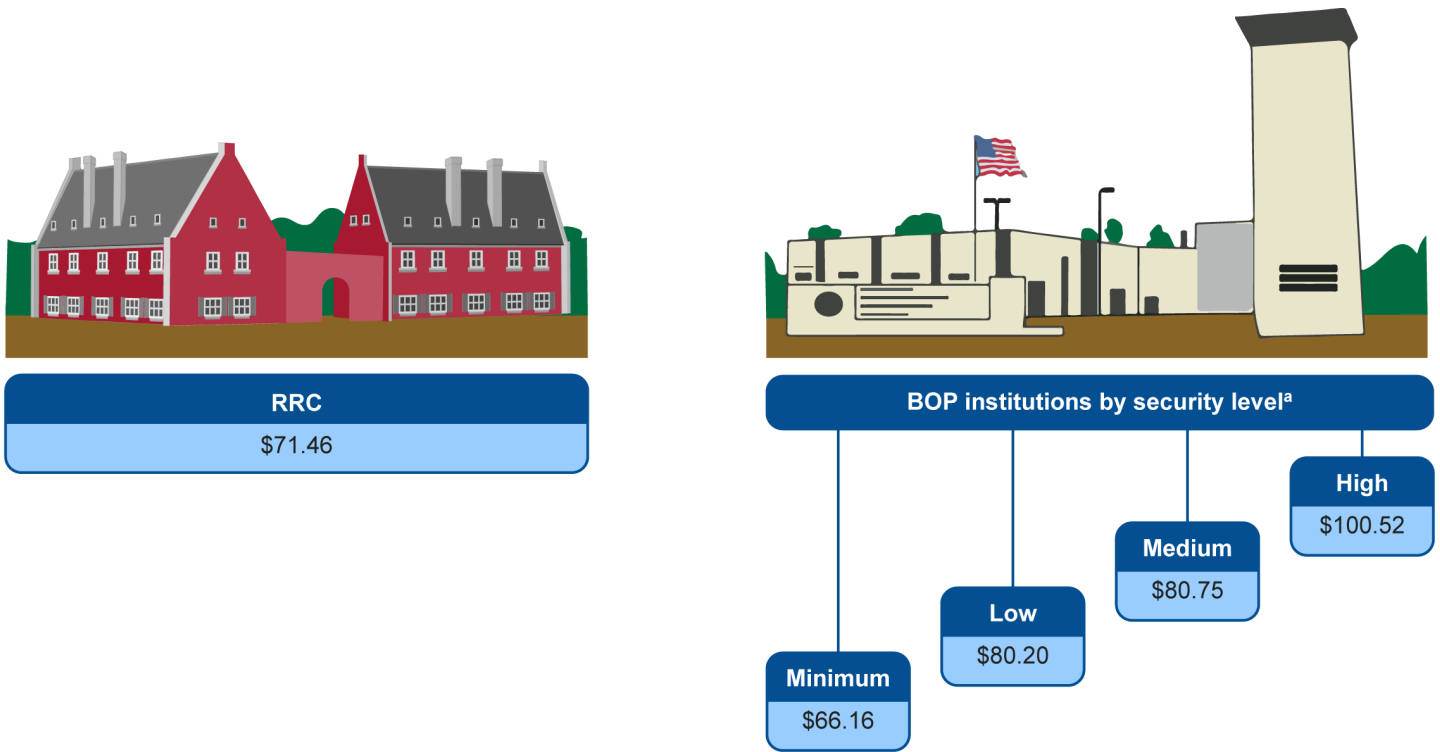
⁴¹According to BOP officials, as of March 2016, BOP held 180 contracts to operate halfway houses and provide home confinement programs for federal inmates. These contracts are awarded by BOP on a competitive basis in locations nationwide.

RRC, and can compare the cost with the daily cost of housing inmates in minimum, low, medium, and high security institutions. Specifically, according to our review of BOP data, the daily cost for placing an inmate into an RRC is greater than the cost to incarcerate the inmate in a minimum security institution, but less than incarcerating an inmate in low, medium, or high security institutions. For example, in 2015, the daily per capita cost for placing an inmate in an RRC was about \$71 per day.⁴² In comparison, as shown in figure 7, the daily cost in 2015 to house an inmate in minimum security was about \$66 while for low, medium and high security institutions was about \$80, \$81, and \$101, respectively.⁴³

⁴²As part of their placement, inmates in RRCs are also required to pay to the RRC a subsistence fee of 25 percent of an inmate's gross income if that inmate is employed, to help defray the costs of their community corrections placement. The subsistence payment is to be subtracted from the amount the RRC bills BOP for providing supervision of inmates. According to BOP guidance, this requirement is waived if ordered by the court or if the inmate faces an extreme hardship such as homelessness, unemployment due to physical or mental health reasons, unexpected or emergency critical health care needs, for example. BOP officials stated that the value of the fees that are collected is marginal and does not significantly defray BOP costs. Consequently, they do not track data as to how many inmates pay the fees or the value of the fees they pay.

⁴³Total daily costs to house an inmate in a BOP institution include the additional support costs BOP incurs related to staffing and providing food and medical services. These additional support costs are not incurred by BOP when an inmate is in an RRC because these are either part of the RRC's responsibilities under its contract with BOP or, in the case of medical services, are the inmates' responsibility while at an RRC. Excluding these support costs, the daily costs to house an inmate in BOP's institutions are \$59.52 at minimum security, \$72.15 at low security, \$72.65 at medium security, and \$90.43 at high security.

Figure 7: Daily Cost per Inmate of Bureau of Prisons Facilities and Residential Reentry Centers, Fiscal Year 2015



Source: GAO analysis of BOP data. | GAO-16-516

^aTotal daily costs to house an inmate in a BOP institution include the additional support costs BOP incurs related to staffing and providing food and medical services. These additional support costs are not incurred by BOP when an inmate is in an RRC because these are either part of the RRC's responsibilities under its contract with BOP or, in the case of medical services, are the inmates' responsibility while at an RRC. Excluding these support costs, the daily costs to house an inmate in BOP's institutions are \$59.52 at minimum security, \$72.15 at low security, \$72.65 at medium security, and \$90.43 at high security.

According to BOP officials, RRCs are more costly than some BOP-operated institutions because RRCs tend to be located in more urbanized areas in which it is usually more expensive to operate. Locations for RRCs are selected after BOP RRM field offices identify a need for RRC services in a specific area. Factors BOP identified as taken into consideration when locating a RRC include the number of beds needed as determined by the number of inmates projected to release to the area, prosecution trends, new initiatives, and contacts with other federal law enforcement agencies. Based on our comparison of the locations of

RRCs BOP used in 2015 with Census Bureau data on urbanized areas, we found that 173 of the 175 RRCs serving adult inmates were located in urbanized areas.⁴⁴

Further, BOP can track and report the daily costs of individual RRCs, which can vary widely due to additional factors or features specific to the RRC. For example, according to BOP data in 2015, the daily costs to BOP for placing an inmate in an RRC averaged \$89 but ranged from about \$45 in Oklahoma City, Oklahoma to about \$164 in Brawley, California. According to BOP officials, the variation in daily costs between RRCs is due to a variety of factors, such as facility sizes/inmate bed counts, variances in programming requirements, geographic location, and services offered for special populations such as mothers with infants. BOP officials also noted that while the RRCs may generally be more expensive than incarceration in minimum security facilities, the primary reason for using alternatives such as RRCs is not to reduce immediate operational costs, but to provide inmates with an opportunity to adjust to life outside of an institution and ease their transition back into society from incarceration.

Similarly, BOP can measure the costs to place inmates into home confinement. For inmates in home confinement under the FLM program, BOP officials stated that the average cost to BOP is about \$15 per inmate per day. According to BOP, although the cost of home confinement varies depending on the contract terms and location, the daily cost to BOP of an inmate in home confinement is no more than 50 percent of the daily cost for an inmate placement into the supervising RRC. However, BOP officials stated they are in the process of updating their contracts to more precisely track home confinement costs through RRCs. As we reported in

⁴⁴For this analysis, we used the Census Bureau's definition of an urban area used for the 2010 census. The Census Bureau identifies two types of urban areas--Urbanized Areas of 50,000 or more people; and Urban Clusters of at least 2,500 and less than 50,000 people. According to the Census Bureau, these areas comprise a densely settled core of census tracts and/or census blocks that meet minimum population density requirements, along with adjacent territory containing non-residential urban land uses as well as territory with low population density included to link outlying densely settled territory with the densely settled core. We compared the location of BOP's RRCs against the Census Bureau's list of locations that met its definition of an Urbanized Area or Urban Cluster. For RRCs whose locations did not appear on that list, we reviewed additional Census Bureau information on the individual location to determine whether the location's population was at least 2,500. Those locations that met that screening criteria were considered to be urban for the purposes of this analysis.

February 2012, BOP at the time did not require contractors who provide both RRC and home confinement services to separate out the price of home confinement services, and thus did not know the actual costs of home confinement.⁴⁵ Consequently, we recommended that BOP establish a plan for requiring contractors to submit separate prices of RRC beds and home detention services. BOP concurred and determined that all new solicitations as of February 1, 2013, will have separate line items for RRC and home confinement services. BOP officials stated that at this time, current home confinement contracts are a mix of the two types, but that as the older contracts expire, new ones with separate line items for home confinement services will be implemented. Once all contracts have a separate line item, BOP officials stated they would be better able to identify its precise costs of home confinement going forward.

While BOP can measure the overall costs of RRCs and home confinement, it does not track the information needed to help measure their outcomes and does not have such measures in place. For example, one of the goals in BOP's strategic plan calls for BOP to, among other things, provide services and programs to address inmate needs and facilitate the successful reentry of inmates into society. As mentioned previously, as part of its strategic plan, BOP has specified two measures to track placement of inmates into RRCs and home confinement—one measuring institutions' placement of inmates into RRCs by security level, and the other measuring the Residential Reentry Division's placement of home-confinement eligible inmates in home confinement. However, neither of these measures assesses the outcomes of RRCs and home confinement, such as how they relate to the recidivism rates of inmates.

The GPRAMA of 2010 requires agencies to have outcome-oriented goals for major functions and operations and an annual performance plan consistent with that strategic plan with measurable, quantifiable performance goals. Although GPRAMA requirements only apply at the DOJ-level, we have previously reported that they can serve as leading practices for performance planning and measurement at lower

⁴⁵See GAO, *Bureau of Prisons: Eligibility and Capacity Impact Use of Flexibilities to Reduce Inmates' Time in Prison*, [GAO-12-320](#) (Washington, D.C.: Feb. 7, 2012).

organizational levels, such as bureaus, offices, and individual programs.⁴⁶ Specifically, the GPRAMA requires agencies to set performance goals and measures each year and measure progress against those goals. According to GPRAMA, performance measurement allows agencies to track progress in achieving their goals and provides information to identify gaps in program performance and plan any needed improvements.

According to BOP, RRCs provide programs that are intended to help inmates rebuild their ties to the community and to thereby reduce the likelihood that they will recidivate. The current measures BOP tracks are useful for monitoring the near term use of RRC bedspace and home confinement relative to targets and in planning for future RRC bedspace and home confinement capacity. However, they do not yield information or insight into the potential benefits they provide after the inmates use them, or potential areas for program improvement. While BOP headquarters officials also stated that they were aware of an effort by the Office of the Deputy Attorney General to solicit an outside contractor to evaluate and measure the outcomes provided by BOP's use of RRCs and home confinement, DOJ was unable to provide any additional information or documentation on the details of this intended evaluation. Without data or measures to assess the outcomes of RRCs and home confinement, BOP does not know whether RRCs and home confinement—programs intended, in part, to help facilitate the successful reentry of inmates into society—are contributing to its strategic goal in this area.

Given the limitations of BOP's current measures, taking additional steps to develop more outcome oriented measures could enable BOP to better track the outcomes of the alternatives in achieving BOP goals. BOP officials stated that measuring the outcomes of alternatives such as RRCs and home confinement is difficult due to methodological challenges, such as the need to designate a control group of inmates for comparison that fully accounts for the diverse characteristics and reentry needs of the inmates. We recognize the challenge in conducting such a rigorous study; however, other options are available to assess the outcomes of RRCs

⁴⁶See for example, GAO, *Environmental Justice: EPA Needs to Take Additional Actions to Help Ensure Effective Implementation*, [GAO-12-77](#) (Washington, D.C.: Oct. 6, 2011); *Coastal Zone Management: Opportunities Exist for NOAA to Enhance Its Use of Performance Information*, [GAO-14-592](#) (Washington, D.C.: July 16, 2014); and *Aviation Security: Rapid Growth in Expedited Passenger Screening Highlights Need to Plan Effective Security Assessments*, [GAO-15-150](#) (Washington, D.C.: Dec. 12, 2014).

and home confinement that may pose fewer challenges, such as measuring how frequently offenders who have gone through RRCs or home confinement reoffend or find jobs. For example, in an August 2015 testimony, the former BOP Director cited statistics on the percentage of inmates released from federal prison who were rearrested, had their supervision revoked, or returned to federal prison within 3 years. Given that BOP has recidivism data available on former inmates, BOP may be able to develop similar statistics for inmates who had served time in an RRC or home confinement. As another approach to obtain data and develop performance measures, BOP could conduct surveys of inmates who have completed time in RRCs or home confinement to get their perspectives and feedback on the outcomes of RRCs and home confinement in helping them to transition back into the community.

Further, during the course of our review, BOP headquarters officials stated that under the direction and guidance of the Office of the Deputy Attorney General, a project was initiated to contract for an analysis of BOP's current RRC model and identify specific recommendations for improvement. Among other things, this analysis is to assess the degree to which current RRC programming addresses criminogenic needs, reduces recidivism, and meets the programmatic needs of the reentering population. In addition, the analysis is to provide recommendations for monitoring performance including identifying benchmarks, goals, and performance targets to measure and monitor outcomes. According to BOP officials, the contract was signed in April 2016 and the report is expected to be released during the summer of 2016. Given the scope and intent of this analysis, its results may provide BOP insights into its use of RRCs and home confinement. However, because this analysis is still in process, it is too early to determine the extent to which the results of this analysis will be helpful to BOP in identifying potential data and measures to monitor the outcomes of RRCs and home confinement. Regardless of the measure or method BOP determines to be most appropriate, by tracking data and developing performance measures to monitor the outcomes of RRCs and home confinement, BOP would be better positioned to determine how those alternatives are contributing to its goal of helping inmates successfully reenter society, and how to adjust its policies and procedures for the use of these alternatives, as necessary and within statutory requirements, to optimize the net benefits they can provide.

Conclusions

To help reduce the overall size and costs of the federal prison population, DOJ components such as USAOs, in coordination with judicial branch

stakeholders such as PPSO and federal judges, have utilized alternatives to incarceration for low-level offenders and minimum and low security inmates at various stages of the criminal justice process. DOJ has taken some initial steps to collect data and measure its efforts for several of these alternatives. However, DOJ's data on the use of pretrial diversions is of limited usefulness and reliability because EOUSA's case management system does not distinguish between the different types of diversion and DOJ has not provided guidance to USAOs as to when and how pretrial cases are to be entered into the system. Additionally, because DOJ does not track data on the outcomes and costs of its pretrial diversion programs, it does not have awareness about the overall outcomes of the programs in achieving the department's goals. Tracking the use of Title 9 diversion and court-involved pretrial diversion programs using separate codes, and issuing guidance to USAOs as to what codes to use and when to use them, would provide DOJ more reliable and complete data on the overall use of pretrial diversion across districts.

Further, by taking steps to obtain and track data on the outcomes of the programs and developing performance measures for its use of pretrial diversion, DOJ would be better able to determine the extent to which the alternatives are contributing to the achievement of DOJ goals and objectives and what adjustments to policies and procedures, if necessary, may make them more effective. Moreover, for the alternatives at incarceration, because BOP has not assessed the outcomes of RRCs and home confinement, it does not know whether RRCs and home confinement, which are intended, in part, to help facilitate the successful reentry of inmates into society, are in fact doing so. By tracking data and developing performance measures for RRCs and home confinement, BOP would be better positioned to determine how these alternatives are contributing to its reentry goals, adjust policies and procedures, as needed, and optimize their benefits.

Recommendations for Executive Action

To help ensure that USAOs consistently track the extent of use of all pretrial diversion alternatives, the Attorney General should direct the EOUSA to take the following two actions:

- revise its data system to allow it to separately identify and track Title 9 and court-involved pretrial diversion alternatives; and
- develop guidance on the appropriate way to enter data on the use of Title 9 and court-involved pretrial diversion alternatives, including the timing of entry and use of revised codes.

To help determine if pretrial diversion programs and practices are effectively contributing to the achievement of department goals and enhance DOJ's ability to better manage and encourage the use of such programs and practices, the Attorney General should take the following two actions:

- identify, obtain, and track data on the outcomes and costs of pretrial diversion programs; and
- develop performance measures by which to help assess program outcomes.

To determine how the use of RRCs and home confinement contribute to its goal of helping inmates successfully reenter society, and to better enable BOP to adjust its policies and procedures for the optimal use of these alternatives, as necessary and within statutory requirements, the Director of BOP should take the following two actions:

- identify, obtain, and track data on the outcomes of the programs; and
- develop performance measures by which to help assess program outcomes.

Agency Comments and our Evaluation

We provided a draft of this report to DOJ, the AOUSC, and the USSC for review and comment. The AOUSC provided written comments, which are reproduced in appendix I. The USSC did not provide comments. In an e-mail we received May 27, 2016, DOJ's audit liaison stated that DOJ concurred with all of our recommendations and provided comments, which we incorporated as appropriate and have further addressed below.

In particular, in our draft report, we recommended that EOUSA identify, obtain, and track data on the outcomes and costs of pretrial diversion programs, and develop performance measures to help assess program outcomes. The DOJ liaison stated that implementing these two recommendations would be the responsibility of the department, not EOUSA exclusively. As a result, we directed these two recommendations to the Attorney General. In addition, the liaison provided information about efforts taken in April 2016, during the course of our review, by the Office of the Deputy Attorney General and BOP to solicit an outside contractor to evaluate and measure the outcomes provided by BOP's use of RRCs and home confinement contracts. We reviewed and incorporated this information in this report, and will continue to monitor the implementation of this contract to identify whether it meets the spirit of our recommendation.

Moreover, the DOJ liaison stated that BOP does not view inmates' placement in RRCs and home confinement as incarceration alternatives when it is done pursuant to BOP's statutory authority. As noted earlier in the report, we acknowledge BOP's position, but, for the purposes of this report, we consider RRCs and home confinement to be alternatives to incarceration because they allow inmates to serve a portion of their sentences outside of a prison environment.

Additionally, the liaison stated that BOP had concerns about our comparison of the daily cost to house an inmate in an RRC with the daily cost to house an inmate in a minimum, low, medium, and high security institution. Specifically, BOP believed our comparison was misleading because the costs shown for BOP institutions includes the additional support costs (e.g., staffing, food, medical services) that BOP incurs when housing an inmate at one of its facilities and that such costs are not incurred by BOP when an inmate is at an RRC. The cost information we presented was taken directly from a table prepared by BOP that presents the same information for public disclosure on BOP's website. We believe our comparison accurately reflects the total out-of-pocket costs to BOP for placing inmates in its institutions and RRCs because for the RRCs, those additional support costs are either the RRCs' responsibilities under its contract with BOP or, in the case of medical services, are the inmates' responsibility while at an RRC. However, to help provide context, we revised our discussion to include additional information on the support costs BOP incurs at its institutions.

Further, we state in the report that one option available to BOP to assess the outcomes of RRCs and home confinement could be measuring how frequently offenders who have gone through RRCs or home confinement reoffend. In the emailed comments, the DOJ audit liaison stated that BOP does not believe recidivism data should be used as a performance measure for RRCs due to external and unique factors that may impact the likelihood an individual will recidivate, such as economic conditions. In addition, the DOJ liaison stated that recidivism indicators are a negative measurement of criminal actions that do not consider positive behavior or successful adjustment of the offender, while the re-integrative model and definition of RRC programs mandates a measure of positive behavior or adjustment which is very difficult to quantify or measure. We cited the potential use of recidivism or re-offense indicators as one example of using currently available data to attempt to assess outcomes of the use of RRCs and home confinement. In our report, we also offered other examples of potential positive outcomes or adjustments BOP could track and measure, such as tracking measures related to inmates' ability to find

jobs or the value of RRCs and home confinement to inmates in helping them to transition back into the community as shown through results of surveys of inmates who have completed time in RRCs or home confinement. We defer to BOP to determine which measures are most appropriate. While we acknowledge the challenge in establishing such measures, we continue to believe it is important for BOP to identify, obtain, and track data on the outcomes of the programs and develop appropriate performance measures in order to be better able to monitor its use of RRCs and home confinement as a means to achieve its goal of helping inmates successfully reenter society.

AOUSC and DOJ also provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the Department of Justice; Administrative Office of the U.S. Courts; U.S. Sentencing Commission; appropriate congressional committees and members, and other interested parties. In addition, this report is available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff have any questions, please contact Diana Maurer at (202) 512-9627 or maurerd@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made significant contributions to this report are listed in appendix II.

A handwritten signature in black ink that reads "Diana Maurer". The signature is written in a cursive style with a large initial "D" and "M".

Diana C. Maurer
Director, Homeland Security and Justice Issues

List of Congressional Committees

The Honorable Richard C. Shelby
Chairman

The Honorable Barbara Mikulski
Ranking Member

Subcommittee on Commerce, Justice, Science, and Related Agencies
Committee on Appropriations
United States Senate

The Honorable John Culberson
Chairman

Mike Honda

Acting Ranking Member

Subcommittee on Commerce, Justice, Science, and Related Agencies
Committee on Appropriations
House of Representatives

Appendix I: Comments from the Administrative Office of the U.S. Courts



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

JAMES C. DUFF
Director

WASHINGTON, D.C. 20544

June 3, 2016

Ms. Diana Maurer, Director
Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Ms. Maurer:

The Judiciary has received and reviewed the draft report in this matter entitled: *FEDERAL PRISON SYSTEM: Justice Has Used Alternatives to Incarceration, But Could Better Measure Program Outcomes* (GAO-16-516). We appreciate the opportunity to comment on this report. While the report touches on many areas relevant to federal policy on alternatives to incarceration, we would like to add some additional observations to clarify the function and role of the Judiciary.

The pervasiveness of statutory mandatory minimum sentences and the federal Sentencing Guidelines is central to understanding federal policy on alternatives to incarceration. The Sentencing Guidelines and mandatory minimums constrain a judge's ability to apply alternative sentences and the impact of the Guidelines is significant. According to the U.S. Sentencing Commission, the Guidelines remain the starting point for all federal sentences and continue to exert significant influence, including on the availability of alternatives to incarceration. Under the Guidelines and current statutory limitations, Sentencing Commission data show that more than three-quarters of U.S. citizen federal defendants were ineligible for alternative sentences in 2014.¹

While the report discusses the roles of the various stakeholders, I emphasize the central role of the judge (as compared to other court personnel) in determining federal sentences. Judges must consider the Sentencing Guidelines, adjudicate how the Guidelines are calculated in nearly every criminal case, determine the appropriate length

¹*Alternative Sentencing in the Federal Criminal Justice System*, United States Sentencing Commission, May 2015.

A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

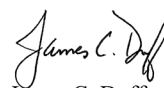
Ms. Diana Maurer
Page 2

of the sentence, and define the terms and length of supervision. Judges are directly assisted in this role by Probation and Pretrial Services officials; Federal Defender and Criminal Justice Act panel attorney participation is integral as well. The responsibility to impose federal criminal sentences, however, remains a judge's function.

Congress has not created any federal drug courts. Although some federal courts have set up programs for certain willing offenders that are similar in some respects to state drug courts, at the federal level, such "courts" are local programs within those existing federal district courts. These programs are not available in most federal districts. Moreover, the Federal Judicial Center is completing a multi-year evaluation of an evidence-based practices re-entry program model implemented in five study districts. This study will likely bring important information to bear on the question in the coming years.

Finally, because we recognize that the scope of GAO's study was to focus on alternatives after arrest through incarceration and re-entry into society, we note that consideration of the full range of Executive Branch powers is important to a complete discussion of federal policy on alternatives to incarceration. Prosecutors have the power to bring charges that incur fewer mandatory minimum sentences, lower Guidelines sentences, or pursue greater avenues for a non-incarceration sentence. The President has the power to pardon and commute sentences. In light of the statutory and policy limitations described above, these policy tools are considerably more flexible than judicial sentencing authority.

Sincerely,



James C. Duff
Director

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

Diana C. Maurer, (202) 512-9627 or maurerd@gao.gov

Staff Acknowledgments

In addition to the contact named above, Jill Verret (Assistant Director), Pedro Almoguera, Erin Butkowski, Willie Commons, William Egar, Sally Gilley, Christopher Hatscher, Susan Hsu, Amanda Miller, and Jeff Tessin made key contributions to this report.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (<http://www.gao.gov>). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to <http://www.gao.gov> and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, <http://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

Connect with GAO

Connect with GAO on [Facebook](#), [Flickr](#), [Twitter](#), and [YouTube](#).
Subscribe to our [RSS Feeds](#) or [E-mail Updates](#).
Listen to our [Podcasts](#) and read [The Watchblog](#).
Visit GAO on the web at www.gao.gov.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Website: <http://www.gao.gov/fraudnet/fraudnet.htm>

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Katherine Siggerud, Managing Director, siggerudk@gao.gov, (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548



Please Print on Recycled Paper.