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U.S. Department of Justice

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FOR IMMEDIATE RELEASE
July 14, 2016

DOJ OIG Releases Report on Pretrial Diversion and Diversion-Based Court Programs

The Department of Justice (DOJ) Office of the Inspector General (OIG) announced today the release of a report examining DOJ's use of pretrial diversion and diversion-based court programs as alternatives to incarceration. These programs, which the DOJ's August 2013 *Smart on Crime* initiative encouraged prosecutors to use in appropriate cases, are alternatives to prosecution or incarceration that enable certain low-level and non-violent offenders to be diverted from traditional criminal justice proceedings. Successful completion of these programs can result in an offender being sentenced to a lesser or no term of incarceration, or avoiding a conviction altogether.

Today's report from the OIG finds that while the Department has taken some steps to address its historically limited use of pretrial diversion and diversion-based court programs, the availability and use of these programs varies substantially across federal judicial districts. Specifically, we found that the use of pretrial diversion, which is initiated at the prosecutor's discretion, appeared to be substantially less in some U.S. Attorneys' Offices (USAOs) than in others. From fiscal years (FY) 2012 through 2014, nearly one-half (44 of 94) of all USAOs had just 5 or fewer successful pretrial diversion participants. As for diversion-based court programs, which are generally run by the U.S. Courts in partnership with the USAOs and Probation and Pretrial Services, we found that the vast majority of federal judicial districts (78 out of 94) had no diversion-based court program at all.

The OIG also found that neither the Executive Office for U.S. Attorneys (EOUSA) nor the USAOs track metrics about these programs that we consider crucial to evaluating a program's effectiveness, such as the total number of offenders who were placed in a program or the total number of unsuccessful participants. Nor has the DOJ evaluated the potential for diversion programs to reduce prosecution costs, incarceration costs, or recidivism.

Despite the limited data available, the OIG was able to identify 7,106 offenders, sentenced from FY 2012 to FY 2014, who based on their criminal histories and the nature of their crimes were potentially suitable for pretrial diversion. Of this number, 1,520 offenders had successfully completed a pretrial diversion program. We were, however, unable to assess whether the remaining 5,586 potentially suitable offenders would have met their particular USAO's eligibility requirements or been deemed suitable for supervision by Probation and Pretrial Services. For diversion-based court programs, we were able to identify 12,468 offenders who were sentenced during the same 3-year time period who were potentially suitable for a diversion-based court program. Again, we were unable to assess whether these offenders would have met the entrance and eligibility requirements for these programs in their individual sentencing jurisdictions. Nevertheless, we believe that our analysis of the available data with regard to both

types of programs illustrates that there remains a larger population of offenders for whom a diversionary disposition may be a possibility.

We also concluded that the potential cost savings from increased use of diversion programs could be substantial. Specifically, we estimated that the DOJ spent more than \$26 million in FYs 2012 through 2014 to incarcerate offenders who we found might be suitable for pretrial diversion. This amount does not take into account the cost to the DOJ of prosecuting these cases, the cost to the U.S. Courts to handle them, or the costs of the diversion programs themselves. For diversion-based court programs, we analyzed the court records of successful program participants in several judicial districts and came to similar conclusions. Records from the Central District of Illinois, for example, indicated that its diversion-based court program resulted in average savings of \$157,577 to \$197,261 per offender.

Finally, from our limited testing, we found that recidivism rate for offenders who completed a diversion program was lower than the general recidivism rate for federal inmates, suggesting that a broader study by the DOJ of the effect of diversion programs on recidivism is warranted. Today's report makes five recommendations to the Office of the Deputy Attorney General (ODAG) and EOUSA to strengthen the use of pretrial diversion and diversion-based court programs within DOJ. The ODAG and EOUSA agreed with the recommendations.

Report: Today's report is available on the OIG's website at the following link: <https://oig.justice.gov/reports/2016/a1619.pdf>.

Multimedia: To accompany today's report, the OIG has released a 2-minute video featuring the Inspector General summarizing the report's findings. The video and a downloadable transcript are available at the following link: <https://oig.justice.gov/multimedia/>.