

AUDIT OF THE DEPARTMENT OF JUSTICE OFFICE OF THE FEDERAL DETENTION TRUSTEE

EXECUTIVE SUMMARY

In Fiscal Year (FY) 2001, Congress approved the Department of Justice (Department or DOJ) request for the establishment of the Office of the Federal Detention Trustee (OFDT or office). Historically, the confinement of persons in federal custody awaiting trial or immigration proceedings (*i.e.*, detention) was the responsibility of the U.S. Marshals Service (USMS) and the former Immigration and Naturalization Service (INS).¹ However, there have been longstanding concerns with the cost, efficiency, and safety of federal detention, and the involvement of two separate components resulted in a fragmented approach to detention management. Because of the magnitude of these issues, detention was a longstanding DOJ material weakness and one of its top management challenges for over 10 years. The Department created a working group to address the matter, and this group concluded that a central command structure was key to realizing cost savings and improving efficiency in managing detention activities.

The DOJ Appropriations Act of 2001 therefore provided \$1 million to establish the OFDT as a separate component within the Department reporting to the Deputy Attorney General. As directed by Congress, the initial objective of the new office was to centralize responsibility for detention to better manage and plan for needed detention resources without unwanted duplication of effort or competition with other Department components. The law provided that the OFDT was to:

[E]xercise all power and functions authorized by law relating to the detention of Federal prisoners in non-federal institutions or otherwise in the custody of the United States Marshal Service and the detention of aliens in the custody of the Immigration and Naturalization Service...²

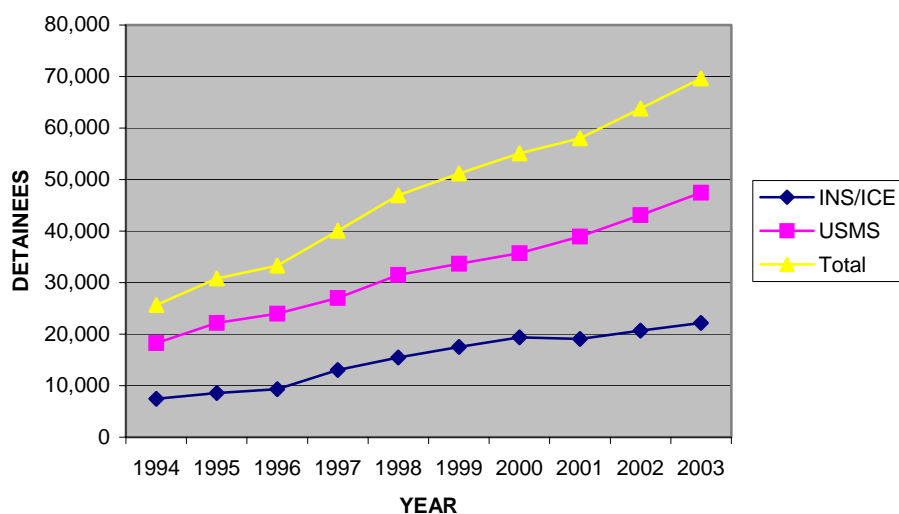
¹ The detention activities of the former INS were transferred to the new Bureau of Immigration and Customs Enforcement (ICE) when the Department of Homeland Security (DHS) was created in March 2003. This governmental reorganization proved to be one in a series of challenges for the OFDT that are discussed in this report.

² Public Law 106-553, enacted December 21, 2000.

Detention Growth

One of the challenges facing the OFDT was the significant growth in detention. The number of detainees held by the INS/ICE and the USMS increased from 25,675 in 1994 to 69,615 in 2003. On average, the number of detainees increased at an annual rate of almost 12 percent between 1994 and 2003, resulting in a total increase of over 171 percent.

DETAINED CRIMINAL DEFENDANTS AND ALIENS³



Source: Office of the Federal Detention Trustee

This growth has, in turn, generated the need for additional funding for bed space, transportation, medical costs, support services, and associated personnel. To illustrate, when 25,675 detainees were being held by the Department as of September 30, 1994, a total of about \$690 million was expended that fiscal year for detention. In comparison, the administration's FY 2003 budget request included over \$1.3 billion in funding for detention, about \$700 million for the USMS and \$600 million for the INS.⁴ Over this same 10-year period, the average daily rate for detention beds rose from about \$54 to \$61 per bed. This represents a modest 13-percent increase in the daily bed rate compared to the 171-percent increase in the number of detainees cited above. These statistics help illustrate that the rising costs of

³ Population counts represent the population on September 30 of each year. As of July 31, 2004, the total population was 72,956; 52,951 were in USMS custody and 20,005 were ICE detainees.

⁴ Since the INS was transferred out of the DOJ in March 2003, the FY 2003 budget was the last time federal detention costs were budgeted together. The DOJ detention budget for FY 2004 was originally approved in January 2004 at \$814 million.

detention are primarily due to the significant increase in the number of detainees.

Audit Objectives and Results

The objectives of this Office of the Inspector General (OIG) audit were to: 1) review the funding and the accomplishments of the OFDT since its inception in FY 2001; 2) determine how the OFDT coordinates and oversees detention activities within the Department; and 3) examine the OFDT's plans and goals for managing detention needs. Additional information on our audit objectives, scope, and methodology is contained in Appendix I.

In brief, we found that although the office has been in place for almost four years, the OFDT has not been able to complete the goal of centralizing and overseeing detention activities. The former INS's transfer to the DHS, congressional action, leadership vacancies, and other obstacles have complicated the OFDT's ability to build a firm foundation with a clearly defined organizational purpose. In addition, the area of detention has recently experienced funding shortages that have caused the need for funds to be transferred to the OFDT from other Department initiatives.

Obstacles to the OFDT Mission

The Department's proposal for the creation of the OFDT stated that the agency would be a small office operated separately from the existing components involved in detention to oversee the various activities and develop solutions to issues that went beyond individual component interests. Its budget in each of the first two years of operation was only about \$1 million. This changed dramatically in FY 2003 when it was given authority over the entire \$1.3 billion DOJ detention budget. The staff size has grown from its original ceiling of 3 individuals to its current level of 18.

Despite this growth, the OFDT has encountered significant obstacles in its ability to achieve its mission of overseeing detention, resulting in the office being seen by officials both inside and outside of the Department as an unstable organization with an uncertain future. For example:

- In March 2002, just six months after the hiring of the first Detention Trustee, the Department began planning to eliminate the OFDT as an independent entity and transfer its functions and personnel into the Federal Bureau of Prisons (BOP). In May 2003,

the Office of Management and Budget (OMB) officially rejected the proposal because it wanted the OFDT to remain independent.

- In January 2003, the first Detention Trustee retired after having served just 15 months. The position was then vacant for almost 18 months, while the OFDT Director of Programs served as the Acting Detention Trustee. In June 2004, after a prolonged search for a suitable applicant, the Department transferred an experienced executive (who was serving as a USMS Assistant Director in the Prisoner Services Division) into the Detention Trustee position.
- The OFDT's budget was greatly enhanced in FY 2003 when it received full monetary authority for all Department detention activities in non-federal facilities. The OFDT's budget grew from about \$1 million to over \$1.3 billion. The office was ill-equipped to handle such a large change in fiscal responsibility. At the time of the enhancement, the OFDT had five employees on board.
- In March 2003, the INS was reorganized, in part, into the newly created Department of Homeland Security (DHS), Bureau of Immigration and Customs Enforcement (ICE). This reorganization resulted in the transfer of significant detention activities and funding outside of the DOJ, once again fragmenting the government's efforts related to detention. An Interagency Agreement (IAA) was enacted between the OFDT and ICE in January 2004 that called for the OFDT to provide ICE with certain detention services, such as contracting support and facility inspections. However, to date, this agreement has not solved the fragmentation because it gives the OFDT only limited involvement in ICE detention activities.
- Beginning in the FY 2002 budget and appropriation process, Congress began indicating that it wanted the OFDT to take over management responsibility for the Justice Prisoner and Alien Transportation System (JPATS), currently under the control of the USMS.⁵ As the OFDT was first proposed and created to be a small oversight office, this direction appeared to signal a change in the spirit and character of the OFDT by adding duties of a

⁵ Created in 1995 through the merger of the air fleets operated by the USMS and the former INS, JPATS operates a fleet of aircraft, cars, vans, and buses to transport prisoners and detainees to courts and detention/incarceration facilities. On average, more than 270,000 prisoner and alien movements a year are completed by JPATS. In FY 2004, JPATS employed 146 permanent staff in addition to 210 contract employees and had a budget of \$87 million.

more operational nature. When the FY 2003 budget was passed in February 2003, Congress directed the Department to transfer the management of JPATS to the OFDT. Although the FY 2003 budget also raised the OFDT staff size to 18, the office had only five staff on board, and the Detention Trustee position was vacant at the time the legislation was passed. Therefore, Department officials believed that transferring JPATS was not feasible at that time. The FY 2004 budget again included provisions for the management of JPATS to be transferred to the OFDT. The Department is reviewing the current situation and discussing available options with Congress. In the meantime, JPATS remains under the USMS.

In our judgment, the OFDT's progress has been hampered by the lack of a clear and consistent purpose. Both Congress and Department officials seem to have wavered on the intended role and functions of the office. In addition, the former INS and its detention activities and funding were transferred to DHS, and the Detention Trustee position remained vacant for an extended period. These factors made it difficult for the OFDT to move forward in addressing detention weaknesses. Instead the office was focused on addressing the issue of the moment (e.g., the proposed merge with the BOP, the IAA with ICE) and the completion of individual tasks, such as reports requested by Congress or other special projects.

Recent Developments and the Future

After an extended vacancy, the Department placed an experienced executive in the Detention Trustee position in June 2004. The new Detention Trustee has acknowledged the weaknesses in the OFDT's operations due to the lack of a clear and consistent vision for the organization. She has provided a proposal to DOJ management for the OFDT to undertake an oversight role, including strategic management (e.g., advanced procurement planning and standardization of per diem rates for housing detainees), budget execution and formulation (e.g., forecasting and statistical analysis), and policy setting (e.g., cost containment initiatives and confinement standards), rather than an operational role requiring day-to-day OFDT involvement in contract management, facility inspections, and other routine tasks.

In recent correspondence, Department officials have expressed to Congress that it is committed to having the OFDT lead the effort in addressing the myriad detention problems that have plagued the Department. Congress responded that it considers the Department's recent

actions to be positive steps to address detention issues and remains in support of the OFDT.

Detention Funding Shortfalls

The OFDT faces another challenge related to detention forecasting and budgeting. Recent budget projections of detention bed space needs have been significantly inaccurate. The OFDT attributes these inaccuracies to weaknesses in the statistical model used to calculate the projections. Because the significant growth in detention was not accurately projected by the statistical model, which was developed by a USMS contractor, detention activities needed a budgetary bailout from other Department funding sources.

In FYs 2003 and 2004, the OFDT recognized that the funds budgeted for detention would fall short of the amount needed to fully fund activities. The receipt of \$40 million in wartime supplemental funds rectified the shortfall in FY 2003. For FY 2004, however, the Department was required to reprogram \$109 million from other initiatives to cover the shortage. Further, the Department has shifted \$150 million in funds previously budgeted for other Department initiatives into the OFDT's FY 2005 budget request.

According to Department officials, the primary cause of the shortfalls was a significant increase in the number of detainees. These increases far exceeded the forecasts used to calculate the budget requests. OFDT officials have acknowledged limitations of the statistical model used to develop the forecasts, and they hope to improve the accuracy of future projections by expanding the model to incorporate additional factors, such as law enforcement and prosecutorial resources and initiatives. Further, the Department has stated that the increasing trend in the detainee population is expected to continue. In response, the Department is embarking upon several initiatives coordinated by the OFDT to help contain the growth in detention costs. For example, the new Detention Trustee is heading a new high-level, interagency steering committee established to reduce the time individuals spend in detention, and the OFDT is working with the federal judiciary to raise the awareness of detention costs and projected shortfalls. The Department acknowledged that the dynamic detention environment includes significant factors outside its control but that it intends to make every effort to eliminate the need for funds to be transferred from other sources to cover detention budget shortfalls.

We believe the Department and the OFDT should also examine the current strategy and practices for acquiring detention space in non-federal facilities. According to the OFDT, detainee housing and subsistence constitutes about 90 percent of its total program costs (about \$800 million). The primary method for obtaining non-federal detention space is entering into Intergovernmental Service Agreements (IGAs) with state and local governments for jail beds.⁶ In previous OIG audits of IGAs, we have identified questioned costs related to the daily rate charged to house federal detainees. In 17 audits between FYs 1998 and 2003, we reported questioned costs in excess of \$21 million, which were primarily due to the state or local governments' inclusion of unallowable, unallocable, or unsupported costs in the computation of the daily rate.

Recommendations

As a result of our review, we have provided eleven recommendations to assist the Department and the OFDT in the endeavor to improve the Department's management of detention activities. The Department and the OFDT must address the continued lack of accuracy in estimating the cost of detention activities that has caused shortfalls to occur and must take steps to help contain the continually rising costs of detention. In addition, the Department must take firm action to establish the role and functions of the OFDT, particularly in relation to ICE and JPATS. The role and functions must then be clearly communicated to all stakeholders through the development of a strategic plan. Once this is done, the OFDT can begin to concentrate on tasks that contribute to the accomplishment of its mission. The new Detention Trustee has generally agreed with our findings and has begun taking steps to address them.

⁶ IGAs are agreements whereby state and local facilities provide bed space for federal detainees on a per diem basis. Once the daily rate is negotiated and the IGA is signed, the jail provides bed space as available and needed; however, bed space is not guaranteed. The USMS and ICE have established over 1,500 IGAs across the country, about half of which are utilized at a given time.

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INTRODUCTION

Two components within the Department of Justice (Department or DOJ) – the U.S. Marshals Service (USMS) and the former Immigration and Naturalization Service (INS) – were historically responsible for the detention of persons in federal custody awaiting trial or immigration proceedings. However, two components performing essentially the same function resulted in a fragmented management structure over federal detention. To centralize the detention function with the Department, Congress acted upon the DOJ's recommendation and established the Office of the Federal Detention Trustee (OFDT) in Fiscal Year (FY) 2001. This centralized command structure was envisioned as key to realizing cost-savings and gaining efficiencies.

However, detention in the DOJ changed in 2003 when the INS was transferred to the newly formed Department of Homeland Security (DHS). Detention of aliens is now the responsibility of the DHS Bureau of Immigration and Customs Enforcement (ICE). This change has presented major challenges for the OFDT. However, this change is only one of the numerous obstacles that the office has encountered in its short existence. In this Introduction, we provide background information on detention and the establishment of the OFDT. The INS transition to DHS and the other obstacles faced by the OFDT are discussed individually in Finding 1.

Nature of Detention

Detention refers to the temporary holding of individuals charged with federal crimes or pending immigration hearings or removal proceedings. Ideally, detainees are housed near court locations in the proper jurisdiction or in proximity to alien removal locations. Detention facilities can be federal, state or local, or private. The USMS and ICE have housed detainees in all three types. According to the OFDT, detainee housing and subsistence in non-federal facilities constitutes about 90 percent of its total program costs.

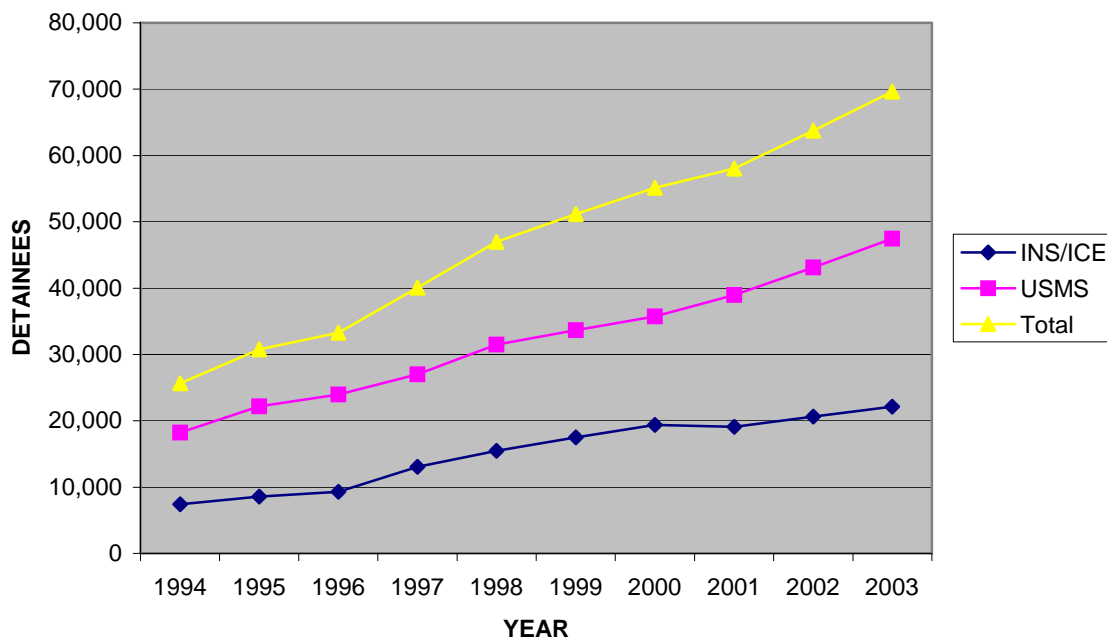
Detention space in state or local jails is obtained through the execution of Intergovernmental Service Agreements (IGAs). These are agreements whereby state and local facilities provide bed space for federal detainees on a per diem basis. Once the daily rate is negotiated and the IGA is signed, the jail provides bed space as available and needed; however, bed space is not guaranteed. The USMS and ICE have established over 1,500 IGAs across the country, about half of which are utilized at a given time.

In contrast to detention, incarceration refers to the confinement of individuals convicted of and sentenced for federal crimes. The Federal Bureau of Prisons (BOP), whose primary responsibility is incarceration, has played a supporting role in detention activities by housing a portion of federal detainees in BOP stand-alone detention centers and units in correctional facilities.⁷ Detention differs markedly from incarceration in terms of population stability. Detention is temporary in nature and entails the constant movement of detainees in and out of facilities, while incarceration is more long-term and involves less movement of individuals.

Growth of Detention

As shown in the following graph, federal detention has grown significantly. On average, the number of detainees increased at an annual rate of almost 12 percent between 1994 and 2003, resulting in a total increase of over 171 percent.

DETAINED CRIMINAL DEFENDANTS AND ALIENS⁸



Source: Office of the Federal Detention Trustee

⁷ Funds for detainees held in BOP facilities are included in the BOP's budget.

⁸ Population counts represent the population on September 30 of each year. As of July 31, 2004, the total population was 72,956; 52,951 were in USMS custody and 20,005 were ICE detainees.

Such growth has generated the need for additional funding for bed space, transportation, medical costs, support services, and associated personnel. In FY 1994, when 25,675 detainees were being held by the Department as of September 30, a total of about \$690 million was expended for detention. In comparison, when the FY 2003 budget was prepared, the administration requested over \$1.3 billion for detention, about \$700 million for the USMS and \$600 million for the INS.⁹ Over this same 10-year period, the average per diem rate for non-federal detention beds in use rose from about \$54 to \$61. This represents a modest 13-percent increase compared to the 171-percent increase in the number of detainees. The OFDT attributed the growth in detainees to new law enforcement initiatives, departmental and agency policies, and laws enacted by Congress that resulted in increasing numbers of arrests or apprehensions of illegal aliens or individuals suspected of violating federal laws.

The Detention Problem

Longstanding Department concerns with the cost, efficiency, and safety of federal detention resulted in detention space being considered a "material weakness" and one of the Top Management Challenges facing the Department. Over the years, the Department has examined these problems with studies, reports, and the Detention Planning Committee (DPC), which was created in 1989 and headed by the Deputy Attorney General.

In 2000, the DPC found that the Department lacked a systemic method of identifying or coordinating bed space needs. For example, the USMS and INS used different means and methods to predict detainee populations, making it difficult to plan for overall detention needs in the Department. Additionally, the USMS and the INS were acting independently and did not utilize a standard procurement process to obtain detention space. As a result, the two agencies were not able to benefit from potential economies of scale that might be realized during negotiations for detention space.

In addition, the DPC found that the Department lacked consistent detention standards that applied to non-federal facilities utilized by each component. The lack of standards led to inconsistent practices, confusion among detention providers, and lack of accountability. Also, these facilities were not adequately monitored to ensure safe, secure, and humane

⁹ Since the INS was transferred out of the DOJ in March 2003, the FY 2003 budget was the last time federal detention costs were budgeted together. The DOJ detention budget for FY 2004 was originally approved in January 2004 at \$814 million.

conditions of confinement. Standards for inspections were inconsistent, inspection staff lacked subject matter expertise, and no system existed to ensure corrective action and follow-up.

The DPC concluded that a central command structure would be the key to realizing cost savings and gaining efficiency in managing detention activities. As a result, in FY 2000 the Department asked the Office of Management and Budget (OMB) for approval to establish a "Detention Trustee" to oversee detention functions within the Department. OMB concurred and forwarded the request to Congress.

Establishment of the OFDT

In response to the Department's request and in recognition of the continuing difficulty in planning for and obtaining detention space, Congress established the OFDT in FY 2001. The law provided that the OFDT was to:

[E]xercise all power and functions authorized by law relating to the detention of Federal prisoners in non-federal institutions or otherwise in the custody of the United States Marshal Service and the detention of aliens in the custody of the Immigration and Naturalization Service...¹⁰

According to the OFDT, the initial objective of the office was to centralize responsibility for detention to better manage and plan for needed detention resources without the prospect of unwanted duplication of effort or competition with other Department components. With this broad authority and responsibility, the OFDT stated that it was expected to implement business process improvements and identify areas where operational efficiencies and cost-savings could be realized.

Language in a House of Representatives report related to the legislation creating the Detention Trustee directed the OFDT to focus on two regional detention pilot projects ("hot spots") to examine the efficiency of centralizing detention operations into a single office.¹¹ According to the OFDT, the office was also tasked with conducting a needs assessment of detention and

¹⁰ Public Law 106-553, enacted on December 21, 2000.

¹¹ House Report 106-680 was silent as to the exact locations of the "hot spots" to be addressed; however, the pilot projects were to be located in the Midwest and along the Southwest Border. The OFDT selected the specific locations as Chicago, Illinois, and El Paso, Texas/Las Cruces, New Mexico. More information on these projects can be found in Appendix II.

detainee handling requirements and describing the present efficiency and effectiveness of all aspects of detention and detainee handling. This assessment would establish a baseline against which subsequent process improvements and the efficiency of consolidation would be measured.

Additional responsibilities included developing and implementing consistent detention standards that would apply to non-federal facilities utilized by the Department. Also, the OFDT was responsible for ensuring that these non-federal facilities complied with the standards by carrying out a quality assurance inspection program. Further, the OFDT was to develop and implement a national repository for state and local governments and private detention space providers to electronically post space availability, rates, and any included services such as transportation and health care programs.

Audit Objectives

The objectives of this Office of the Inspector General (OIG) audit were to: 1) review the funding and the accomplishments of the OFDT since its inception in FY 2001; 2) determine how the OFDT coordinates and oversees detention activities within the Department; and 3) examine the OFDT's plans and goals for managing detention needs. Details of our scope and methodology are presented in Appendix I.

FINDINGS AND RECOMMENDATIONS

1. The Role and Functions of the OFDT

In December 2000, Congress approved a Department request and created the OFDT to centralize and oversee all detention functions. However, although the office has been in place for almost four years, the OFDT has not been able to complete this undertaking. Progress has been hampered by the lack of an overall and consistent vision as well as other major factors, including the creation of the Department of Homeland Security (DHS), which resulted in the movement of INS and its alien detention responsibilities and funding out of the Department. In addition, Congress has changed and expanded the OFDT's responsibilities, causing further uncertainty regarding the organization's purpose. The OFDT has also suffered from significant staffing weaknesses, including a period of almost 18 months during which the Detention Trustee position was filled on a temporary basis with an Acting Trustee. The Department has recently taken action to fill the Detention Trustee position. However, it must still make fundamental decisions regarding the role and functions of the OFDT and coordinate this effort with Congress, OMB, and DHS.

Since the OFDT was created in FY 2001, many extraordinary events, both internal and external, have occurred in its short existence. Below is a description of these events, in chronological order. A graphic representation of the significant events is displayed as a timeline in Appendix III.

Standing Up the OFDT

As previously noted, the Department attempted to solve longstanding concerns regarding detention through the creation of the OFDT. The OFDT was envisioned to be a small office operated separately from the existing components involved in detention – USMS, INS, and BOP – in order to develop solutions to issues that went beyond individual component interests. The OFDT was placed under the direct operational responsibility of the Deputy Attorney General to ensure that the office had both independence and credibility within and outside the Department.

In December 2000, Congress approved the request and created the OFDT to "...be responsible for construction of detention facilities...; the management of funds appropriated to the Department for the exercise of any detention functions; and the direction of the USMS and INS with respect to the exercise of detention policy setting and operations for the Department."¹² Congress appropriated approximately \$1 million in both FY 2001 and FY 2002 for the establishment and continuation of the organization.

The first Detention Trustee, a member of the Senior Executive Service, came on board in September of 2001, about nine months after the formal creation of the OFDT. The Trustee was a career civil servant with almost 30 years of experience, most of it in the BOP and related to federal prisons and prisoners. At the time he took office, the authorized full time equivalent (FTE) ceiling at the OFDT was three. Following the selection of the Trustee, the office began to take shape with the leasing of office space and hiring of personnel. In FY 2002, the OFDT's FTE ceiling was raised to six.

During these two initial fiscal years, the small OFDT staff began working on a baseline detention report, establishing uniform detention standards, and performing the other detention-related projects required by Congress, such as the regional detention pilot projects described on page 4. However, the OFDT had not yet begun to perform direct detention activities such as procurement planning or forecasting of detention needs.¹³

The Department's Plan to Merge the OFDT into the BOP

In March 2002, just six months after the initial Detention Trustee was hired, the Department began formulating a plan to eliminate the OFDT as an independent entity and transfer its functions and personnel into the BOP. According to a proposal submitted to OMB in October 2002, Department officials believed that this organizational change would reduce bureaucratic layering, streamline the Department's detention functions, and eliminate duplication of resources. The effort to transfer the OFDT's functions to the BOP lasted for about 15 months. In May 2003 OMB

¹² Public Law 106-553, enacted on December 21, 2000.

¹³ Appendix II contains information about each of the reports and projects prepared by the OFDT.

officially rejected the Department's proposal and expressed its desire for the OFDT to remain independent.

OFDT officials told us that while the proposal was awaiting OMB approval, OFDT staff met with BOP officials approximately every two weeks to work on the details of the transition. In addition, the OFDT was instructed by the Department not to hire any additional staff during the time that the proposal was under consideration.

OFDT Leadership

After serving 15 months, the first Detention Trustee retired in January 2003. The Department named the OFDT's GS-15 Director of Programs as the Acting Detention Trustee. Throughout the spring of 2003, the Department pursued filling the vacancy and a qualified replacement was selected. However, this candidate turned down the position in June 2003, because, according to several Department officials, the candidate viewed the OFDT as an unstable organization. In our opinion, the apparent lack of support on the part of the Department for an independent OFDT likely contributed to the concerns about instability.

In November 2003, Department officials stated that a recruiter was employed to find a new Detention Trustee, and it was hoped a new candidate would be hired quickly. The position was announced and open from December 15, 2003, until January 15, 2004. However, Department officials reported that the applicants did not meet their needs and, as a result, the position was not filled from this announcement. Instead, the Department directed a member of the Senior Executive Service currently serving as a USMS Assistant Director in the Prisoner Services Division to transfer into the vacant Detention Trustee position. She reported for duty at the OFDT on June 15, 2004. Before her arrival, the Detention Trustee position had been vacant for almost 18 months.

FY 2003 Budget Enhancement

The FY 2003 federal budget, which was approved by Congress in February 2003, called for the detention funding of the USMS and the INS (totaling over \$1.3 billion) to be transferred to the OFDT, giving the office the budgetary authority over all detention activities. However, day-to-day detention operations remained with the USMS and INS.¹⁴ The legislation

¹⁴ The USMS portion of the detention funding was approximately \$700 million and the INS portion was approximately \$600 million.

also included language calling for the Justice Prisoner and Alien Transportation System (JPATS) to come under the control of the OFDT.¹⁵

At the time that these funds were transferred, the OFDT was under the direction of the Acting Detention Trustee, and a total of only five individuals were on board. In our opinion, the office was ill-equipped to handle such a large change in fiscal responsibility.

The FY 2003 appropriation included funding to hire an additional 12 staff, but as previously reported, hiring remained on hold while the Department attempted to merge the OFDT into the BOP. In addition, FY 2003 budget legislation documents from the Senate included recommendations for a transfer of USMS, INS, and BOP staff to the OFDT so that it could assume full operational control of bed space management. The Senate advised that it was concerned that the OFDT did not have control of detention personnel and urged the Department to rectify the problem. However, this language was not included in the official FY 2003 budget or the accompanying conference report; the appropriations language remained essentially the same as the prior year.

The Senate language, however, indicated a change in the Senate's intentions for the depth of the OFDT's responsibility. The language appeared to envision a larger organization capable of running the day-to-day operations of detention, which was a marked change from the small, \$1 million organization initially established. The Department responded to this change of direction by assigning the Justice Management Division's Management and Planning Staff (MPS) to develop a plan for a transfer of necessary staff.¹⁶

Creation of the Department of Homeland Security

As a result of the creation of the Department of Homeland Security (DHS), the INS left the DOJ in March 2003 and the enforcement portion of the INS (which included detention) was reorganized as the Bureau of Immigration and Customs Enforcement (ICE). This shift had major implications for the OFDT.

Just one month after the federal budget was approved in February 2003, the OFDT was required by Congress to transfer the INS's

¹⁵ JPATS is discussed in more detail on page 12.

¹⁶ MPS's efforts to develop a staffing plan are detailed on page 13.

detention budget (about \$600 million) to DHS. Most importantly, with ICE's detention activities and funding no longer under the responsibility of the Department, the OFDT did not have the authority to oversee all detention activities and fulfill its original, congressionally mandated mission.

Beginning in the spring of 2003, OFDT and ICE officials met to discuss centralized oversight of detention by the OFDT through the formation of an Interagency Agreement (IAA), but they could not agree on the terms. Consequently, in September 2003, OMB was brought in to help with the negotiations, and in November directed ICE to sign an IAA by December 3, 2003. Even with this intervention, disagreements continued and an agreement was not finalized until January 28, 2004.

We asked ICE officials what issues had to be resolved before an agreement could be reached. First, ICE officials noted that its alien detainees are entitled to certain privileges that are not required to be provided to criminal detainees, such as access to telephones, legal materials, pro bono legal guidance groups, consular offices, and recreation. Detention officials at ICE told us that they were concerned that the OFDT might not agree with the priority of these privileges and the detention facilities procured by the OFDT might be more suitable for the criminal detainees in the custody of the USMS. Second, ICE was concerned about the proposed consolidation of previously independent facility inspections being done by USMS and ICE personnel. Specifically, officials worried that the additional entitlements for ICE detainees mentioned above would not be evaluated as part of the consolidated inspections. The third issue of concern to ICE was how to determine the value of the services provided by OFDT. Finally, ICE officials opined that the OFDT staffing level might not be adequate to perform the necessary functions, including ensuring good communication with ICE.

The IAA, which was signed on January 28, 2004 (11 months after the transfer of INS to DHS), was broad in nature, limiting the authority of the OFDT to perform procurement and contract management services for non-federal facilities and inspections of such facilities. The IAA did not involve the OFDT in other ICE detention issues such as projection of future detention needs, planning of detention space, or general detention policy-setting. In fact, the IAA named the OFDT as "a provider of procurement and contract/agreement management support for the ICE non-federal detention program" [emphasis added]. This language allowed ICE to use the OFDT for procurement services on an ad-hoc basis. Since signing the

IAA, ICE has requested OFDT assistance with six contracts for detention space. According to OFDT officials, the office has reviewed the requests and has begun to take necessary action (such as reviewing environmental assessments or developing the necessary requests for contract proposals), but no contracts have been put out for bid as of August 16, 2004.

The IAA negotiation process required significant time and effort on the part of the OFDT and, in our opinion, distracted the organization from addressing other detention needs, such as population forecasting and long-range planning. In addition, the transfer of INS out of the DOJ fragmented the government's detention efforts and caused further disruption in the mission of the OFDT. Within the DOJ, all non-federal detention operations were now under the responsibility of the USMS. Without a need to centralize a function once performed by two Department components, some questioned the need for the OFDT. As a result, the future of the office was viewed as uncertain.

Reimbursement Agreements with USMS for Detention Funding

As previously stated, the OFDT received an enormous budget enhancement in FY 2003 because it was given control of all DOJ detention funding that, in the past, had been budgeted to the USMS and INS. After transferring INS's funding to DHS, the OFDT only remains in control of the USMS's detention funding. However, the OFDT does not directly expend these funds, but instead acts as a pass-through entity.

On March 25, 2003, the OFDT and the USMS entered into a Reimbursement Agreement that set up the system by which the \$758 million for FY 2003 expenses related to the detention of federal prisoners housed with non-federal service providers would be forwarded from the OFDT to the USMS.¹⁷ Specifically, on a quarterly basis, the OFDT advanced funding to the USMS to cover its expected detention expenditures during that period. The USMS then submitted a monthly certification of summary expenditures made, along with automated expenditure listings of all USMS district offices. The OFDT reconciled the certifications to the district expenditure data.

In our opinion this process for the oversight of USMS detention expenditures is superficial, without written policies or procedures that

¹⁷ Similar arrangements were made for FY 2004. However, unlike FY 2003 for which only one reimbursement agreement was signed, the FY 2004 funds have been transferred using a series of monthly or bi-monthly agreements.

govern the process. Further, the OFDT has been only minimally involved in detention-related decisions (such as what facilities are used and the price to be paid) and the subsequent disbursement of funds.

Addition of JPATS

In addition to the previously mentioned increases in fiscal responsibility in FY 2003, Congress again directed in the FY 2004 budget that JPATS and its \$87 million in funding be transferred to the OFDT. Operated by the USMS, JPATS on average performs more than 270,000 prisoner and alien movements a year. Its operations are financed through a revolving fund, with each user paying for services on a flight cost-per-hour basis.

Created in 1995 through the merger of the air fleets operated by the USMS and the former INS, JPATS operates a fleet of aircraft, cars, vans, and buses and routinely serves approximately 40 cities. It supports the federal judiciary by scheduling and transporting prisoners to courts and detention facilities around the country, including sentenced prisoners who are in the custody of the BOP. JPATS also transports ICE criminal and administrative aliens to hearings, court appearances, and detention facilities. In addition, JPATS provides regular international flights for the removal of deportable aliens. JPATS is also available to military, state, and local law enforcement agencies to shuttle their prisoners between different jurisdictions. As of FY 2004, JPATS had 146 permanent staff in addition to approximately 210 contractor personnel.

The transfer of JPATS to the OFDT was first suggested by the Senate during the FY 2002 budget process, in which it said, “[m]anagement of JPATS is precisely the sort of task that should be undertaken by the Detention Trustee.”¹⁸ The intent was that the OFDT would be an impartial arbiter and be able to quickly resolve disagreements among the users of JPATS. The JPATS transfer was not included in the budget, however, until FY 2003.

With the passage of the FY 2004 budget, Congress firmly expressed its desire for the OFDT to manage JPATS by again directing the OFDT to become responsible for the management of JPATS. However, Department officials continued to believe that transferring JPATS to the OFDT was not feasible at that time because the future of the OFDT was uncertain due to

¹⁸ Senate Report 107-042, dated July 20, 2001.

the events outlined above (i.e., the retirement of the Detention Trustee, the increase in budget authority in FY 2003, the transfer of INS to DHS, and the protracted negotiations with ICE relating to the terms of the IAA). Further, although the FY 2003 budget raised the OFDT staff size to 18, the office was not fully staffed until July 2004.

Currently, much remains uncertain about JPATS. The Department has not taken action to transfer the management of JPATS to the OFDT. The new Detention Trustee has held discussions about JPATS with Department officials, congressional staff, and OMB, and has asserted that the matter will be addressed as soon as possible. In the meantime, JPATS remains under the umbrella of the USMS.

Department's Plans to Enhance the OFDT

In response to Congress' recommendations for the OFDT to receive a transfer of necessary detention staff from BOP, ICE, and USMS, Department officials required the MPS to assist the OFDT in determining its personnel needs. In March 2004, MPS submitted a proposal to the Attorney General recommending that the OFDT receive 37 additional FTEs in order for it to be capable of handling day-to-day detention operations, such as facility inspections and contract management. Specifically, 19 positions would be transferred from the USMS and 18 positions would be funded through a reimbursement agreement with ICE.

Although this was the final proposal submitted, MPS drafted several different plans and had extreme difficulty determining the number of staff to be transferred. Officials stated that this was because Department officials, USMS, ICE, and OMB were not in agreement about what functions the OFDT would eventually undertake. For example, the OFDT believed that Congress expected it to be involved in the day-to-day operations of all detention in non-federal facilities. The USMS opined that the OFDT was to be only an oversight agency and therefore would not require the number and types of staff being discussed for transfer. As a result, there were many versions of the proposal, particularly as it related to the transfer of USMS personnel. The first proposal reflected a transfer of 25 USMS positions. In subsequent draft proposals, this was increased to 35 and later decreased to 19 and then to 9 positions. The final proposal presented for approval to the Attorney General and OMB called for a total transfer of 37 positions (19 from USMS and 18 from ICE). According to an MPS official, this proposal has been shelved due to the recent appointment of

the new Detention Trustee, who is now responsible for determining the staffing resource needs of the OFDT.

Construction of Non-Federal Detention Facilities

The FY 2004 budget process also brought to light another challenge for the OFDT related to the functions expected to be performed by the office. This challenge specifically related to whether the OFDT had the authority to contract for construction of a detention facility. The legislation that established the office in FY 2001 stated "the Trustee shall be responsible for...construction of detention facilities or for housing related to such detention..."¹⁹ Similar language was included in the FY 2002 budget. Believing that it was well within the authority granted to it, the OFDT became involved in a construction contract, as detailed below.

In response to a growing need for detention bed space in the Washington, D.C./Baltimore, Maryland, area, the USMS and INS submitted a joint request in July 2001 to the Department asking for authority to pursue a 20-year contract with the private sector for 1,500 detention beds. The components estimated that these beds would be needed by July 2005. The request was forwarded to the OFDT, which began assessing existing detention bed space in the region and determined that the only way to solve the problem would be to build a private, non-federal facility in Maryland or the District of Columbia. In July 2003, the OFDT began the procurement process by issuing a pre-solicitation notice for a private detention facility to be constructed. The notice required potential providers to submit site surveys within four Maryland counties or the District of Columbia. In September 2003, the OFDT received four surveys to build a private, non-federal detention facility in Maryland.

The procurement process was cancelled, however, when Congress learned about the construction plan during the FY 2004 budget process and expressed its concern that the OFDT was addressing detention needs by contracting to construct a facility. In reports accompanying the FY 2004 budget, Congress further stated that construction was a BOP function and was never intended to be undertaken by the OFDT.

¹⁹ Public Law 106-553.

Need for Establishment of the OFDT's Role and Functions

The circumstances detailed above illustrate the changing landscape in which the OFDT has been operating. OFDT officials agreed that it has been a difficult task to lead the organization through such significant changes. Throughout our audit we interviewed staff and management at the OFDT, USMS, ICE, BOP, the OMB, the Justice Management Division, and officials in the offices of the Deputy Attorney General and Assistant Attorney General for Administration, and almost everyone we encountered expressed frustration over the seemingly constant change surrounding the OFDT and the confusion this caused. More importantly, the officials we interviewed expressed different opinions as to what the role of the OFDT was expected to be. The office was viewed by some as an administrative office responsible for overall oversight of detention issues. Others believed that the office was expected to run detention operations on a day-to-day basis, including conducting all inspections, contracting for bed space, and forecasting detention needs for the government as a whole. Clearly, these individuals did not have a consistent, clear vision of the office's purpose or the direction in which it was heading.

In our judgment, it is essential that the Department and the OFDT, in consultation with OMB and Congress, conclusively determine the role of the office, including its relationships with ICE and JPATS. Once these fundamental decisions are made, the OFDT needs to establish a strategic plan that outlines its vision, mission, and functions, along with the steps it will take to achieve them.²⁰

Recent Developments

As mentioned previously, the Detention Trustee position was filled with an Acting Trustee from January 2003 to mid-June 2004. During this period, Department officials reported having difficulties identifying a suitable applicant with the appropriate experience in both management and detention. This problem was solved through the directed transfer of the USMS Prisoner Services Division Assistant Director. The new Detention Trustee reported for duty on June 15, 2004 and provided us with an overall outlook for the OFDT.

- Role and Functions – The Detention Trustee agreed that there had been a general lack of consistency concerning the OFDT's role and

²⁰ At the start of our audit, the OFDT did not have a strategic plan, and no one that we contacted was aware of any efforts to create one.

functions. She explained that the first order of business must be to determine if the OFDT is going to manage detention through an indirect or direct command and control structure. An indirect structure would result in the OFDT acting as an overseer or administrator of detention matters, with the USMS and ICE performing the actual detention functions. A direct command and control structure would place the OFDT in the role of managing the day-to-day operations of detention that are performed throughout the country.

In early August 2004, the Detention Trustee presented Department management with a draft proposal for the OFDT to act as an overseer for the overall DOJ detention program. This would primarily include strategic bed-space management (e.g., advanced procurement planning and standardization of per diem rates), budget execution and formulation (e.g., forecasting and statistical analysis), and policy setting (e.g., cost containment initiatives and confinement standards). Upon receiving positive feedback from Department officials, the OFDT began developing a formal proposal and strategic plan.

- ICE Involvement – The Detention Trustee acknowledged that the current agreement with ICE is not an optimal solution for solidifying the working relationship between the two organizations. The proposal submitted to the Department outlining the suggested functions for the OFDT includes provisions for the office to assist ICE in the accomplishment of the same broad detention functions for which it would act on behalf of the DOJ, except for budget execution and formulation. The Detention Trustee believes that the IAA can be slightly modified to accomplish this, which will improve the effectiveness of the OFDT and federal detention as a whole. She further believes that ICE will be receptive to such changes in the IAA.
- JPATS – The Detention Trustee noted the uncertainty surrounding the issue of transferring JPATS to the OFDT. She said that she and Department management are still examining the feasibility and necessity of placing JPATS under the umbrella of the OFDT.

- Staffing – The Detention Trustee has recently filled the long-vacant position of Deputy Trustee.²¹ In addition, the Detention Trustee plans to evaluate the staffing needs of the office once the OFDT's role and functions are formally established and a strategic plan is in place to guide the office in the accomplishment of its mission. Further, the Detention Trustee stated that the current OFDT personnel provided important skill sets relative to detention issues at the USMS and the BOP. However, she hopes to add staff with experience and knowledge relative to ICE detention matters.
- USMS Reimbursements – To begin to strengthen the process by which detention monies are transferred to USMS, the Detention Trustee initiated a process in July 2004 to eliminate the need for the advancement of funds. The intent of the new process is to have the OFDT pay out against bona fide obligations to allow the office to better account for the funds it controls.
- Outreach – The Detention Trustee has met with officials from OMB and Congress and discussed with them the continuing detention weaknesses and the challenges that have faced the OFDT. She outlined preliminary plans to address these issues and reported that the officials responded favorably and expressed their continued support for the OFDT in its endeavors to address critical detention issues. The Detention Trustee stated that she intends to continue to communicate with OMB and Congress as she works with the Department to establish the role and functions of the OFDT.

The Future of the OFDT

After an extended vacancy, the Department has taken action to place an experienced executive in the Detention Trustee position. The new Trustee has acknowledged the weaknesses in the OFDT's operations due to the lack of a clear and consistent vision for the organization. She has provided a proposal to management for the OFDT to undertake an oversight role. Acknowledging that a sizeable portion of federal detention now is outside the control of the DOJ, she believes that the OFDT can provide a valuable service to the Department in addressing the concerns that still

²¹ Included in the personnel enhancements authorized in the FY 2003 budget was funding for the establishment of this as a Senior Executive Service position. Because the Detention Trustee position was vacant from January 2003 through June 2004, the Deputy Trustee position also was not filled.

exist, such as population forecasting, procurement planning, and cost containment initiatives.

The Department's recent action to fill the long-vacant Detention Trustee position has demonstrated its support for the existence of the OFDT. Moreover, in recent correspondence Department officials expressed to Congress a commitment to addressing the weaknesses in its detention management. Department officials also believe that there is value in the continuation of the OFDT as an organization to address the myriad detention problems that have plagued the DOJ for over 15 years. In response on July 22, 2004, Congress stated that it considers the Department's recent actions to be positive steps to address detention issues and remains in support of the OFDT.

Conclusion

In FY 2001, \$1 million was appropriated to establish the OFDT as a separate component within the Department responsible for centralizing and overseeing all Department detention functions. This congressional appropriation was made pursuant to a request from the Department, which was looking to solve longstanding concerns related to detention. Although the office has been in place for almost four years, the OFDT has not been able to carry out its mission.

The governmental reorganization that resulted in the movement of INS and its detention functions and funding out of the Department had a profound effect on the OFDT. This move called into question the need for the OFDT and set into motion a protracted negotiation over the terms of an agreement between ICE and the OFDT for the provision of certain services related to detention of aliens in non-federal facilities. Although an agreement was signed, this situation has not been completely remedied; the IAA does not give the OFDT the authority to accomplish the mission of overseeing detention in non-federal facilities.

In addition, congressional action has changed the character and spirit of the OFDT from the small office that was first proposed by the Department to a larger, more encompassing entity. Specifically, the budget increased significantly from FY 2002 to FY 2004, primarily a result of the transfer of detention funding from the USMS and INS to the OFDT. Also, Congress has expressed that the OFDT should take over the responsibility for managing JPATS. The OFDT was expected to take on responsibility for these activities and the related fiscal accountability before

the appropriate staffing level was determined and filled, and before the OFDT and the Department had formally established the role and functions of the office.

Other obstacles have hampered the OFDT's progress, including the fact that the Detention Trustee position was vacant from January 2003 through June 2004. Further, a 2002 Department proposal to merge the OFDT into the BOP would have eliminated the OFDT's position as an independent agency. In contrast, the Department took steps in 2003 and 2004 to greatly increase the size and status of the OFDT. These actions illustrate, and our discussions with various officials confirmed, that individuals within the OFDT, the Department, OMB, and Congress have had different opinions about the breadth of the office's responsibilities.

In June 2004, the Department filled the Detention Trustee position with an executive with experience in detention issues and has illustrated its support for the OFDT. Congress and OMB have both acknowledged this move as a positive step in the Department's efforts to address detention problems and stabilize the OFDT. The Department and the OFDT must now make fundamental decisions regarding the office's role and functions, which can then be formalized into a strategic plan.

Recommendations

We recommend that the Department and the OFDT:

1. In coordination with OMB and Congress, clearly identify the OFDT's mission and responsibilities;
2. Prepare a strategic plan for the OFDT that clearly identifies and communicates the role, functions, and goals of the office;
3. Evaluate the functions assigned to the OFDT in order to ensure that the office has the necessary complement of staff, experience, and skill sets to carry out the strategic plan;
4. Evaluate the current IAA with ICE and determine if it best serves the government, the Department, and the OFDT, and if necessary, coordinate with ICE to make any necessary modifications;

5. Establish and communicate formal policies and procedures to manage the OFDT/USMS reimbursement agreement to ensure that the detention funds are properly monitored; and
6. Formulate and communicate a clear, firm decision regarding the responsibility for management of JPATS.

2. Budget Shortfalls

The number of individuals detained by the Department is steadily rising and therefore the associated costs are increasing as well. In FYs 2003 and 2004, the OFDT recognized that the funds budgeted for detention would fall short of the amount needed to fully fund detention costs. In FY 2003, the receipt of \$40 million in wartime supplemental funds rectified the shortfall. For FY 2004, the OFDT projected the shortage to be approximately \$109 million and Congress approved a Department request to reprogram funds to cover the shortage. Already for FY 2005, the Department has taken action to enhance the OFDT's budget through additional reprogramming of \$150 million. The Department and the OFDT must address the continued lack of accuracy in estimating the cost of detention activities that has caused the shortfalls to occur and should follow through with planned steps to address the continually rising costs of detention. Finally, we believe the Department should examine IGAs as an additional cost saving measure.

Detention Projections and Budgeting

Budgeting for detention is not an easy task. Currently, the Department calculates the amount of funds to be requested for detention activities using a statistical projection model that takes into account historical detention needs and the expected number of detainees on a daily basis. These calculations are impacted by various law enforcement and prosecutorial initiatives. There is little room for error because sufficient funds must be available for keeping the detainees (i.e., criminals or illegal aliens) confined.

The OFDT employs a statistician, who explained to the OIG that the BOP and other corrections agencies commonly use prison population models for projecting fluctuations in the number of incarcerated persons and the resulting need for space and other resources. He stated that these models use the relatively static population of prison inmates, where the length of the sentence is known and the sentence is usually longer than a year. He also stated that, on the other hand, the detainee population is much more unstable due to a turnover rate of about nine months.

Historically, the USMS had contracted with a company to develop a model and projections of its detainee population. According to the OFDT statistician, this company used a time series analysis to project the population, which is based on historical data. While the statistician believed the company made a good effort in projecting detention bed space needs, he thought improvements could be made in the methodology employed. Specifically, he believed the model should take into consideration prosecutorial variables such as whether the U.S. Attorneys accept or decline cases, the number of U.S. Attorneys that prosecute cases, and the number of judges that hear the cases.

In addition, by its very nature, budgeting occurs far in advance of the period in which funds are to be used. There is significant advance planning in the federal budget process; initial budget estimates are submitted about 18 months before the start of the fiscal year. To illustrate, the FY 2004 budget was initially compiled in the spring of 2002. Until the spring of 2003, the USMS had been responsible for preparing the budget for its detention activities. At that time, the OFDT took over the detention budget planning function by preparing the FY 2005 budget request.²²

Identification of FY 2003 and FY 2004 Shortfalls

To monitor the execution of the detention budget, the OFDT reviews the USMS bed space utilization on a monthly basis and makes a comparison to the projected figures. During FY 2003, the OFDT projected that the funds budgeted for detention would not cover the expenses being incurred in the current fiscal year; in other words, they projected a shortfall. However, before officials moved to address the shortfall, the OFDT received \$40 million through a Wartime Supplemental Appropriation.²³ This funding covered the detention budget shortage in FY 2003.

We interviewed an OMB official in early FY 2004 and discussed the occurrence of the shortfall in FY 2003. At that time, we were told that if a shortfall occurred again in FY 2004, the Department would have to find the needed money within its own budget. The OMB official believed Congress would not assist the Department by appropriating additional funds.

²² When the OFDT took over responsibility for budgeting and forecasting, the former INS had already moved to the DHS. The OFDT is not responsible for budgeting and forecasting of detention needs outside of the DOJ.

²³ The Wartime Supplemental Act (Public Law 108-11) was enacted on April 16, 2003.

Subsequent to the submission of the FY 2004 budget request, the USMS experienced a substantial increase in the number of detention beds utilized in non-federal facilities.²⁴ The current population projection reflected a net daily increase of 1,905 detention beds over the projection included in the FY 2004 budget request. In order to accurately estimate the budget shortfall for FY 2004, the OFDT worked with the USMS to appropriately forecast its needs using year-to-date USMS detention data. Included in the estimate were the proportional increases in expenditures for medical services provided to detainees and guard services of hospitalized detainees. The OFDT calculated that the shortfall between the amount budgeted (\$814 million) and the total amount needed for the remainder of the fiscal year equaled \$109 million.²⁵

In order to address the projected shortfall, the Department requested approval from both houses of Congress to reprogram \$109 million from other Department programs to the OFDT. On April 1, 2004, the Department proposed the reprogramming and transfer of \$77.7 million from surplus funds available in the Asset Forfeiture Fund and \$31.3 million from the Working Capital Fund.²⁶

Congressional Action and Department Response

In a letter dated April 20, 2004, the House Committee on Appropriations (Committee) approved the reprogramming and transfer of \$77.7 million from the Asset Forfeiture Fund. At that time, Congress did not approve the \$31.3 million transfer from the Working Capital Fund. Instead, the Department was directed to work on reducing the average number of days spent in detention, and to examine the entire detention process from

²⁴ Similar to the detention increases within the DOJ, DHS has reported an escalation in the number of alien detainees in ICE custody. Further, DHS personnel have reported funding difficulties related to the increase in detainees.

²⁵ In addition to the increase in the number of detainee beds required, the detention budget was also affected by: 1) rescissions enacted along with the overall federal appropriation, and 2) internal Department reductions. OFDT budget personnel estimated these negative adjustments at about \$20 million.

²⁶ The Asset Forfeiture Fund is the repository for seized funds and the sale proceeds from forfeited property. These monies are primarily used to cover certain operating costs of the DOJ Asset Forfeiture Program. The Working Capital Fund (WCF) is a revolving fund subsidized by reimbursements from Department components for the cost of providing certain administrative services on a centralized basis. The WCF does not receive appropriated monies from Congress.

commencement to incarceration, to find ways to operate within requested and appropriated funding levels. It advised that once this was done and the Committee was assured that appropriate actions were being taken, it might reconsider a request to reprogram the remaining \$31.3 million.

In a letter to the Committee dated July 8, 2004, the Assistant Attorney General for Administration (AAG/A) provided a detailed explanation for the shortfall. He stressed that the individual contract jail costs had remained relatively flat and that the increased costs instead resulted from unanticipated increases in the number of detainees, thereby increasing the amount of necessary bed space and related costs. In other words, the shortfall was caused primarily by a higher number of beds needed, not the cost per bed. The AAG/A attributed the additional detainees to new and continuing law enforcement initiatives by the DOJ and DHS to secure the nation's borders and improve public safety. He noted that the OFDT was aggressively seeking more accurate forecasting methods, including working with federal law enforcement agencies and U.S. Attorney's Offices to assess their staffing levels and current and future law enforcement initiatives.

In addition, the AAG/A emphasized that the Department and the OFDT intended to take firm steps to reduce the average detention time during both the pre-trial and post-sentencing phases. These steps included:

- establishing a high-level, interagency steering committee (headed by the Detention Trustee) to develop strategies for reducing the time from sentencing to commitment by targeting high volume districts where processing times are especially long;
- developing an action plan for the implementation of the interagency steering committee's strategies through an accelerated pilot program along the Southwest border;
- implementing a fast-track case-processing program by the Executive Office for U.S. Attorneys;
- working with the federal judiciary to raise the awareness of detention costs and the projected shortfalls;
- addressing weaknesses in the infrastructure that have not kept pace with population growth (e.g., transportation means) thereby increasing detention time and costs; and

- exploring operational alternatives where it may be advantageous to move recently sentenced offenders to lower-cost beds pending their transfer to BOP custody because they no longer need to be located in close proximity to court facilities.

The Department expressed its hope that these plans and the recent hiring of a permanent Detention Trustee in June 2004 would provide the Committee with the assurance that it was looking for, and that as a result, Congress would provide its approval to transfer funds to cover the remaining shortfall of \$31.3 million. On July 22, 2004, and August 5, 2004, the House and Senate, respectively, approved the Department's full reprogramming request. Further, the House expressed its support of the Department's efforts to address continuing critical issues related to detention.

Potential Cost Savings Related to IGAs

As noted above, the OFDT's efforts to reduce detention costs will focus on decreasing the amount of time individuals spend in detention. We believe that additional cost savings can be realized if the OFDT and the Department address deficiencies in the individual Intergovernmental Service Agreements (IGAs) established with state and local law enforcement agencies for detention bed space.

Historically, the OIG has conducted audits of IGAs and identified significant overpayments for detention space. Specifically, between FYs 1998 and 2003, the OIG conducted 17 IGA audits and identified questioned costs totaling in excess of \$21 million. Our reports revealed the state or local governments' inclusion of unallowable, unallocable, and unsupported costs in the daily rates paid by the federal government to house detainees.²⁷ For example, in FY 2003, we issued an audit of the costs incurred by the Orleans Parish, Louisiana Criminal Sheriff's Office to house federal detainees in accordance with an established IGA.²⁸ We found that for FYs 2000 and 2001, the Department paid the facility about \$10 million for bed space, which included overpayments of \$4 million because the daily rates were overstated.

²⁷ While some of our audits focused on and the related questioned costs were attributable to the former INS, our findings concerning the local calculation of the daily rate would apply to IGAs in general, regardless of the federal entity involved.

²⁸ OIG Audit Report number GR-60-03-001-R, entitled "*U.S. Immigration and Naturalization Service, and U.S. Marshals Service Intergovernmental Service Agreement for Detention Facilities with the Orleans Parish Criminal Sheriff's Office, New Orleans, Louisiana.*"

In the previously mentioned July 2004 letter to Congress detailing the Department's plans for addressing the shortfall in detention funding, the Department acknowledged that the individual agreements for detention space are expensive. However, the letter does not include any information about how, if at all, the Department will address the costly strategy. In our opinion, the Department's plans to contain detention costs should include examining the policies governing IGAs and reviewing individual agreements to identify any waste or unnecessary costs.

FY 2005 and Future Projections

The OFDT's involvement in the detention budgeting arena began in the spring of 2003 with the FY 2005 budget process. As previously reported, the OFDT statistician planned to improve upon the USMS's existing projection methodology by developing a model to more accurately project the detainee population by factoring in prosecutorial variables. However, the statistician explained that the new methodology was not yet ready and therefore, he utilized the old projecting process, with some minor adjustments, for the FY 2005 and FY 2006 budget submissions.

For FY 2005, the Department originally requested a \$938.8 million budget for the OFDT. However, the Department has already identified that the same increasing detainee population in non-federal facilities will be present in FY 2005. As a result, they have requested another transfer of DOJ funds. On July 13, 2004, OMB forwarded to the President its approval of the Department's request to adjust its FY 2005 budget submission. Specifically, the Department provided the OFDT with \$150 million in additional funding by transferring \$60 million from the Working Capital Fund, \$35 million originally budgeted for the deployment of the DOJ Consolidated Office Network in the BOP, and \$55 million originally budgeted for a planned medium-security facility in Mendota, California. The \$150 million increase in the OFDT's FY 2005 budget request, which now totals almost \$1.09 billion, represents a 16-percent change in expected outlays over the original submission.

According to the new Detention Trustee, the FY 2006 budget request should be revisited as well. She pointed out that the shortfalls in FY 2003, FY 2004, and that which was anticipated for FY 2005, reflect the upward trend in the detainee population and associated costs. She further stated that while the OFDT will endeavor to contain the rising costs, it is unlikely that the trend will reverse and costs will return to earlier levels. Therefore,

the OFDT will seek to have the \$150 million FY 2005 adjustment added to its base detention funding for FY 2006 and beyond.

As noted above, the OFDT statistician has identified possible enhancements to the projection model and had planned to implement them for the FY 2007 budget process. The new Detention Trustee agrees that the Department must do a better job forecasting its detention bed space needs and has stated that implementing a new projection model is a high priority. She stated that contracting with private firms for this service is expensive and might not be the most cost-effective method for projecting. She also said that the OFDT will research the options available, including those available in-house and in the public sector, and take necessary steps to implement a revised, more precise, and cost-effective method of estimating future detention bed space needs.

Conclusion

Recent budget projections of detention bed space needs have been significantly inaccurate. The OFDT statistician attributed the lack of precision to weaknesses in the projection model used to estimate future detention statistics. The inaccuracies have led to funding shortfalls and, as a result, detention activities have had to receive a budgetary bailout from other Department funding sources. Although the Department has taken action to identify and address the FY 2004 and FY 2005 projected budget shortfalls, it is imperative that action be taken to refine the forecasting methodology that is used to project future detention bed space needs to more accurately estimate the resources needed to manage this essential Department function.

In addition, in the face of rising detention populations, the Department must endeavor to do what it can to contain costs, including reducing the time individuals spend in detention facilities, and if possible, reducing the cost of detaining individuals in non-federal facilities. Some of this is not within the OFDT's control – it is instead a function of the law enforcement community (adding new laws and investigative and prosecutorial initiatives that increase the number of individuals being detained), the courts (processing the detainees in a timely manner), and the BOP (timely designation of the assigned facilities for convicted criminal detainees). Therefore, it is essential that the Department support the efforts of the OFDT and other components to control rising detention costs, including evaluating the current strategy and controls over acquiring detention bed space.

Recommendations

We recommend that the Department and the OFDT:

7. Refine the forecasting methodology that is used to project future detention bed space needs to more accurately estimate the resources needed;
8. Evaluate the previously submitted FY 2006 budget request to determine if an adjustment needs to be made to ensure that a shortfall does not occur;
9. Continue efforts to reduce the average detention time during both the pre-trial and post-sentencing phases, including the pilot project on the Southwest border, and require the steering committee to report related results;
10. Examine the policies and practices regarding IGAs to develop additional areas in which detention costs can be reduced; and
11. Develop a plan for reviewing and verifying the allowability of costs associated with individual IGAs.

STATEMENT ON INTERNAL CONTROLS

In planning and performing our audit of the OFDT, we considered its control structure for the purpose of determining our audit procedures. This evaluation was not made for the purpose of providing assurance on its internal control structure as a whole. However, we noted certain matters involving internal controls that we considered to be reportable conditions under the *Government Auditing Standards*.

Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operations of the internal control structure that, in our judgment, could adversely affect OFDT's ability to effectively oversee federal detention in non-federal facilities. We identified weaknesses in: 1) the defining of the OFDT's role and functions, 2) strategic planning, 3) staffing/hiring, and 4) the forecasting of detention bed space needs and the related impact on budget execution. These issues are discussed in the Findings and Recommendations section of the report.

Because we are not expressing an opinion on OFDT's internal control structure as a whole, this statement is intended for the information and use of OFDT management. This restriction is not intended to limit the distribution of this report.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

We have completed an audit of the Office of the Federal Detention Trustee. The objectives of the audit were to: 1) review the funding and the accomplishments of the OFDT since its inception in FY 2001; 2) determine how the OFDT coordinates and oversees detention activities within the Department; and 3) examine the OFDT's plans and goals for managing detention needs.

Scope and Methodology

We performed the audit in accordance with the *Government Auditing Standards* issued by the Comptroller General of the United States, and accordingly included such tests of the records and procedures that we considered necessary. The audit covered the period from the establishment of the OFDT in FY 2001 to the present.

We interviewed numerous personnel regarding their role in the detention area and their working relationship with the OFDT. In addition to meeting with officials at the OFDT, we interviewed officials at:

- the Office of the Deputy Attorney General;
- the Office of the Assistant Attorney General for Administration, including the Chief Financial Officer and Deputy Chief Financial Officer;
- the United States Marshals Service;
- the Federal Bureau of Prisons;
- the Justice Management Division (JMD) Management and Planning Staff;
- the JMD Budget Staff;
- the Department of Homeland Security, Bureau of Immigration and Customs Enforcement; and
- the Office of Management and Budget.

We also examined budget and other planning documents, as well as reports prepared by the OFDT, correspondence, historical detention information, policies, procedures, public laws, and related legislative history.

OFDT REPORTS AND PROJECTS

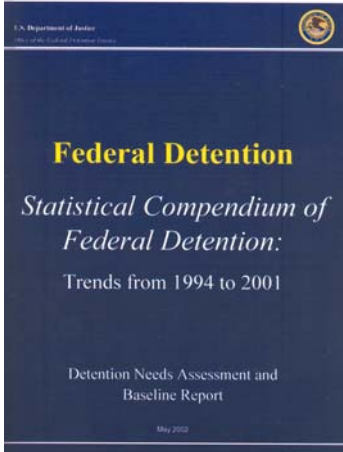
Congressionally Mandated Reports

Congress directed that the newly created OFDT prepare a number of reports and projects related to detention. The OFDT has fulfilled these mandates and generally has been timely in performing and completing the projects.²⁹ The reports and projects, and the legislative reference to the assignment are listed below, followed by more detailed information about each project.

CONGRESSIONALLY MANDATED REPORTS

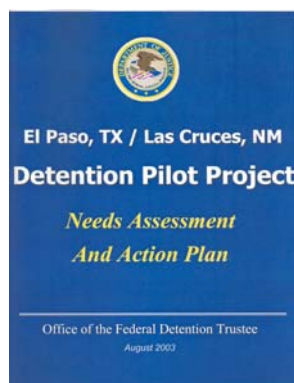
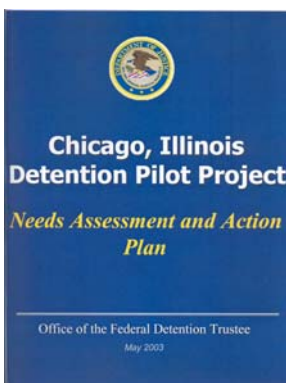
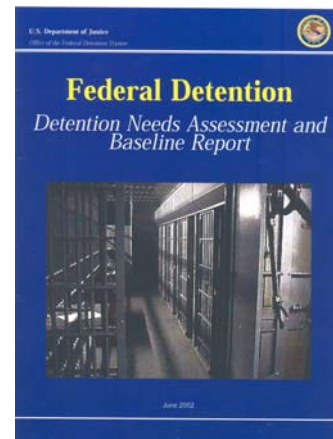
YEAR	LEGISLATIVE REFERENCE	REPORT/PROJECT TITLE
2001	House Report 107-139	Federal Detention Statistical Compendium
2001	House Report 107-139	Detention Needs Assessment and Baseline
2001	House Report 107-139	Chicago, Illinois Detention Pilot Project
2001	House Report 107-139	El Paso, TX/Las Cruces, NM Detention Pilot Project
2003	House Report 108-010	Plan for Medical Evaluation
2003	Public Law 108-7	Aircraft Replacement Procurement Strategy for JPATS
2003	Public Law 108-7	Plan to Evaluate the Health and Safety of Federal Prisoners Held in Non-Federal Detention Facilities

²⁹ Our review of these reports was limited to assessing the timeliness of the project and determining, in general, if the congressional mandate was achieved. We did not perform a detailed review of the material.



The *Federal Detention Statistical Compendium* provided an overview of detention statistical trends from 1994 to 2001. This 28-page report explored criminal detention (defendants awaiting hearings or commitment in the USMS's care) and administrative detention (aliens awaiting deportation by INS), including the number of detainees, the types of charges, the number and locations of detention facilities, the time to process detainees, and the departmental resources available.

The *Detention Needs Assessment and Baseline Report* was developed to determine the present efficiency and effectiveness of all aspects of detention and detainee handling, against which subsequent process improvements would be assessed. This 30-page report assessed the current state of federal detention, highlighting critical areas of concern and opportunities for OFDT action.

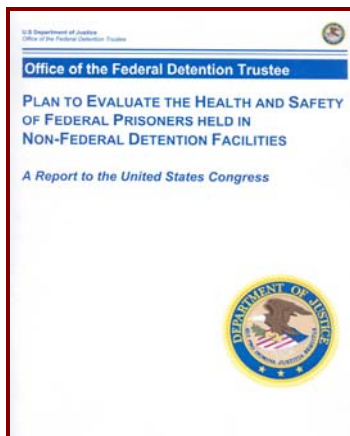
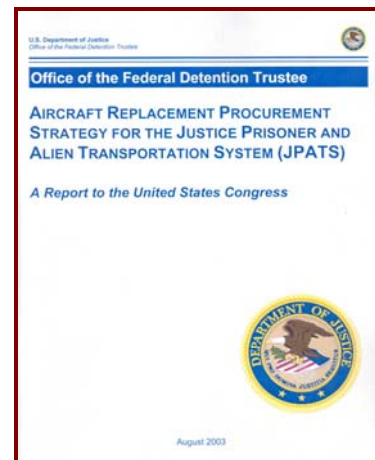


The *Chicago, Illinois Detention Pilot Project* and *El Paso, TX/Las Cruces, NM Detention Pilot Project* reports identified process improvements in the areas of consolidation and oversight of federal detention. For each site, the OFDT collaborated with multiple law enforcement agencies to:

- 1) establish a baseline of the current state of detention operations,
- 2) address future detention needs,
- 3) identify operational areas of improvement, and
- 4) develop an action plan to implement recommendations and measure performance.

The *Plan for Medical Evaluation* was to determine the impact of 18 U.S.C. Section 4006 on the delivery of health care services to detainees in the custody of USMS and ICE. This evaluation has not been finalized. The OFDT issued a memo regarding the contracting out of this report; however, the contractor experienced delays. The OFDT provided constant updates to the Deputy Attorney General. A draft was sent to the affected agencies (BOP, USMS, and ICE), their comments were received, and it has been forwarded to Department management.

The *Aircraft Replacement Procurement Strategy for JPATS* report was a review of the current replacement strategy and possible alternatives to obtain better efficiency. This report explained the current practices and strategy for large aircraft long-term leasing; it subsequently outlined a purchase replacement strategy.



The *Plan to Evaluate the Health and Safety of Federal Prisoners Held in Non-Federal Detention Facilities* was developed by reviewing areas of health care, safety and sanitation, and security and control. This 13-page report addressed the current federal practices, the plan of action for future efforts, and the plan for remedial action for deficient facilities.

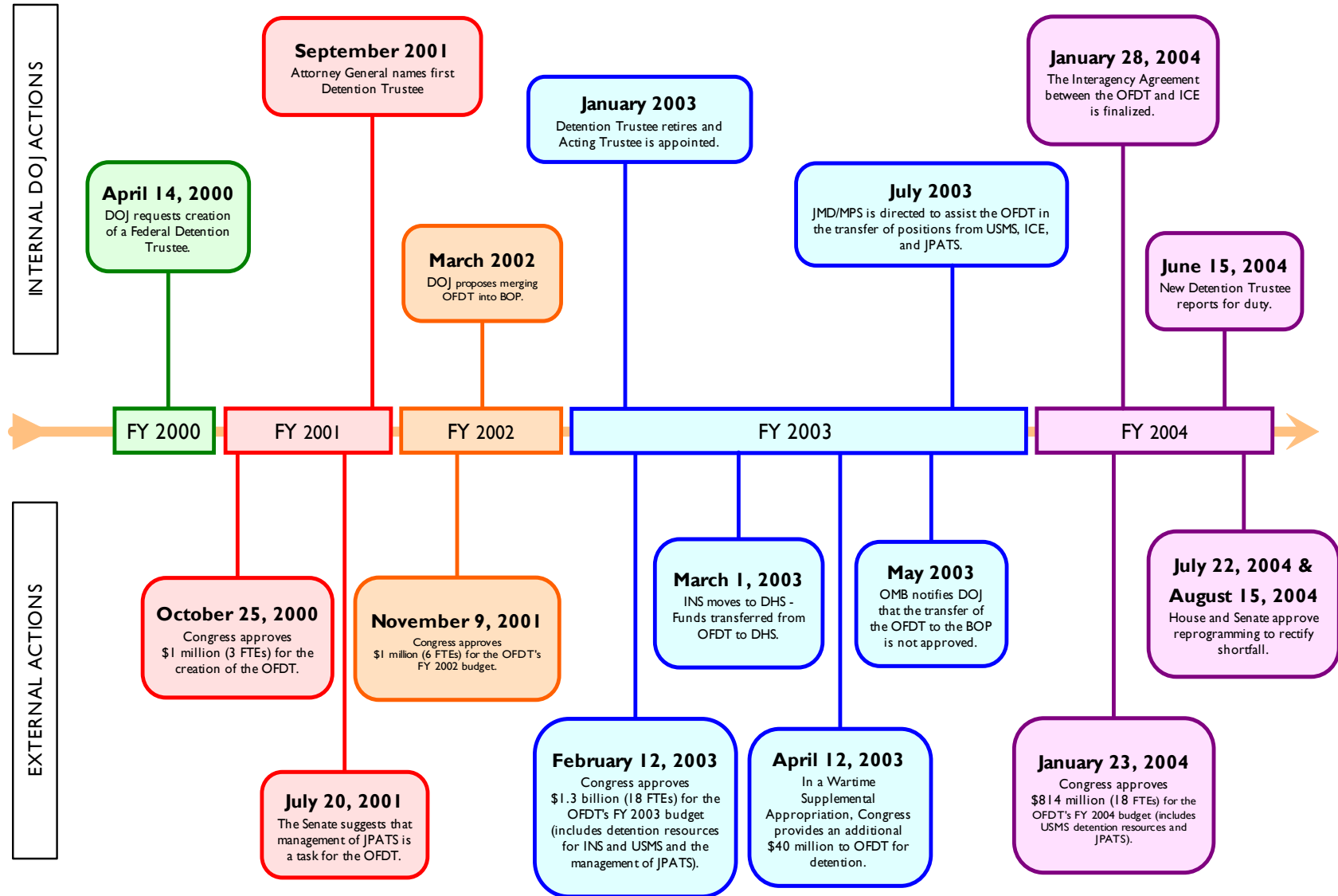
Other Projects

In addition to the mandated reports described above, the OFDT was tasked with several projects to be accomplished as a part of their mission.³⁰ These included the following:

- assembling the uniform *National Detention Standards*,
- the creation of a National Repository for Detention Space Availability, and
- the development of standardized inspection policies and procedures for non-federal facilities housing federal detainees.

³⁰ The OFDT has addressed each of these projects; we did not review them or evaluate their content or sufficiency.

TIMELINE OF SIGNIFICANT EVENTS



OFFICE OF THE FEDERAL DETENTION TRUSTEE RESPONSE



U. S. Department of Justice

Office of the Detention Trustee


Washington, D.C. 20530

November 23, 2004

MEMORANDUM FOR

GUY K. ZIMMERMAN
ASSISTANT INSPECTOR GENERAL
FOR AUDIT

FROM:


STACIA A. HYLTON
FEDERAL DETENTION TRUSTEE

SUBJECT:

Response to Draft Audit Report -- The Department of
Justice's Office of the Federal Detention Trustee

Thank you for the opportunity to comment on the draft audit report of your review of the Office of the Federal Detention Trustee. We have reviewed the recommendations in the report, and our comments are attached.

Should you have questions or concerns regarding this response, please contact Fran Wermuth, Chief, Strategic Planning and Analysis. She can be reached at 202-353-4601.

Attachment

**Office of the Federal Detention Trustee Response to
Draft Audit Report on the Review of the Department of Justice's
Office of the Federal Detention Trustee**

Recommendation 1. In coordination with OMB and Congress, clearly identify the Office of the Federal Detention Trustee's (OFDT) mission and responsibilities.

Agree – OFDT submitted to the Department, on September 13, 2004, a reorganization proposal that provides for OFDT to undertake an oversight role, including strategic management, budget execution and formulation, and policy. It is anticipated that this reorganization will move forward before the end of the calendar year.

Recommendation 2. Prepare a strategic plan for the OFDT that clearly identifies and communicates the role, functions, and goals of the office.

Agree – OFDT's reorganization proposal provides the framework for the strategic plan that clearly identifies and communicates the role, functions, and goals of the office. Once the reorganization is approved, OFDT will finalize and submit the strategic plan for approval. We anticipate this will occur in the second quarter of FY 2005.

Recommendation 3. Evaluate the functions assigned to the OFDT in order to ensure that the office has the necessary complement of staff, experience, and skill sets to carry out the strategic plan.

Agree – OFDT's proposed reorganization plan provides this analysis and enables the Trustee to work with the Justice Management Division and the Department's leadership toward our goal of ensuring that OFDT has the staff, experience, and skill sets necessary to carry out the strategic plan. These issues are being addressed and it is anticipated that the correct complement of staff will be in place by the end of FY 2005.

Recommendation 4. Evaluate the current IAA with ICE and determine if it best serves the government, the Department, and the OFDT, and if necessary, coordinate with ICE to make any necessary modifications.

Agree – OFDT has already initiated discussion with the Acting Director of Detention and Removal about the need for an amended IAA. It was agreed that OFDT would begin the first draft to further define roles and responsibilities, and use that draft as a starting point to discuss with OMB their concerns that there be a unified procurement process and no competition between detention agencies.

Recommendation 5. Establish and communicate formal policies and procedures to manage the OFDT/USMS reimbursement agreement to ensure that the detention funds are properly monitored.

Agree -- OFDT currently provides the USMS with a reimbursable agreement that limits the amount of available resources to time periods based on total availability of funds. Accordingly, for FY 2005, the Trustee is requiring the USMS to develop a district-level operating plan that must be submitted to the Trustee's Office for approval once the FY 2005 budget is passed. The Trustee will then chair a quarterly budget meeting that the USMS will be required to attend at the end of each fiscal quarter where adjustments will be made accordingly and incorporated into the reimbursable agreement. The Trustee will also request the USMS to submit any impact statements that will address how limited funds or necessary adjustments to the operating plan may impede its mission.

A more regulated spending plan and reimbursable agreement process for both USMS headquarters and district offices will refine the current process and reduce the previous confusion on accountability. It will lend itself to providing a forum to ensure that the USMS and Trustee's office are fully engaged and to ensure accountability in order for the USMS to remain within the limitations of the FY 2005 budget. It is anticipated that this action will impress upon district management the limited resources that are available and consequently the need to determine the most cost effective detention space and services.

Recommendation 6. Formulate and communicate a clear, firm decision regarding the responsibility for management of JPATS.

Agree – Department of Justice leadership is currently reviewing this issue and discussing available options with Congress.

Recommendation 7. Refine the forecasting methodology that is used to project future detention bed space needs to more accurately estimate the resources needed.

Agree – For two years the federal prisoner detention account has experienced a significant budget shortfall. The root of the detention account shortfall began in FY 2003, when the average daily population began to exceed projections. Although a certain degree of statistical error is anticipated in population projections, the inaccuracy in the FY 2003-2004 projections, combined with mandatory rescissions and an error in the computation of federal beds, resulted in the largest shortfall in the history of this account. Accurate forecasting is at the core of sound detention management.¹

OFDT utilized a new model based on trend analysis for projections in FY 2005 and FY 2006, and OFDT is now refining that model to incorporate future requirements of planned priorities that would add to trend analysis. Providing reliable projections for the

¹ Although the number of persons indicted is a leading indicator for forecasting BOP incarceration requirements, there are no clear leading indicators that can be easily incorporated into the detention-forecasting model.

detainee population requires identifying measurable and reliable leading indicators and incorporating those into the projection methodology. Such leading indicators would include increases in the number of new law enforcement officer and Assistant U.S. Attorney positions. Additionally, anticipated law enforcement initiatives must be incorporated into the forecasts. Although there will always be uncontrollable, external factors (e.g. Blakely v. Washington) that impact the prisoner detention account, a more refined projection model will result in a better managed account, thus improving the ability to manage unforeseen negative impacts.

Recommendation 8. Evaluate the previously submitted FY 2006 budget request to determine if an adjustment needs to be made to ensure that a shortfall does not occur.

Agree – OFDT and JMD have already begun to update the budget requests at each step in the process. For example, the initial request was made to the Department in May 2004. The request was evaluated at the time of the OMB submission and will be re-evaluated for the President’s Budget Request to Congress.

Recommendation 9. Continue efforts to and (*sic*) require the steering committee to report results related to reducing the average detention time during both the pre-trial and post-sentencing phases, including the pilot project on the Southwest border.

Agree – The time interval from sentencing to commitment has increased from 30 days in FY 1994 to 47 days in FY 2002. The Arizona Sentencing to Incarceration Pilot Project, which has the full support of the Deputy Attorney General, was created by the Trustee to reverse this trend. The system design for the project is complete and in place; all agencies have access to the server and are pleased with the simplicity of the planned process; and numerous demonstrations have been given to agency heads at OFDT’s fully-equipped test lab. OFDT is now waiting for certification and accreditation from the Justice Management Division. OFDT developed the automation that met all agencies’ requirements. However, because AOUSC and DOJ networks are not linked, the two systems cannot currently share electronic information. All agencies have their own IT policies, allowable hardware/software applications and security protocol. Several field tests have been successfully conducted and all participating offices have had training. OFDT is working with Department information technology personnel to implement the project as quickly as possible. We anticipate this to occur by the end of 2004, possibly sooner, if interim approval is granted.

Recommendation 10. Examine the policies and practices regarding IGAs to develop additional areas in which detention costs can be reduced.

Agree – While this is primarily a USMS responsibility, the OFDT has a strong oversight role. As a first step, the Trustee will require that each detention agency strategically plan its procurement needs utilizing an Advance Procurement Plan (APP) and submit that plan to OFDT. An effective APP will provide a foundation to identify the number and location of prisoner bed spaces needed for all detention agencies. This will allow a unified process to ensure equality in rates and ensure more coordinated efforts for

detention activities, including bed space (through IGAs or fixed-price contracts), medical care, transportation means, and guard services.

Recommendation 11. Develop a plan for reviewing and verifying the allowability of costs associated with individual IGAs.

Agree -- Currently, there is little coordination of procurement for detention services between agencies. The Trustee would like a more standardized approach, and would like to work with the Office of Legal Policy to review the OMB A-87 Circular to determine if there are additional options that may improve implementation of IGAs that would result in cost containment or reduction. I believe we can make improvements to the process, such as categorize facilities, which will enable us to establish standard rates, thus ending or reducing the need to negotiate IGAs. Additionally, the Trustee continues to support the USMS Program Review audit process for IGAs, which has saved millions of dollars of detention funds.

Timeline: Five (5) year acquisition management and advance procurement plans in place by March 2005, tied to the FY 2007 budget request and OFDT Strategic Plan.

**OFFICE OF THE INSPECTOR GENERAL, AUDIT DIVISION
ANALYSIS AND SUMMARY OF ACTIONS
NECESSARY TO CLOSE THE REPORT**

Recommendation Number:

1. **Resolved.** The OFDT agreed with our recommendation and reiterated that it submitted a reorganization proposal to the Department on September 13, 2004, which provides for the OFDT to undertake an oversight role, including strategic management, budget execution and formulation, and policy. At this time, the OFDT is awaiting approval of the plan by Department management. In order to close this recommendation, please provide us with documentation showing that the OFDT reorganization proposal has been approved by the Department and that the plan has been implemented.
2. **Resolved.** The OFDT responded that it agreed with our recommendation and said that the reorganization proposal identified in Recommendation Number 1 provides the framework for a strategic plan that clearly identifies and communicates the role, functions, and goals of the office. In order to close this recommendation, please provide us with the finalized strategic plan. In the interim, please keep us informed of your progress in developing and implementing the plan.
3. **Resolved.** The OFDT agreed with our recommendation and stated that the reorganization proposal identified in Recommendation Number 1 provides the necessary staffing analysis. In order to close this recommendation, please provide us with a copy of the staffing analysis and information about action taken in response to the analysis.
4. **Resolved.** The OFDT agreed with our recommendation and said that it has initiated discussions with ICE about the need for an amended IAA. This recommendation can be closed when the OFDT provides documentation to support the agreed-upon definition of roles and responsibilities for the OFDT and ICE and, if appropriate, a copy of the amended IAA.
5. **Resolved.** In its response, the OFDT stated that it agreed with the recommendation and has required the USMS to develop a district-level operating plan that must be submitted to the OFDT for approval for FY 2005. This recommendation can be closed when we receive a copy of the OFDT-approved USMS district-level operating plan, guidelines

governing the process for fund transfers to the USMS, and actual examples of USMS submissions and the related OFDT payments.

6. **Resolved.** The OFDT responded that it agreed with our recommendation and that Department of Justice leadership is currently reviewing the JPATS issue and discussing available options with Congress. In order to close this recommendation, please provide us with the final outcome of the decision makers' discussions regarding JPATS management. If a decision has not been made at the time of the next correspondence, please provide us a detailed explanation of the status of discussions.
7. **Resolved.** The OFDT agreed with our recommendation and said that it is refining the projection model by incorporating measurable and reliable leading indicators, such as increases in the number of new law enforcement officer and Assistant U.S. Attorney positions. This recommendation can be closed when the OFDT provides evidence that a refined projection model has been employed. In the interim, please keep us informed of your efforts to employ new projection techniques.
8. **Resolved.** The OFDT agreed with our recommendation and stated that it has begun to update the budget requests. To close this recommendation, please provide documentation of the OFDT's efforts to address budget issues for FY 2006. In addition, since the issuance of our draft report, the FY 2005 budget was passed at a greatly decreased amount than the adjusted request of \$1.06 billion. Therefore, please provide us with the OFDT's plan to deal with what appears to be an imminent and significant budgetary shortfall.
9. **Resolved.** In its response, the OFDT stated that it agreed with the recommendation and explained that the system design for the Arizona Sentencing to Incarceration Pilot Project is complete and ready to be implemented. To close the OIG's recommendation, the OFDT must provide us with evidence that the project has been implemented and detention time has been reduced. In addition, please provide documentation of the results achieved and any OFDT analysis of the project, including future plans for more widespread implementation of the project.
10. **Resolved.** The OFDT responded that it agreed with our recommendation and stated that it will require that each detention agency strategically plan its procurement needs utilizing an Advance Procurement Plan. According to the OFDT, effective planning will ensure equality of rates and coordination of activities. To close this recommendation, please provide the Advance Procurement Plans and

documentation of the OFDT's efforts in its strong oversight role to use these plans to identify and realize cost savings.

11. **Resolved.** The OFDT agreed with our recommendation and said that it would like a more standardized approach and plans to make improvements to the IGA process. As noted in our report, the OIG has historically identified significant questioned costs when independently auditing IGAs. Therefore, we believe the OFDT should exercise its strong oversight role in the IGA area and organize a more robust plan for ensuring that bed space providers are appropriately reimbursed. This recommendation can be closed when we receive the evidence of the improvements made to the IGA process. In the interim, please provide specific information regarding planned actions and the expected outcomes.