



Detention Needs Assessment and Baseline Report: *A Compendium of Federal Detention Statistics*

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Overview

At the federal level, detention refers to the temporary holding of (1) defendants charged with criminal offenses who were ordered detained by the federal Court, and (2) aliens awaiting removal by the Immigration and Naturalization Service (INS) or the outcome of an immigration proceeding. The responsibility for federal detention is administered by several federal agencies.

- For **criminal detention**, detention decisions are made by a federal judicial officer – U.S. District Court Judge or magistrate – following a defendant’s initial appearance or a subsequent detention hearing. The decision to detain, made in consultation with federal pretrial services and the U.S. Attorney’s Office, is predicated on (1) the likelihood that the defendant will appear for scheduled Court proceedings and (2) the risk the defendant poses to the community or specific individuals. Once a Court orders a defendant to be detained pending adjudication of the charges, the defendant is remanded to the jurisdiction of the United States Marshals Service (USMS) for housing, medical care, and transportation, as applicable. The USMS is responsible for housing detainees from initial detention through adjudication and, if convicted, commitment to the Bureau of Prisons (BOP).
- For **administrative detention** pending the outcome of removal proceedings to determine whether an alien should be deported from the United States, the INS makes the initial determination as to whether a particular alien should be detained. Where an individual alien is not subject to mandatory custody during removal proceedings, he or she can have the initial INS custody determination reviewed by an Immigration Judge.¹ With respect to aliens who entered the United States unlawfully, the decision to detain is predicated on (1) the likelihood that the alien will appear for a scheduled immigration proceeding or removal, (2) the risk that the alien poses to the community, and (3) statutory requirements.² As a practical matter, decisions to detain or release non-*criminal aliens* may be influenced by the availability of detention space. With respect to *criminal aliens*, detention pending removal is presumptively required.³

Although the Department of Justice (DOJ), through the BOP and the INS, own and operate 22 (BOP additionally operates 13 detention units) detention centers, due to the geographic diversity of detention space needs, the Department has historically relied upon state and local governments to supply needed detention bed space across the 94 federal judicial districts and more than 400 federal Court cities.⁴ Between fiscal years (FY) 1994 and 2001, the Department has become increasingly reliant on the states and localities as the number of federal detainees has substantially increased. During the FY 1994-2001 period, the number of federal detainees more than doubled, increasing from 25,675 to 58,029 (table 1). During this time period, the annual rate of increase in the detainee population (12.4%, on average) exceeded that of the sentenced prison population (7.4%).

Table 1. Persons held in detention, by agency with jurisdiction and type of facility, FY 1994 & 2001.

Facility jurisdiction	1994			2001		
	Total	USMS	INS	Total	USMS	INS
Total*	25,675	18,231	7,444	58,029	38,950	19,079
Federal	10,916	6,219	4,697	16,904	10,819	6,085
BOP	8,069	6,218	1,851	13,293	10,817	2,476
INS	2,847	1	2,846	3,611	2	3,609
State or local	12,780	11,416	1,364	33,381	23,734	9,647
Private	1,524	512	1,012	7,317	4,249	3,068
Medical ^a	63	63	0	141	126	15
Other	122	0	122	264	0	264

Notes: Statistics represent population on September 30 of each year.
a. "Total" includes observations for which the facility jurisdiction was not identified.
b. Medical does not include detainees held in BOP medical facilities. Includes detainees found not criminally-responsible by reason of insanity and housed in St. Elizabeth's Hospital in Washington, DC.
Data sources: USMS, Prisoner Tracking System data, FY; INS, Deportable Alien Control System data, FY.

The number of detainees under the jurisdiction of the USMS increased from 18,231 to 38,950. The number of detainees under the jurisdiction of the INS

1. 8 U.S.C. § 1226.

2. 8 U.S.C. 1231(a)(6).

3. 8 U.S.C. § 1226 as implemented by 8 C.F.R. § 236.1(c)(3)-(5).

4. Federal detainees may also be housed in BOP correctional facilities. On September 30, 2001, 1,166 USMS detainees and 2,771 INS detainees were housed in BOP facilities other than the Metropolitan Detention Centers (MDCs), Federal Detention Centers (FDCs) and the Metropolitan Correction Centers (MCCs).

increased at the greatest rate (14.4% annually, on average) – from 7,444 to 19,079.⁵ Additionally, the proportion of detainees housed in non-federal facilities (state prisons, local jails, or contract facilities) increased from approximately 57% in 1994 to 71% in 2001, while the proportion of detainees housed in BOP or INS facilities decreased from 43% to 29% during the same time period.

Criminal Detention

Federal criminal detention is influenced by a variety of factors that are beyond the control of the United States Marshals Service (USMS) and may not be reliably predictable. Such factors include changes in law enforcement priorities and level of activity; U.S. Attorney prosecutorial practices; Court practices relating to the administration of pretrial release and detention; characteristics of individual federal offenders; and the period of time the defendant will be detained prior to adjudication, sentencing, and commitment to prison. Each of these factors may increase the need for detention space beyond the USMS annual projections. For example, following implementation of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (P.L. 104-208, Title III, 110 Stat. 3009 (1996)) and implementation of the Southwest Border Initiative, the number of criminal prosecutions for immigration offenses increased substantially, more than doubling over a four-year period. These additional arrests and prosecutions stressed all phases of the federal criminal justice system: U.S. Attorneys prosecuted a substantially greater number of immigration-related offenses; by virtue of these defendants characteristics, these defendants were less likely to be released pending adjudication of the charges; the USMS was obligated to acquire and provide detention space to house these defendants; and the increase in the number of convictions and number of defendants sentenced to prison stressed the BOP's capability to provide needed prison space.⁶

Additionally, the continued federal emphasis on prosecuting drug and weapons offenders continually introduces cohorts of offenders that are usually ineligible for pretrial release given their history of violent or drug-related crime, their risk of pretrial flight, and their lack of established ties to the community. By contrast, prior to the federal focus on drug, weapons, and immigration offenses, a larger proportion of federal prosecutions included major frauds and other economic offenses for which the defendants were a lesser pretrial risk.⁷

Federal Law Enforcement Activity

Between fiscal years (FY) 1994 and 2000, the number of referrals made to U.S. Attorneys by federal law enforcement agencies increased by approximately 25%, from 99,251 to 123,559 (table 2). This increase is primarily attributed to an increase in the number of referrals for drug, immigration, and weapons offenses.

Table 2. Suspects referred to U.S. Attorneys, by most serious offense, FY 1994-2000

Most serious offense	Referral year						
	1994	1995	1996	1997	1998	1999	2000
Total	99,251	102,220	97,776	110,034	115,692	117,994	123,559
Violent	5,570	5,720	6,570	7,354	7,527	5,768	6,036
Property	32,579	31,759	28,962	29,916	30,125	28,011	28,423
Fraud	28,491	27,836	25,245	25,854	26,328	24,200	24,679
Other property	4,088	3,923	3,717	4,062	3,797	3,811	3,744
Drug	29,311	31,686	30,227	34,027	36,355	37,313	38,959
Regulatory	5,059	5,371	5,154	5,423	6,541	6,332	5,737
Weapons	5,996	5,376	4,462	4,870	4,907	6,982	8,589
Immigration	5,526	7,256	7,122	9,366	14,114	15,539	16,495
Other	14,084	13,665	13,764	17,434	14,703	16,484	18,443
Offense not reported	1,126	1,387	1,515	1,644	1,420	1,565	877

Data source: Executive Office for U.S. Attorneys, Central System data file, 1994-2000 as reported in Bureau of Justice Statistics, Federal Criminal Case Processing, 2000.

- **Drug offenses** - The number of suspects referred to U.S. Attorneys for possible drug offenses increased by 33% from 29,311 during FY 1994 to 38,959 during FY 2000. Federal prosecution of significant drug traffickers and highly structured drug organizations is an ongoing priority. Additionally, in recent years the DOJ has specifically targeted individuals involved with methamphetamine production and distribution.⁸
- **Immigration offenses** - The number of suspects referred to U.S. Attorneys for possible immigration offenses tripled, increasing from 5,526 during FY 1994 to 16,495 during FY 2000. The increase in referrals

5. Represents the population on September 30 of each year.

6. See, Bureau of Justice Statistics, *Immigration offenders in the federal criminal justice system, 2000* (March 2002).

7. See, Bureau of Justice Statistics, *Compendium of Federal Justice Statistics*, (Annual, 1984-2000).

8. U.S. Department of Justice, Executive Office for U.S. Attorneys, *Annual Statistical Report, 1996-2000*.

for immigration offenses can be attributed to the enactment of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*.

- **Weapons offenses** - The number of suspects referred for possible weapons offenses increased by 43%, from 5,996 during FY 1994 to 8,589 during FY 2000. The increase in referrals for weapons offenses can be attributed to a variety of DOJ law enforcement initiatives that relied on the federal firearm offense statutes to target violent offenders for federal prosecution. These initiatives have included *Project Triggerlock*, *Operation Ceasefire*, *Project Exile*, and *Project Safe Neighborhoods*.

The increase in referrals to U.S. Attorneys varied substantially across the 94 federal judicial districts. In 52 districts the number of referrals increased by 10% or more. By contrast, in 16 districts the number of referrals decreased by 10% or more. However, almost two-thirds of the total increase in referrals was observed in 6 judicial districts: New Mexico (1,291), Arizona (2,654), Western District of Texas (5,156 additional referrals), Southern District of Texas (3,235), Eastern District of Virginia (2,562), and Eastern District of Kentucky (1,007). Additionally, during the FY 1994-2000 period, U.S. Attorneys were increasingly more likely to prosecute; the prosecution rate increased from 64% of referrals to 74%.⁹

More than half of the increase in referrals in the judicial districts along the southwest border – Southern District of California, District of Arizona, Western District of Texas, and Southern District of Texas – is attributable to the increase in referrals for immigration-related offenses. In these 5 judicial districts, the number of immigration offense referrals increased from 3,370 (or 24% of the U.S. Attorney workload) during 1994 to 10,331 (or 39%) during 2000. The increase in immigration offenses can be attributed to the increased presence of INS law enforcement officers and changes in federal law requiring the prosecution of certain aliens who attempted to enter the United States illegally. Following implementation of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (P.L. 104-208, Title III, 110 Stat. 3009 (1996)), the number of INS law enforcement officers increased from 12,403 to 17,654 nationally.¹⁰ About 75% of these additional officers were stationed in California (973), Arizona (1,120), and Texas (1,880). By contrast, in other districts such as Eastern District of Virginia and Eastern District of Kentucky – where there was a substantial increase in U.S. Attorney workload - the increase can be attributed to increases in the number of referrals for drug and weapons offenses. The increase in referrals to U.S. Attorneys and the decrease in the declination rate resulted in an increase in the number of defendants charged with a criminal offense in U.S. District Court. Between 1994 and 2000, the number of defendants charged with an offense in U.S. District Court across the nation increased by 34%, from 62,327 to 83,251.

Administration of Pretrial Release and Detention in the Federal Court

In the federal criminal justice system, as in most state and local systems, once an individual suspected of a criminal offense is arrested and charged, the now defendant is taken before a judicial officer for the initial Court appearance. At this initial appearance, recommendations are made to the Court by the U.S. Attorney and the pretrial services officer handling the case. If sufficient cause to detain the defendant is presented to the Court, the Court will order the defendant held pending the outcome of a detention hearing.¹¹ The detention hearing is typically held within three days of the initial appearance. Otherwise the defendant is released pending adjudication of the charges. The defendant's release may be contingent on compliance with certain court-ordered release conditions.

Proportion of criminal defendants released and detained by the federal Court following initial appearance or detention hearing, FY 1994-2000.

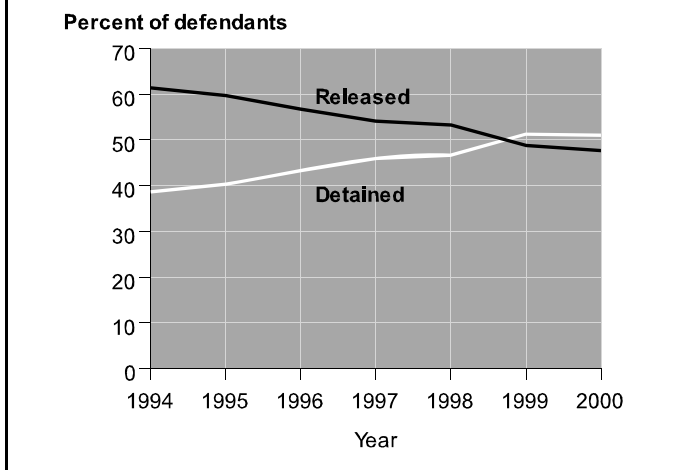


Figure 1

9. Bureau of Justice Statistics, *Compendium of Federal Justice Statistics*, annual.

10. Bureau of Justice Statistics, *Census of Federal Law Enforcement Officers*.

11. 18 U.S.C. 3142(f).

At the conclusion of the detention hearing, if the defendant is ordered detained pending adjudication, the defendant is remanded to the custody of the USMS for housing in a secure facility. The USMS has no role in the pretrial release determination. The role of the USMS is to house defendants ordered detained by the Court. Pretrial detention decisions are not predicated on the availability of detention space.

Pretrial Release and Detention Decisions

Between fiscal years (FY) 1994 and 2001 the number of referrals to federal pretrial services increased by 58% – from 47,456 to 74,952 (table 3). During this period, the federal Courts were increasingly more likely to order defendants detained following the defendant’s initial appearance or a subsequent detention hearing held pursuant to 18 U.S.C. § 3142(f). The pretrial detention rate increased from 39% of defendants arraigned during 1994 to 52% during 2001 (figure 1, page 3). The combined effect of increased prosecutions and higher court-ordered detention has resulted in the doubling of the actual number of defendants ordered detained following the initial appearance or detention hearing, from 18,314 during 1994 to 39,022 during 2001.

Year	Total	Status		Percent detained %
		Released	Ordered Detained	
1994	47,456	29,142	18,314	38.6
1995	52,581	31,373	21,208	40.3
1996	56,634	32,096	24,538	43.3
1997	60,121	32,512	27,609	45.9
1998	68,773	36,675	32,098	46.7
1999	69,994	34,125	35,869	51.2
2000	75,000	35,745	38,255	52.3
2001	74,952	35,930	39,022	52.1

Data source: Administrative Office of the U.S. Courts, Pretrial Services Agency data file, fiscal year.

In addition to the initial court-ordered detention, a defendant’s release status may change during the pretrial period. Defendants initially released may be subsequently detained following violations of release conditions, and defendants initially ordered detained may be subsequently released by the Court. Of those defendants who terminated pretrial services during 2000, 10,708 had been subsequently detained after initially being released and 6,890 had been subsequently released after initially being ordered detained.

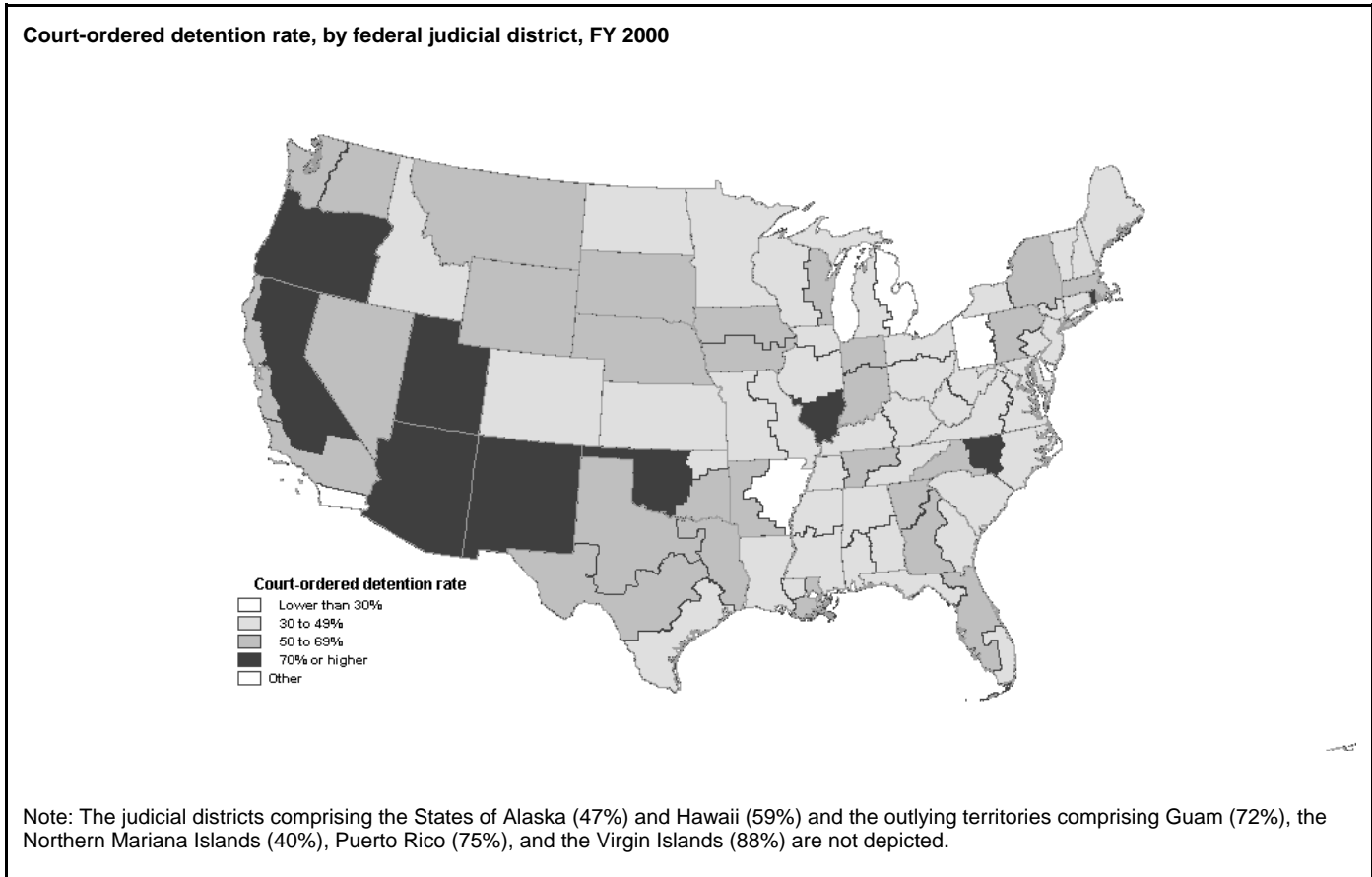


Figure 2

Pretrial release and detention practices vary considerably by judicial district. While approximately half of all defendants charged nationwide were initially detained, the detention rate varied from 23% of defendants charged (in the Southern District of California) to 90% (in the Virgin Islands) (figure 2, page 4). Of all defendants ordered detained nationwide by the federal Court, approximately half were detained in 13 of 94 federal judicial districts: New Mexico (4.3%), Arizona (12% of all detentions), Western District of Texas (6.5%), Southern District of Texas (5.5%), Central District of California (3.7%), Southern District of California (2.9%), Eastern District of New York (2.7%), Southern District of Florida (2.7%), Southern District of New York (2.3%), Middle District of Florida (2.3%), Northern District of Texas (2.2%), Eastern District of Virginia (2.1%), and the Eastern District of California (1.9%).¹²

Factors Associated with the Pretrial Release/Detention of Federal Offenders

The decision to release or detain a defendant pending adjudication of the charges has traditionally been predicated on the likelihood that the defendant will appear for trial. The *Bail Reform Act of 1966* (P.L. 89-465, §5 80 Stat. 127 (1966)) required the federal Court to release defendants charged with noncapital offenses on their own recognizance or an unsecured bond unless the Court determined that the defendant would fail to appear for trial under such minimal supervision.¹³ In those cases where a defendant could not be released under such minimal supervision, the Court could require third-party supervision, limited travel or association, bail, or any other condition(s) deemed appropriate to ensure the defendant’s appearance.

The subsequent *Bail Reform Act of 1984* (P.L. 98-473, Title II, §203, 98 Stat. 1976 (1984)) expanded (1) the authority of the Court to regulate pretrial release for reasons such as protecting the community and/or specific individuals from defendants too dangerous to be released and (2) the number of factors the federal Court could consider when making pretrial release decisions.¹⁴ Consequently, in an attempt to strike a balance between the presumption of innocence and the possible threat of new crimes, intimidation of witnesses, and flight, the 1984 Act created a three-tiered approach for pretrial release:

- consistent with the 1966 Act, the Court can release those defendants who do not pose a risk of flight or a danger to another person or the community;
- if a defendant poses either a flight risk or a threat to the community, the Court should release the defendant under the least restrictive conditions to ensure appearance or otherwise mitigate the threat risk;
- if a defendant poses a flight risk or a threat to the community and no condition or combination of conditions exist that could mitigate those risks, the Court could order these defendants to be detained during the pretrial period.

Pursuant to the 1984 Act, the Court can consider certain factors when making pretrial detention decisions. The factors broadly identified by statute are: (1) the nature and circumstances of the offense charged, particularly whether the offense was a crime of violence or involved a narcotic drug; (2) the weight of evidence against the person; (3) the personal history and characteristics of the person,

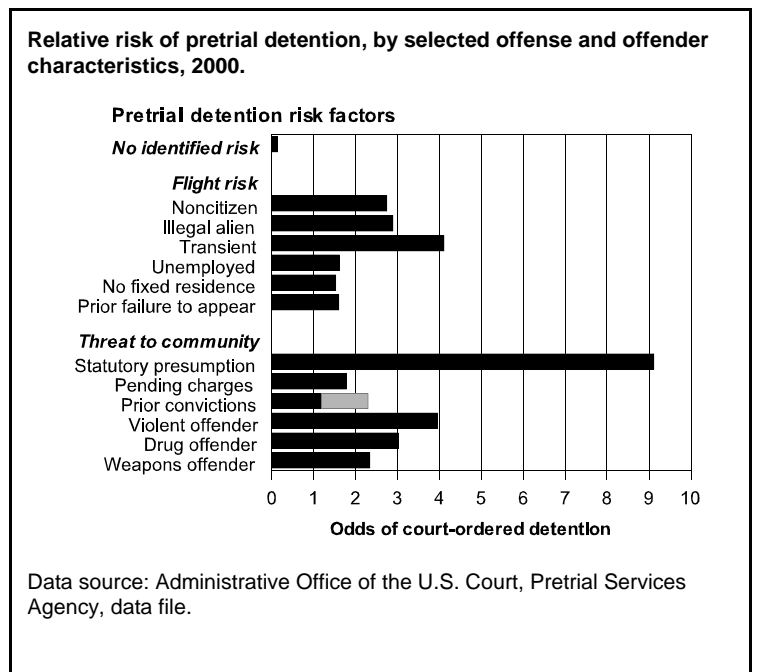


Figure 3

12. Excluded from this analysis is the federal judicial district for the District of Columbia. The U.S. District Court for the District of Columbia does not participate in the pretrial services program. Pursuant to 18 U.S.C. § 3152, pretrial services are administered by the local pretrial services agency for the District of Columbia. Information describing these defendants is not reported to Administrative Office of the U.S. Court.

13. H.R. REP. 1541, 89th Cong. 2nd Sess. (1986).

14. 18 U.S.C. § 3142.

including the person's family ties, financial resources, length of residence in the community, community ties, criminal history, and record concerning appearances at court proceedings; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release.¹⁵

These statutorily prescribed factors effect pretrial release/detention decisions to varying degrees. For example, during fiscal year (FY) 2000, defendants who were illegal aliens or otherwise not U.S. citizens, were almost 3-times more likely to be ordered detained than citizens, independent of other salient factors. Similarly, defendants charged with a violent, drug, or weapons offenses were 2- to 4-times more likely to be ordered detained than defendants charged with other offenses; and defendants who were not residents of the community in which they were arrested were 4-times more likely to be ordered detained. Additionally, the likelihood of detention generally increased with each additional prior conviction, from 1.2- to 2.1-times (figure 3, page 5).

The most salient criterion for pretrial detention is the statutory presumption to detain. Pursuant to 18 U.S.C. § 3142(e), a defendant is presumed to be a pretrial risk – and accordingly is presumptively detained – if (1) the defendant was charged with a violent or drug offense carrying a statutory maximum penalty of 10 years or more, the current offense was committed while the defendant was on release pending trial for another offense, and the current offense was committed within 5 years of a previous conviction or release from imprisonment; or (2) the defendant was charged with a drug offense carrying a statutory maximum penalty of 10 years or more or was charged with possessing a firearm during the commission of a violent or drug trafficking offense. These defendants were greater than 9-times more likely to be ordered detained than other defendants.

Historically, the risk of pretrial flight has been the primary determinant for pretrial detention. Defendants without substantial ties to the community are generally considered to be a greater flight risk than those defendants with established community ties. Consequently, the federal Courts are more likely to order the detainment of the defendants without established ties to the community pending adjudication than those with established ties. A variety of factors comprise a defendant's ties to the community. These factors include (1) the time that a defendant has actually lived in the community in which he was arrested, (2) whether the defendant has an established and fixed residence, and (3) whether the defendant was employed at the time of the arrest. Additionally, for a large segment of the federal criminal population, U.S. citizenship is a salient factor.

During 2000, 85% of defendants who were transients, (*i.e.*, they reported being in the community in which they were arrested for less than 30 days), were ordered detained by the Court (table 4). By contrast, about 40% of those who lived in the community for 5 years or more were ordered detained. Similarly, defendants without an established residence or who were unemployed at the time of the offense were more likely to be detained:

- 81% of defendants identified as "homeless" were ordered detained compared to 54% of those who had not made a financial contribution to their housing, 45% of those who rented, and 28% of those who owned their residence;

Table 4. Status of defendants charged in Court following the initial or detention hearing, by community ties, FY 2000.

Characteristic	Number of defendants	Percent detained
Total*	75,000	52.3%
Citizenship		
U.S. citizen	48,775	41.4%
Non-citizen	23,477	74.0
Legal alien	6,243	56.3
Illegal alien	17,234	80.5
Employment status		
Employed	33,642	38.7%
Unemployed	24,878	58.1
Residential status		
Own residence	12,458	27.5%
Renting	22,696	44.6
No contribution	12,434	53.6
Homeless	753	80.7
Other	8,799	32.8
Time in area		
Transient	9,453	84.9%
Less than 1 year	25,256	57.2
1 to 3 years	10,731	47.1
3 to 5 years	2,444	41.9
More than 5 years	27,116	39.5

* "Total" includes observations for which specific characteristics may not have been reported.
Data source: Administrative Office of the U.S. Court, Pretrial Services Agency data file.

Table 5. Status of defendants charged in Court following the initial or detention hearing, by offense, FY 2000

Offense charged	Number of defendants	Percent detained
Total	75,000	52.3%
Violent	3,500	69.7%
Property	15,048	23.9%
Fraud	11,843	22.1
Other	3,205	30.7
Drug	29,567	59.1%
Regulatory	2,543	33.2%
Immigration	14,540	70.8%
Weapons	4,339	58.5%
Other	5,308	37.9%

Data source: Administrative Office of the U.S. Court, Pretrial Services Agency data file.

15. 18 U.S.C. § 3142(g).

- 58% of defendants who were unemployed at the time of the offense were ordered detained compared to 39% of those who were employed.

The threat that a defendant poses to the community has also been a decisive factor in the pretrial release and detention decision process. The federal Courts have been more inclined to detain defendants charged with violent, drug, and weapons offenses. For instance, during FY 2000, approximately 70% of defendants charged with a violent offense and, 59% of those charged with a drug or weapons offense were ordered detained pending adjudication (table 5, page 6). Additionally, 90% of defendants charged with a drug trafficking offense with a statutory maximum of 10 years or more or for using a firearm during the commission of a violent or drug offense were ordered detained. By contrast, for those charged with nonviolent offenses – other than immigration offenses – such as fraud, other property offenses, and regulatory offenses, the detention rate during FY 2000 was substantially lower: 33% for regulatory offenses, 31% for non-fraud property offenses, and 22% for fraud offenses. For those charged with immigration offenses, the detention rate during FY 2000 was 71%. This higher rate generally reflects the risk that non-citizens, particularly illegal aliens, pose for pretrial flight.

The threat that a defendant poses to the community can also be measured by the defendant’s criminal history; defendants with increasingly extensive criminal histories were increasingly more likely to be ordered detained.¹⁶ One of the most decisive factors related to criminal history is that the defendant committed the current offense while on pretrial release for another offense or within five years of a prior conviction or release from prison. Ninety-three percent of these defendants were ordered detained by the Court during FY 2000 (table 6).

During FY 2000, the court-ordered detention rate increased with the number of prior convictions: 44% of first time offenders, (*i.e.*, those with no prior convictions), were ordered detained compared to 49% of those with 1 prior conviction, 60% of those with 2 to 4 prior convictions, and 71% of those with 5 or more prior convictions. Defendants previously convicted of more serious offenses were more likely to be detained than those convicted of misdemeanor offenses: 68% of defendants previously convicted of a felony were detained compared to 41% of those previously convicted of a misdemeanor; 73% of defendants previously convicted of a violent felony, 70% of those previously convicted of a drug felony were detained, and 67% of defendants arrested while on release for pending charges were detained.

Home Confinement and Electronic Monitoring

For more than a decade, home confinement has been viewed as an acceptable non-custodial alternative to ensure that a defendant will appear for scheduled court proceedings. Generally, home confinement programs may consist of three levels of restrictiveness: nighttime curfew, home detention whereby the defendant is required to be at home except for work or other court-approved activities, and home incarceration whereby the defendant is required to be at home 24-hours per day except for medical necessities, court appearances, or other court-ordered activities. The extent of home confinement may vary at the discretion of

Table 6. Status of defendants charged in the federal Court following the initial or detention hearing, by criminal history, FY 2000

Characteristic	Number of defendants	Percent detained
Total*	75,000	52.3 %
Statutory presumption		
No	65,492	47.0 %
Yes	9,508	89.5
Current drug or weapons offense	8,131	88.9
Current violent or drug offense committed while on pretrial release or within 5 years of a prior conviction	1,377	93.2
Number of prior convictions		
None	34,845	43.6 %
1	12,008	49.3
2 to 4	16,456	60.1
5 or more	11,691	70.7
Nature of prior convictions		
No priors	34,845	43.6 %
Felony	28,507	67.7
Violent	11,987	72.5
Drug	10,292	69.9
Other	6,228	54.7
Misdemeanor	11,648	41.1
Number of pending charges		
None	63,638	49.8 %
1	7,344	63.5
2 to 4	3,472	71.3
5 or more	546	77.8
Number of prior failures to appear		
None	64,616	49.9 %
1	5,092	64.6
2 to 4	3,883	68.4
5 or more	1,409	74.7

* "Total" includes observations for which specific characteristics may not have been reported.
Data source: Administrative Office of the U.S. Court, Pretrial Services Agency data file.

16. The federal Courts have generally held that threat to the community includes the risk that the defendant will continue to engage in criminal activity. See, e.g., *U.S. v. Provenzano*, 605 F.2d 85 (3rd Cir. 1979); *U.S. v. Hawkins*, 617 F.2d 59 (5th Cir. 1980) *cert. denied*, 449 U.S. 952 (1980); *U.S. v. Cook*, 880 F.2d 1158 (10th Cir. 1989); *U.S. v. Strong*, 775 F.2d 504 (3rd Cir. 1985). See, also, S. REP. No. 225, 98th Cong., 1st Sess. (1983).

the judicial officer imposing the requirement.¹⁷ The degree to which defendants are permitted to leave their residence is determined by judicial officers on a case-by-case basis. Home confinement furthers the presumption of innocence by allowing defendants to remain employed or otherwise meet familial responsibilities during the pretrial period. Electronic monitoring is the mechanism by which compliance with a home confinement requirement is assessed by the Court. Defendants released with a home confinement/electronic monitoring requirement are required to wear a transmitting device, typically around the ankle, 24 hours per day. A receiver unit monitors the location of the transmitter either continuously or periodically depending upon the type of equipment. If the transmitter leaves the equipment's range or is tampered with, the receiver notifies the supervision officer. In the federal electronic monitoring program, the maximum permitted distance between the transmitter and receiver is 150 feet.¹⁸

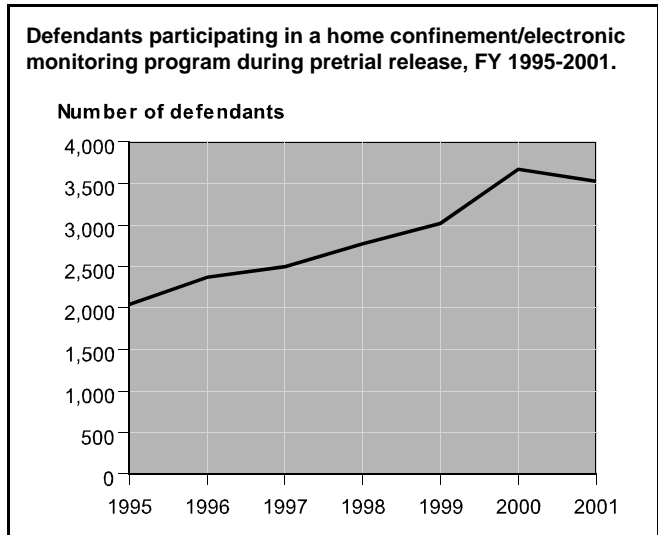


Figure 4

Though not a primary goal, home confinement/electronic monitoring affords the more efficient management of scarce detention resources. During FY 2001, the estimated cost of detaining a defendant in a secure facility was approximately \$63 per day.¹⁹ By contrast, the average cost of supervising a defendant released on home confinement/electronic monitoring was approximately \$19 per day.²⁰ In 1995, an effort to encourage the use of home confinement/electronic monitoring by the federal Courts, the United States Marshals Service (USMS) entered into a reimbursable agreement with the Administrative Office of the U.S. Courts (AOUSC) whereby the USMS would provide \$1 million to the AOUSC for expenditures relating to the use of home confinement/electronic monitoring.

Between FY 1995 and 2001, the number of defendants participating in a home confinement/electronic monitoring program increased from 2,045 to 3,528 (figure 4). Despite the increased use of home confinement, such alternatives to confinement were utilized as a mechanism for pretrial release for less than 5% of all criminal defendants and 10% of those released. Home confinement/electronic monitoring was used as a release alternative by the Court, to a certain extent, in all of the judicial districts during FY 2001. However, the Court in Maryland (36% of defendants released on home confinement), Southern District of Alabama (38%), South Dakota (31%), Eastern District of Wisconsin (25%), Eastern District of Pennsylvania (22%), and Western District of North Carolina (21%) had the greatest proportion of defendants released on home confinement, together accounting for 12% of all defendants released on home confinement/electronic monitoring during FY 2001.

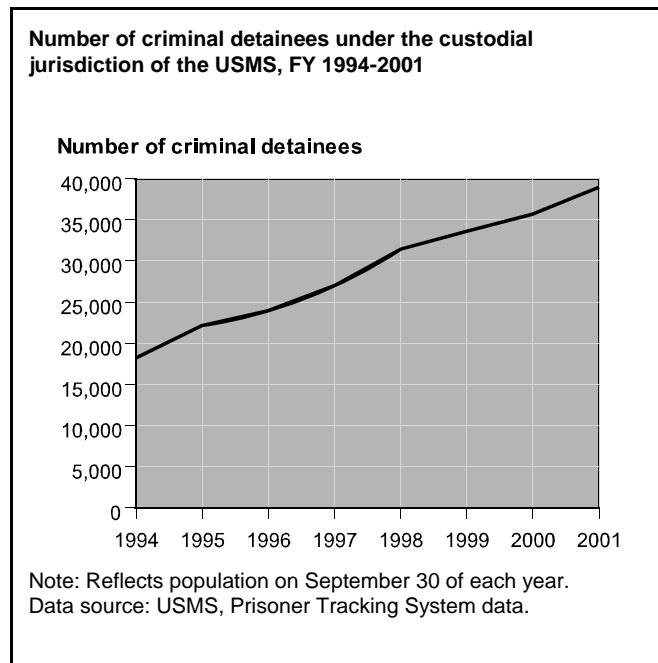


Figure 5

17. Annesley K. Schmidt, *Electronic Monitoring: What does the literature tell us?*, 62 Federal Probation 10 (December 1998).

18. Administrative Office of the U.S. Court, *Federal Corrections and Supervision Division, THE FEDERAL HOME CONFINEMENT PROGRAM FOR DEFENDANTS AND OFFENDERS: MONOGRAPH 113*.

19. USMS, FY2001 ANNUAL REPORT (Forthcoming). Based on an average daily population of 26,299 housed in non-federal facilities, the average per day cost of detention reflects total annual jail costs for detainees housed in non-federal facilities, total annual medical expenditures, and total annual guard expenditures.

20. Administrative Office of the U.S. Court, Office of Probation and Pretrial Services.

Defendants Under the Custodial Jurisdiction of the United States Marshals Service (USMS)

As a result of the increase in the number of court-ordered detentions, the number of defendants under the custodial jurisdiction of the USMS more than doubled, increasing from 18,231 on September 30, 1994 to 38,950 on September 30, 2001 (figure 5, page 8). However, 7 judicial districts accounted for 50% of the increase in the number of criminal detainees during the FY 1994-2001 period (the increase in 5 of these southwest border districts is attributable to the Southwest Border Initiative): Arizona (8%), Puerto Rico (5%), New Mexico (4%), Western District of Texas (13%), Southern District of Texas (11%), Southern District of California (6%), and the District of Columbia (3%) (figure 6).²¹ In these judicial districts, the number of detainees increased by more than threefold. In an additional 30 districts, the number of criminal detainees at least doubled.

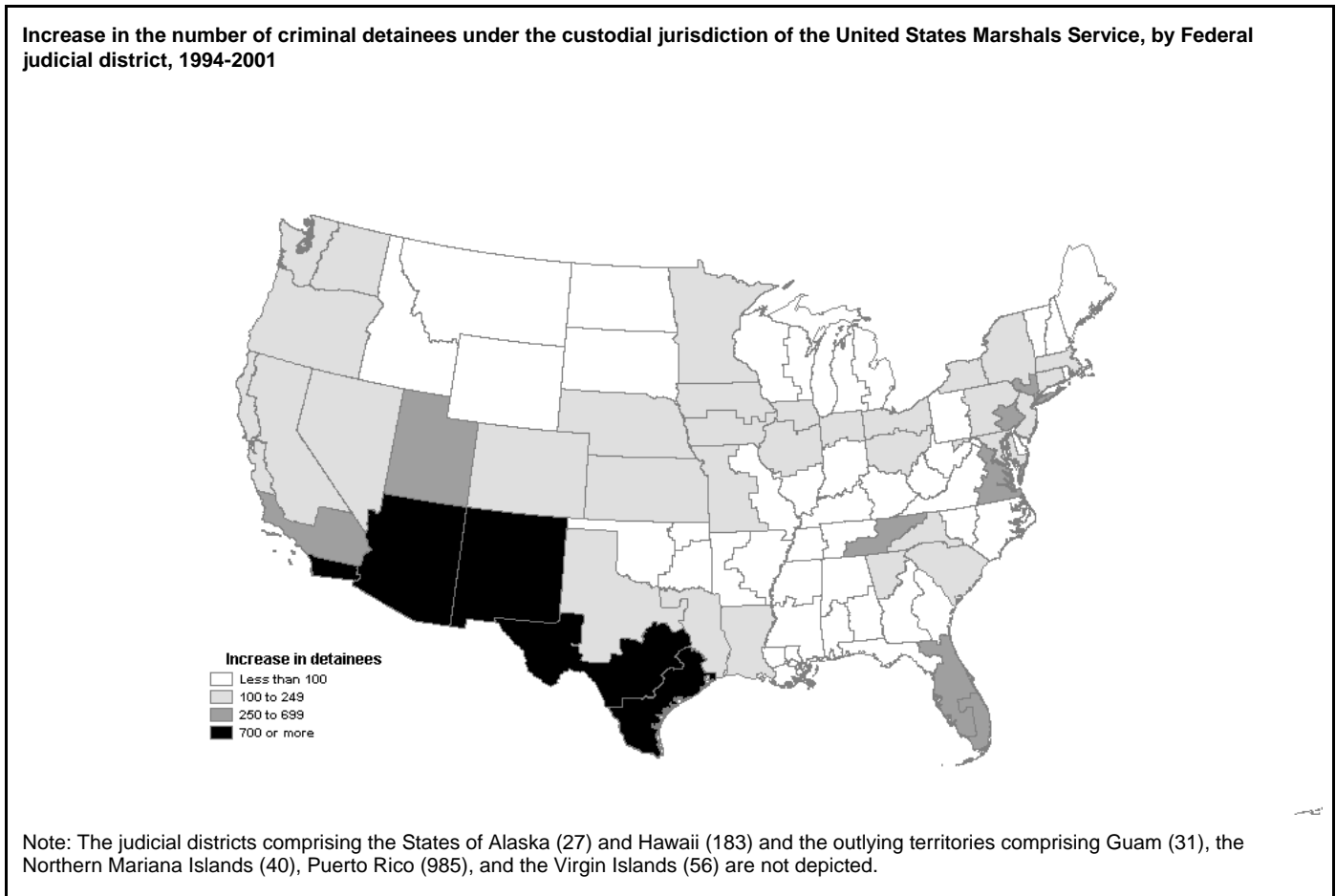


Figure 6

Case Processing Time and Time in Detention

Two significant time intervals are present in the processing of criminal defendants (detained and released) in the federal Court: (1) the interval from the commencement of a criminal proceeding (*i.e.*, the first courtroom event) to adjudication, and (2) the interval from adjudication to sentencing. During fiscal year (FY) 2000, an average of 186 days (or 6 months) elapsed between commencement of the case against a defendant and adjudication and an additional 115 days (or 4 months) from adjudication to sentencing (figure 7, page 10). The total time elapsed between commencement and termination of case – either adjudication if the defendant was not convicted or sentencing if the defendant was convicted – was 287 days or approximately 9½ months.

21. Statistics for the District of Columbia represent the number of detainees ordered detained by the U.S. District Court.

Between FY 1994 and 2000, court case processing time increased from an average of 271 days to 287 days (figure 8). While the interval between commencement and adjudication had decreased (from 211 days to 186 days), with the increased complexities of the federal sentencing process, the interval between adjudication and sentencing increased (from 76 days to 115 days). Two factors that influence case processing time include the offense charged and mode of conviction. The case processing time for defendants charged with offenses that carry greater penalties is generally longer than for less serious offenses. For instance, during FY 2000 the total case processing time for defendants charged with drug offenses was substantially longer (352 days) than that for defendants charged with most other offenses. By contrast, the total case processing time for defendants charged with immigration offenses was the shortest (157 days) of all defendants. Similarly, total case processing time was longer for those defendants adjudicated by trial (392 days) than by guilty plea (253 days).

Case processing time varied substantially across the 94 federal judicial districts. In a quarter of the districts, total case processing time averaged less than 223 days whereas in another quarter of the districts, total case processing time averaged more than 340 days. Factors that influenced this inter-district variation include the caseload within districts (districts with larger caseloads have longer average case processing times) and the type of cases adjudicated in the districts (districts with a higher proportion of drug cases have longer case processing intervals whereas districts with more immigration cases have shorter case processing intervals).

Concomitant to the increase in court case processing time, the time criminal defendants were detained prior to commitment to federal prison also increased between FY 1994 and 2000. For those defendants sentenced, the time spent detained pending adjudication and sentencing increased from an average of 139 days, during FY 1994 to 167 days during FY 2000. The time spent detained from sentencing to commitment to Bureau of Prisons (BOP) increased from an average of 32 days, on average to 43 days (figure 9, page 11).

Similar to court case processing time, the detention period between sentencing and commitment to BOP varied substantially across judicial districts. In the 25% of the judicial districts with the longest intervals between sentencing and commitment to BOP, the detention period between sentencing and designation averaged more than 27 days during FY 2000, and the period between designation and commitment was more than 24 days (figure 10, page 12). By contrast, in the 25% of judicial districts with the shortest interval between sentencing and commitment to BOP, the detention period between sentencing and designation was an average of 19 days or less, and the period between designation and commitment to BOP was less than 15 days.

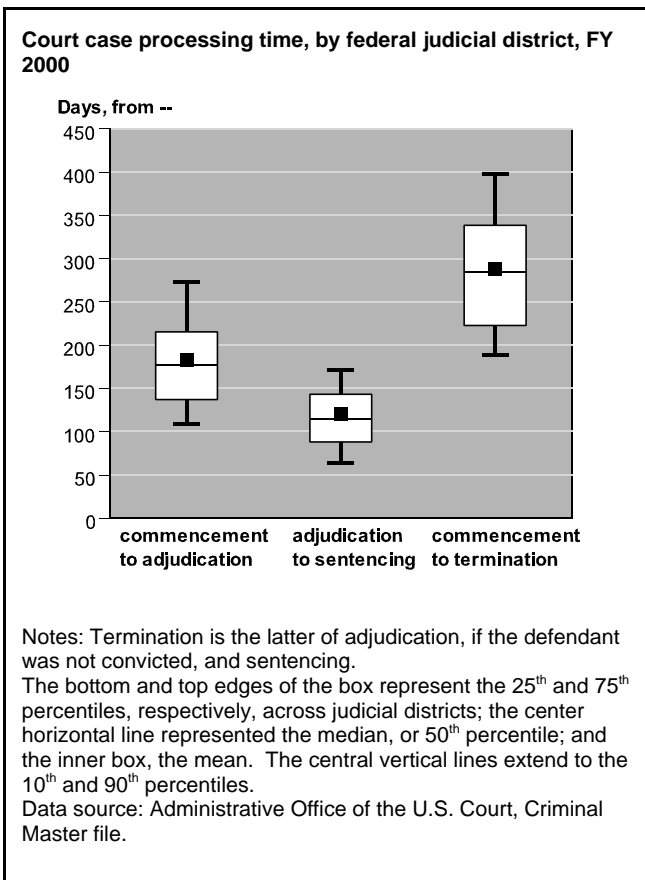


Figure 7

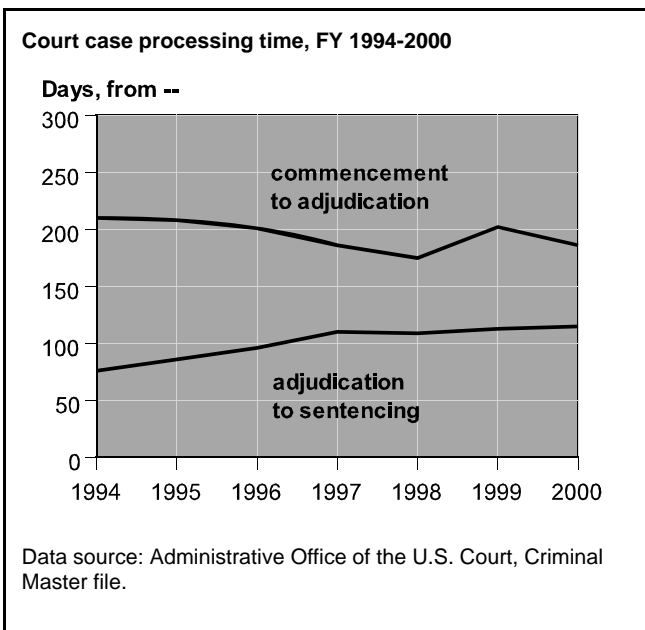


Figure 8

Administrative Detention for Immigration Violations

Illegal immigration to the United States is influenced by a variety of factors that are largely beyond the control of federal law enforcement. For instance, political turmoil, disintegrating economies, socio-demographic factors, and ecological factors may influence unlawful migration to the United States and other countries.²² While migration attributable to some factors, such as the annual migration of agricultural workers from Mexico to California, is more readily predictable, migration attributable to other factors may not be as predictable; often a causal relationship can only be discerned in retrospect.

Detention is an administrative tool used by the Immigration and Naturalization Service (INS) to ensure that illegal aliens are successfully removed from the United States and repatriated. The authority to detain an illegal alien rests with INS law enforcement officers. Where detention is not mandatory under section 236(c) of the Immigration and Nationality Act, an alien may have his or her detention reviewed by an Immigration Judge.

Following implementation of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (P.L.

104-208, Title III, 110 Stat 3009 (1996)), detention of certain aliens became mandatory for –

- aliens who are removable due to convictions for certain serious criminal offenses,²³
- aliens placed in expedited removal proceedings because they sought admission to the United States without proper documentation or through fraud or misrepresentation, and
- aliens with final orders of removal during the statutory 90-day removal period.

In general, detention determinations are based on the danger posed by the alien to the community and the likelihood that he or she will appear for all scheduled hearings. Factors that the INS considers in making this determination include prior criminal history, the severity of the crimes for which the alien was convicted, history of failure to appear for Court, equities in the United States and evidence of ties to the community, availability of relief from removal and the likelihood of relief being granted, and prior immigration violation history. INS detention policy sets forth guidelines for determining priorities in which aliens should be detained. This policy sets forth four major categories of aliens and classifies these individuals as required, high priority, medium priority, and lower priority detention.

- Category I, mandatory detention;
- Category II, includes security and related crimes, other criminals not subject to mandatory detention, aliens deemed to be a danger to the community or a flight risk and alien smugglers;
- Category III, includes inadmissible non-*criminal* aliens (not placed in expedited removal), aliens who committed fraud or were smuggled into the United States, work site apprehensions; and
- Category IV, includes non-criminal border apprehensions, other aliens not subject to mandatory detention, aliens placed in expedited removal.

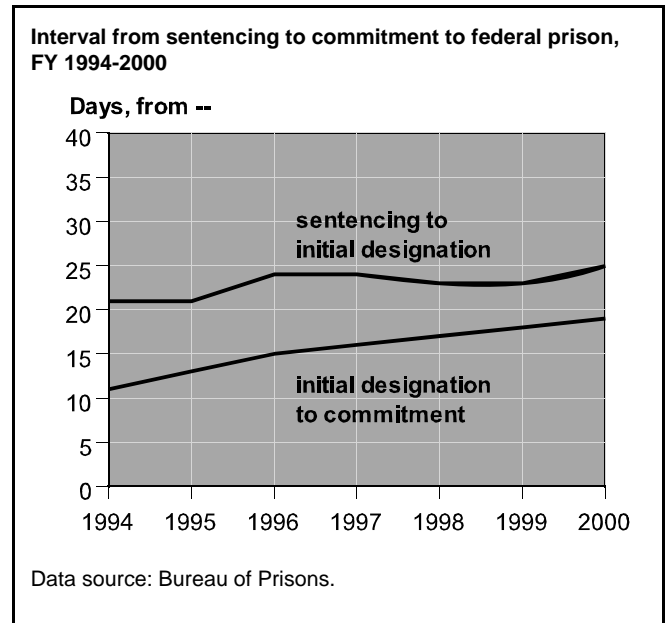


Figure 9

22. Rein Müllerson. *Some Causes of Uncontrolled Migration*, in *MIGRATION AND CRIME* 127 (Proceedings of the International Conference on Migration and Crime. Global and Regional Problems and Responses, Alex P. Schmid ed. (1998)).

23. 8 U.S.C. § 1226(c). Several United States circuit courts have found this mandatory detention provision to be unconstitutional in whole or in part. See, *Patel v. Zemski*, 275 F.3d 299 (3rd Cir. 2001) (finding mandatory detention unconstitutional and requiring individualized custody determinations); *Radoncic v. Zemski*, 2001 WL 1681643 (3rd Cir. 2002) (same); *Kim v. Ziglar*, 276 F.3d 523 (9th Cir. 2002) (finding mandatory detention under 8 U.S.C. 1226(c) unconstitutional as applied to lawful permanent residents).

Consequently, not all apprehensions of illegal aliens result in detention. The majority of aliens apprehended by INS agree to voluntarily depart the United States without ever being detained. During FY 2000, of the more than 1.8 million deportable aliens located by the INS, almost 1.7 million (or 92%) chose to depart voluntarily rather than face detention and a formal removal proceeding.²⁴ Apprehensions made by INS investigators and inspectors are more likely to result in detention than those made by the Border Patrol. During FY 2000, approximately 80% of the aliens apprehended by investigators and inspectors were detained compared to 3% of those apprehended by Border Patrol.

Additionally, for those aliens apprehended who do not choose to depart voluntarily, INS has the authority to release them into the community on their personal recognizance, on bond, or on parole pending the outcome of an immigration law proceeding.²⁵ During FY 2000, 25% of aliens under INS docket control were released into the community for a period of time: 13% on a surety bond, 7% on parole, and 5% on their personal recognizance or INS supervision. However, several studies have indicated that many aliens who are released into the community pending the outcome of a removal proceeding fail to appear for proceedings or subsequent removal orders.²⁶

For those illegal aliens who choose not to voluntarily depart or those who have a criminal history and are not authorized a granting of voluntary departure, a referral is made to an Immigration Judge to make a determination of deportability and whether the alien should be removed from the United States.²⁷ During FY 2001, 285,000 matters were received at the immigration courts, which includes bonds and motions.²⁸ While 85% of immigration hearings include the issues of deportation, exclusion or removeability, the ultimate issue of many immigration hearings involves relief from an order of deportability. Subsequent to a determination of deportability, many aliens claim asylum, seek an adjustment of status or a suspension or cancellation of the removal order. Additionally, Immigration Judges received 32,929 matters involving INS bond re-determinations. In most cases, the decision rendered in an Immigration Court proceeding is removal. During FY 2001, Immigration Courts issued deportation orders in 78% of the cases; in 15%, relief from deportation was granted; and in 6% of the cases, the charge against the alien was not sustained.²⁹

Criminal aliens are a special category of alien and include, but are not limited to, aliens who have been convicted of certain serious felonies such as murder, manslaughter, rape, drug trafficking, certain firearms offenses, offenses

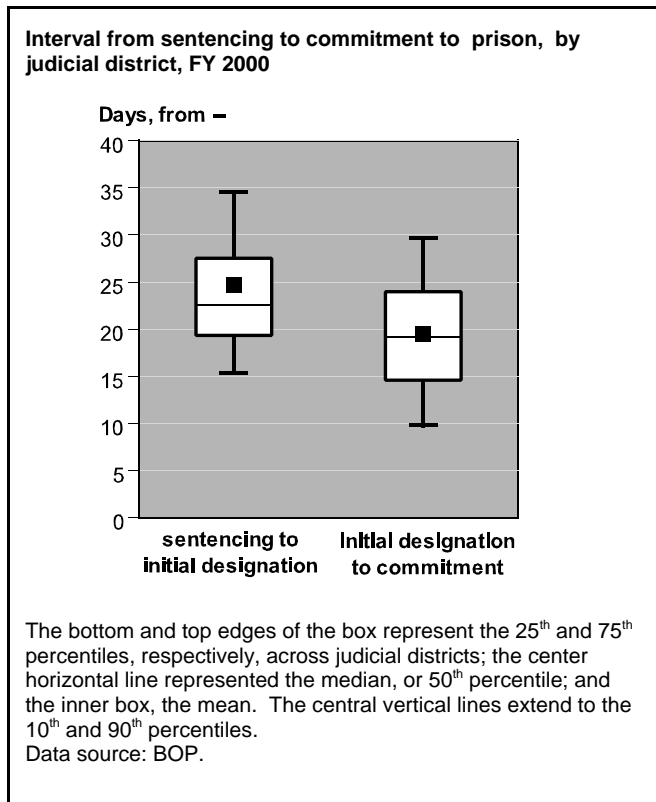


Figure 10

24. INS, FY2000 STATISTICAL REPORT, Tables 59 & 64 (Forthcoming). The Immigration and Nationality Act imposes a severe penalty to encourage voluntary departure. Aliens who voluntarily depart – at no expense to the government – are not prohibited from entering the United States legally at a later time. However, those who are deported may not be admitted to the United States for a period of up to 10 years following removal (20 years in the case of aggravated felons). Re-entry by a deported alien is a criminal offense. (8 U.S.C. § 1326 and 8 U.S.C. 1226(c)(1) (detention of *criminal* aliens); 1231(a)(2) (mandatory detention during 90-day removal period after order of removal becomes administratively final); 1225(b)(1)(B)(iii)(IV) (mandatory detention during expedited removal process).

25. In the context of immigration law, “parole” refers to the temporary admission of an inadmissible alien for urgent humanitarian reasons or when the alien’s entry is determined to be for significant public benefit. A “parolee” is required to leave the United States when the conditions supporting their parole cease to exist.

26. See, e.g., Vela Institute of Justice, “The Appearance Assistance Program: Attaining Compliance with Immigration Laws through Community Supervision” (1998); DOJ, OIG, “Immigration and Naturalization Service: Deportation of Aliens after final orders have been issued,” (I-96-03), (1996); General Accounting Office, “Illegal Aliens: Opportunities exist to improve the Explicit Removal Process,” (GAO/GGD-00-176) (2000).

27. For the purposes of this discussion “deportability” includes deportation, exclusion, and other removals.

28. Executive Office for Immigration Review, FY2001 ANNUAL REPORT, Table 1 (April 2002).

29. *Id.*, Table 12.

relating to national security, and major property offenses.³⁰ The *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* expanded the definition of *criminal alien* in several respects. However, the most significant change was the lowering of the threshold for an aggravating felony from an offense resulting in a sentence of 5 years imprisonment to a sentence of 1 year imprisonment.³¹ While *criminal aliens* can be identified at different stages of the criminal justice process, INS tends to concentrate its attention on those aliens who have been convicted of and are serving a sentence for a deportable crime. The Institutional Removal Program (IRP) is a cooperative effort between the INS, the Executive Office for Immigration Review (EOIR), and federal, state and local correctional agencies to identify and process *criminal aliens*.³² Established by the *Immigration Reform and Control Act of 1986*, the IRP provides the framework for hearings that determine the immigration status of aliens convicted of criminal offenses prior to the completion of an alien's prison term in a federal or state prison or a local jail.³³ By determining deportability and securing necessary travel documents while the alien is incarcerated, the IRP is an efficient mechanism that enables INS to more effectively manage limited detention resources. Once a deportable *criminal alien* has been identified and processed through the IRP, INS issues a "detainer"; aliens subject to an INS detainer can be deported after the alien has completed serving a criminal sentence. Pursuant to the *Violent Crime Control and Law Enforcement Act of 1994*, the INS was authorized to unilaterally order the removal of certain non-resident aliens convicted of certain aggravated felonies.³⁴ This statutory provision streamlines the removal process for *criminal aliens* who are not eligible for any relief from removal by eliminating the Immigration Court proceeding. For instance, following implementation of the *Violent Crime Control and Law Enforcement Act of 1994*, the number of matters received by Immigration Court decreased by 41%, from 18,750 during 1997 to 10,963 during 2001.³⁵

Illegal Aliens Apprehended by Immigration and Naturalization Service (INS)

To accomplish the INS enforcement mission, INS law enforcement officers – Border Patrol Agents, Immigration Inspectors, Investigators, and Detention and Removal Officers, and Special Agents/Criminal Investigators – apprehend and detain both aliens who enter the United States illegally as well as those who entered legally but later violated the conditions of entry by overstaying their visa, seeking employment, or committing a criminal offense. The primary mission of the Border Patrol is to secure the Nation's borders and to prevent illegal entry into the United States, interdict drug smugglers and other criminals, and to compel those persons seeking admission to present themselves legally at established ports of entry for inspection. Immigration Inspectors inspect all those seeking entry to the United States at ports of entry in order to facilitate the entry of bona-fide travelers, make determinations on who may be admitted into the country, and screen out those who are not legitimate entrants. The primary mission of INS investigations is the enforcement of immigration laws within the interior of the United States on matters relating to terrorism, violent crime, document fraud, drug trafficking, alien smuggling, and various forms of organized crime that involve both aliens and citizens. The primary mission of the Detention and Removal program is to locate, apprehend, and remove those aliens found to be deportable from the United States.

Approximately 30 million aliens legally enter the United States annually.³⁶ More than three-quarters of these admissions are temporary admissions for pleasure.

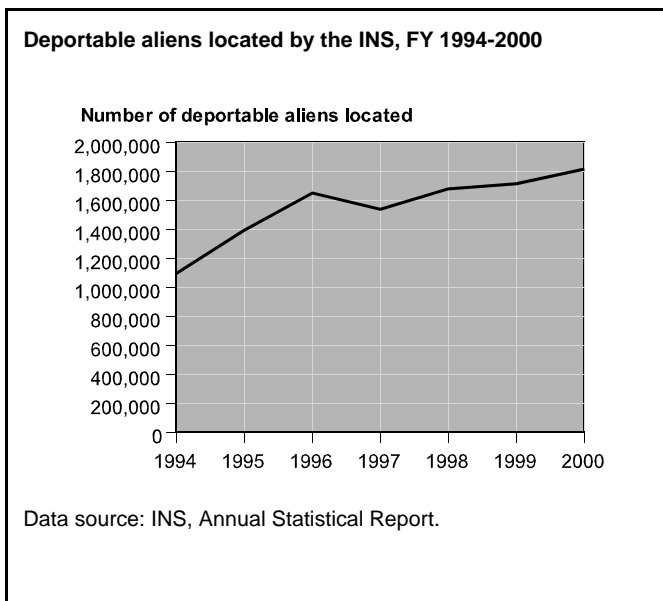


Figure 11

30. 8 U.S.C. §§ 1227-1228 (amending 8 U.S.C. §§ 1251-1252 (1990)).

31. P.L. 104-208, Div. C, § 321, 110 Stat. 3009 (1996).

32. Following passage of the 1994 Crime Act, *infra*, the Institutional Hearing Program (IHP) was renamed the Institutional Removal Program (IRP).

33. P.L. 99-603, Title VII, § 701, 100 Stat. 3559 (1986).

34. P.L. 103-222, Title XIII, § 130004, 108 Stat. 1796 (1994) as codified at 8 U.S.C. § 1252(a).

35. EOIR, *supra* note 30, Figure 24.

36. INS, *supra* note 27, Table 37.

(Additionally millions of Mexican and Canadian nationals enter the United States through the Border Crossing program.) While the number of aliens illegally entering the United States is unknown, during 2000 INS law enforcement officers apprehended approximately 1.8 million deportable aliens who had unlawfully entered the United States or who legally entered but later violated the conditions of their admission.³⁷ Most (91%) of the apprehensions were made by INS Border Patrol along the southwest border of the United States: 96% of apprehensions involved Mexican nationals; and 98% of the aliens apprehended entered the United States without inspection. Between 1994 and 2000, the number of deportable aliens apprehended by INS law enforcement officers increased overall from approximately 1.1 to 1.8 million (figure 11, page 13). Almost all (99%) of the increase in apprehensions involved entries without inspection, 92% by the Border Patrol along the southwest border.

Illegal Aliens Detained Pending Removal From the United States or Other Outcome of an Immigration Proceeding

The number of aliens ordered detained and taken into the custody of the INS pending removal from the United States or other outcome of an immigration proceeding increased from 72,154 during FY 1994 to 188,547 during FY 2001 (figure 12). Because most aliens apprehended who illegally entered the United States agree to leave voluntarily, the number of aliens detained does not correlate to changes in the number of deportable aliens apprehended. In recent years, the increase in the number of aliens detained has primarily been a result of the increase in the number of aliens the INS was statutorily required to detain pursuant to the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*. About 43% of the total increase in the number of detentions can be attributed to the increase in the number of *criminal aliens* taken into custody, from 39,979 during FY 1994 to 90,415 during FY 2001. Twenty-six percent is the result of the increase in detentions following a final order of removal, from 18,221 to 48,709, 5% is the result of the number of aliens detained pending the an expedited removal proceeding, and 26% of the increase is caused by other unspecified reasons.³⁸

The increase in the number of *criminal aliens* located and apprehended by INS is attributable to a variety of factors including legislation (1) requiring states and localities to provide INS with notice of aliens who violated state criminal laws, (2) providing reimbursement to states and localities for costs associated with the incarceration of *criminal aliens*, and (3) expanding the definition of *criminal alien*.³⁹ Beginning in 1995, funds were appropriated to the Bureau of Justice Assistance (BJA) to reimburse states and localities for the cost of incarcerating *criminal aliens*. During FY 1995, BJA made awards totaling \$128 million to 44 states and the District of Columbia to partially reimburse the costs of housing 37,679 *criminal aliens*. The payments during FY 1995 represented approximately 16% of the total costs incurred as reported by the states.⁴⁰ By FY 2001, awards totaling \$537 million were made to 521 states and localities to partially reimburse the costs of housing approximately 69,035 *criminal aliens*. These payments represented approximately 4% of the total costs reported by the states and localities.

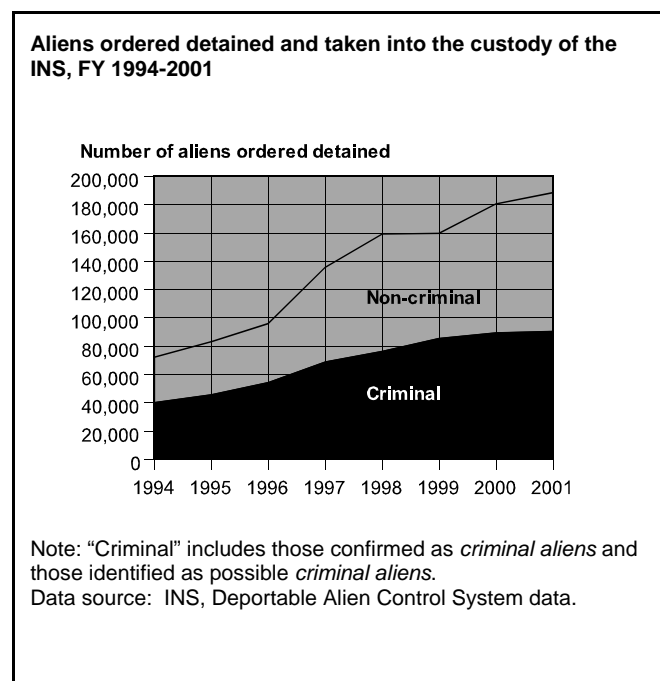


Figure 12

37. INS, *supra* note 27, Table 60.

38. In FY 2001 the DOJ Justice Management Division (JMD) concluded that INS allowed an estimated 136,000 aliens, who otherwise would have been detained, to voluntarily depart because the INS lacked adequate and timely information describing their criminal histories. (As reported in DOJ, OIG, *Status of IDENT/IAFIS Integration* (December 7, 2001) (I-2002-003).) These 136,000 potential detainees translate to an estimated 4 million additional bed days (or an estimated 11,000 bed increase in the average daily population).

39. P.L. 101-649, Title V, § 507, 104 Stat. 4978 (1990) (as codified at 42 U.S.C. § 3753); P.L. 99-603, Title V, § 501, 100 Stat. 3359 (1986); P.L. 104-208, Title III, § 321-322, 110 Stat. 3009 (1996) (as codified at 8 U.S.C. § 1101).

40. BJA, *State Criminal Alien Obligation Summary Report, FY 2001* (October 9, 2001) (on file with the Office of the Federal Detention Trustee).

As a result of the increase in apprehensions (and the increase in the detention period, *infra*), the number of aliens under the custodial jurisdiction of the INS increased from 7,444 at FY 1994 to 19,079 at FY 2001 (figure 13). Approximately 71% of this increase is the result of the number of *criminal aliens* held in detention, which increased from 4,193 to 12,409. At year-end 2001, *criminal* aliens represented 65% of all aliens under the custodial jurisdiction of the INS, up from 56% during 1994.

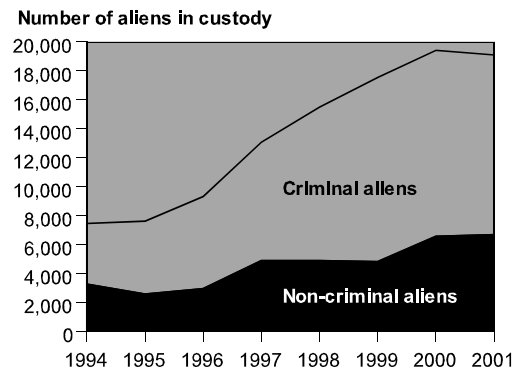
Time in Detention

During FY 2001, the average time an INS detainee was detained prior to removal from the United States was approximately 30 days.⁴¹ However, time in detention varied according to several key characteristics of INS detainees. For instance, *criminal aliens* were detained for a longer period than non-criminals, an average of 35 days compared to 22 days. Aliens subject to a deportation proceeding were detained for a longer period than those choosing to voluntarily withdraw their application for admission to the United States, an average of 33 days, compared to 8 days (figure 14).

Additionally, time in detention varied substantially according to the nationality of the alien. While Mexican nationals who were removed from the United States during FY 2001 were detained for an average of 15 days, the average detention period for aliens of other countries was 63 days. However, for a quarter of the countries to which aliens were removed, the detention period was 120 days or more (figure 15, page 16). For those aliens from countries with strained diplomatic relations with the United States or experiencing socio-political turmoil or economic difficulty, the length of time in detention was the greatest. For instance, nationals of Angola (an average of 316 days), Cuba (294 days), Liberia (232 days), Sierra Leone (227 days), the former Yugoslavia (227 days), China (227 days), Sudan (222 days), Bosnia (212 days), Algeria (210 days), and Haiti (208 days) were detained for the longest periods of time (200 days or more).

Despite legislative and policy efforts to reduce the amount of time aliens are detained pending removal, the average overall detention period increased during the FY 1994-2001 period, from 26.5 to 29.5 days. For certain categories of aliens, the detention period increased more substantially. For instance, for *criminal aliens*, the detention period increased from 26.5 days to 34.7 days. For aliens of nationalities other than Mexican, the detention period increased from 49.9 to 62.5 days.

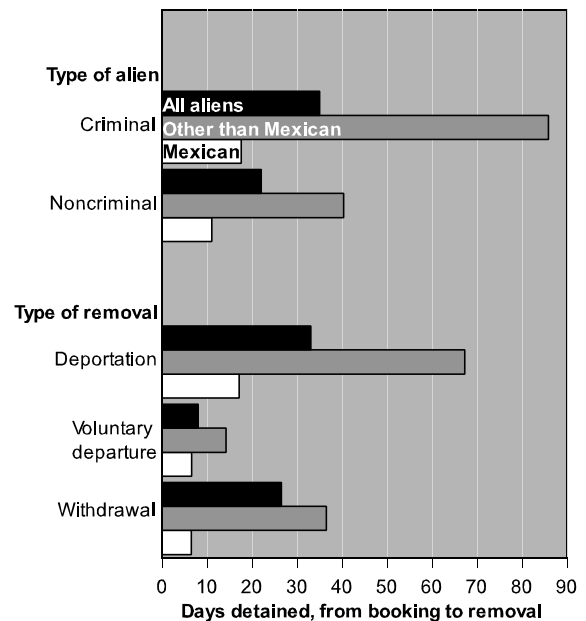
Aliens under the custodial jurisdiction of the INS, FY 1994-2001



Note: "Criminal" includes those confirmed as *criminal aliens* and those identified as possible *criminal aliens*. Data represents population as of September 30, 2001. Data source: INS, Deportable Alien Control System data.

Figure 13

Average number of days detained for aliens removed from the United States by the INS, 2001



Data source: INS, Deportable Control System data file.

Figure 14

41. The average time aliens were detained prior to "release" – whether removed from the United States or released into the community – was approximately 39 days.

The number of detainees in the custody of INS for more than 180 days following an order of removal increased almost three-fold from 1,847 during FY 1994 to 5,266 during FY 2001.⁴² Most (87%) of the detainees were identified as *criminal aliens*. Two-thirds of those in custody were nationals of 12 countries: Cuba (27%), Jamaica (7%), China (6%), Vietnam (5%), Mexico (4%), the Dominican Republic (3%), Guyana (3%), Haiti (3%), El Salvador (3%), Colombia (2%), Nigeria (2%), and Laos (2%).

Detention Resources

At the federal level, detention refers to the temporary holding of (1) defendants charged with criminal offenses who were ordered detained by the federal Court, and (2) aliens awaiting removal from the United States by the INS or other outcome of an immigration proceeding. Within the Department of Justice (DOJ), the responsibility for detention has been shared by the USMS, the INS, and the BOP:

- the **USMS** is responsible for housing criminal defendants charged with a federal offense who the federal Court have ordered detained pending adjudication and, if convicted, sentencing and commitment to the custody of the BOP.
- the **INS** is responsible for housing illegal aliens apprehended by the INS law enforcement officers pending their removal from the United States or other outcome of an immigration proceeding.
- the **BOP** is primarily responsible for housing offenders convicted of and sentenced for an offense in the federal Court. However, the BOP has historically provided detention space in some areas to assist the USMS and INS with housing detainees under its jurisdiction.

During FY 2001, the BOP provided detention space for approximately 23% of all federal detainees; 28% of those under the jurisdiction of the USMS and 13% under the jurisdiction of the INS.⁴³ The INS was able to house 19% of its detainees in its Service Processing Centers (SPCs) or other facilities. To accommodate the remaining detention space requirements, the USMS and INS acquired detention space through Inter-governmental Agreements (IGAs) with state and local governments for the use of detention space and contracts with private correctional or detention facilities. On September 30, 2001, the USMS and the INS housed detainees in 756 state and local correctional facilities or jails and 26 contract facilities. State and local governments are encouraged to provide detention space to the USMS and INS through the Cooperative Agreement Program (CAP).⁴⁴ CAP provides for jail modifications and renovations to assist state and local jurisdiction with meeting federal requirements, and guarantees bed space to USMS and INS. Between FY 1994 and 2001, \$175 million has been appropriated for CAP; awards have been made to 230 jurisdictions during this period. These CAP awards guarantee the USMS approximately 12,000 jail beds for an average of 15 years.

The use of non-federal facilities to house detainees provides a clear public benefit. Because of the geographically diverse need for detention space, few areas need large-scale federally-owned and -operated detention facilities. The use of state and local facilities through IGAs, as well as contract facilities, permits the USMS and INS to acquire the minimally needed amount of space in a specific city or other location without having to incur the capital costs of building and the recurring costs of operating a detention facility. Further, the use of state and local facilities provides

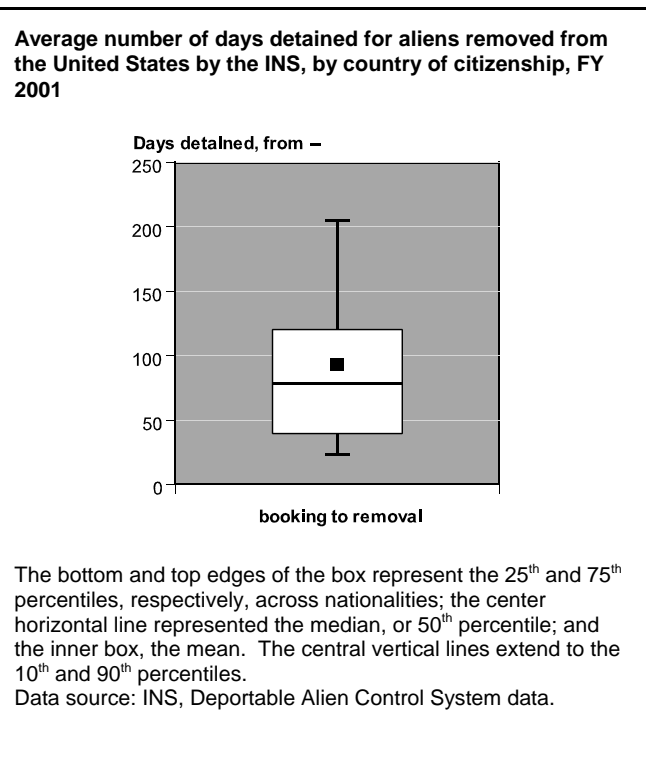


Figure 15

42. INS and BOP have agreed to recognize long-term detainees as those who cannot be returned to their home countries.

43. Represents a population count as of September 30, 2001.

44. While the Cooperative Agreement Program is administered by the USMS, INS has input into funding decisions and benefits directly from CAP.

a source of revenue for these jurisdictions that provides general support for the operation of the detention facilities. In some instances, localities have increased, or otherwise modified or renovated, detention space specifically to accommodate the federal need. However, as the DOJ becomes increasingly reliant on non-federal sources to meet detention space needs, the Department becomes increasingly subject to the forces of supply and demand for such resources. For instance, during FY 2000 the USMS missed its Performance Plan estimated target of an average of \$56 per-day per-capita.⁴⁵ For subsequent years, the USMS increased its target per-day per-capita rate to \$60 in FY 2001, \$61 in FY 2002, and \$63 in FY 2003 despite an increase in the use estimated of detention space in lower cost areas.⁴⁶ Additionally, in some instances, the USMS and INS have competed for the same detention space.⁴⁷

The DOJ has favored the use of IGAs over contracts with private facilities for two reasons: (1) detention space can be obtained in small quantities to accommodate the specific geographic needs and (2) detention space can typically be acquired in 90 to 180 days through an IGA compared to up to 3 to 5 years for a contract. Federal contracts for private detention space are competitively awarded in accordance with the Federal Acquisition Regulations (FAR). Currently, the INS has pending 3 solicitations for private detention space: (1) Laredo, Texas, solicitation announced in March 1997; (2) Houston, Texas, August 1998; and (3) Seattle, Washington, August 1998. After more than 4 to 5 years, all 3 have yet to be awarded by the INS.

The increased reliance on state and local governments and private contractors for detention space has not gone without criticism or concern. The DOJ's Office of the Inspector General (OIG) has included detention space and infrastructure management of the USMS and the INS as one of the "Top Management Challenges in the Department of Justice – 2001 List". Obtaining and efficiently managing detention space for the USMS and the INS has been listed as a material weakness since 1989, and today it remains a top management challenge.

The OIG - while generally concerned with the Department's management of detention resources - has expressed specific concern over (1) the lack of long-term contingency plans to address the potential inability of a contractor to continue operations, and (2) the nature, legality, and appropriateness of the reimbursements paid to obtain jail space from state and local governments.

Regarding the preparedness of the DOJ to address the financial failure of a contractor, the OIG was expressly concerned about the lack of coordination between the three components (USMS, INS, and BOP) to develop contingency plans. Without adequate contingency planning, the OIG stated that a disruption of contract services could lead to a host of legal, health, financial, logistical, safety, and security issues (table 7, page 18).

Another area of concern cited by the components is inter-departmental competition for the same jail space. In some cases the INS, USMS, and BOP will be negotiating with a jail space provider against one another to obtain space. While this situation rarely occurs, it demonstrates the need for detention consolidation.

As the OIG noted, due to the unavailability of federal detention space in some districts, the DOJ depends on state and local governments and contractors to provide detention space for the housing and safekeeping of federal detainees and prisoners. The USMS is restricted with respect to the location of facilities that can be used for housing criminal detainees. Because criminal detainees are awaiting adjudication and sentencing, they need to be located within the proximity of the federal court city in which their case is being adjudicated. Currently, there are more than 400 federal court cities located across the 94 federal judicial districts. In 45 of the 94 federal judicial districts, the USMS was responsible for housing fewer than 200 defendants in each district, making the construction and operation of federal detention facilities impractical. By contrast, in 9 districts currently without a BOP detention facility, the USMS was responsible for housing 500 or more defendants making the construction and operation of a federal detention facility an option.

45. U.S. DOJ. *FY 2000 Performance Report and FY 2002 Performance Plan*, Strategic Goal Five (April 2001). Actual expenditures resulted in an average per day, per capita rate of \$57.57. This slight increase from the target rate resulted in an additional expenditure of \$5.1 million, based on the approximate 9 million contract/IGA bed days.

46. U.S. DOJ. *FY 2001 Performance Report and FY 2002 Revised Final, FY 2003 Performance Plan*, Strategic Goal Five (March 2002).

47. See, e.g., U.S. DOJ, OIG. Audit Report. *Inter-governmental Service Agreements for Detention Services with the County of York Pennsylvania, York County Prison*. (June 25, 2001) (on file with the *Office of the Federal Detention Trustee*) and Letter from Patrick J. Fitzgerald, U.S. Attorney for the Northern District of Illinois, to John D. Ashcroft, Attorney General of the United States (March 5, 2000) (on file with the Office of the Federal Detention Trustee).

INS Owned and Operated Service Process Centers Current Capacity and Staffing Levels			
Location of Center	Number of Beds	Federal Staff	Contract Support Staff
Aguadilla, PR	65	27	30
Buffalo, NY	450	120	65
El Centro, CA	540	110	159
El Paso, TX	750	154	158
Florence, AZ	442	127	190
Krome, FL	500	188	151
Port Isabella, TX	705	207	105
San Pedro, CA	450	78	163
Varick St., NY (Temp. Closed)	225	189	12
Totals	4127	1200	1033

(Source DRO Briefing 4/02, R. Cortina)
Table 7

INS detainees present several unique problems with respect to acquiring detention space. Unlike those of the USMS, less than half (48%) of aliens taken into custody by the INS are detained because they have a criminal background.⁴⁸ While the INS attempts to segregate *criminal-* and *non-criminal aliens*, segregation is not always timely or possible. As INS becomes increasingly reliant on state, local, and contract facilities, that are primarily used to house convicted offenders and those awaiting adjudication of a criminal offense to provide needed detention space, to ensuring that *non-criminal aliens* are segregated from criminals (alien or otherwise) becomes increasingly difficult. For instance, while efforts were taken to ensure segregation from the general population, at one private detention facility under contract to the INS, juveniles ranging in age from 4 to 16 years, nonetheless, were housed in violation of a policy that prohibited the detention of juveniles. Because it was the policy of the facility not to house juveniles, no policies (including medical), procedures, plans, or post orders were in effect to govern their detention.

Additionally, a risk of violence between aliens of particular nationalities is often present because of cultural and political rivalries. Because of the lack of familiarity that state, local, and private jail administrators may have with detainees of various nationalities, the existence of these rivalries and propensity for violence may not become apparent until an incident occurs.

Justice Prisoner and Alien Transportation System

The JPATS has gone through dramatic growth and change to its operational and administrative functions since its inception in 1995. In the first year of operation, JPATS facilitated 69,852 air movements. In FY 2001, JPATS facilitated 152,717 air movements (Table 8, page 19). The air transport of these prisoners has been accomplished with a combination of full-time and contract employees and government owned and leased aircraft.

The BOP, USMS, and the INS each transport detainees/prisoners for various purposes, such as producing them for federal and Immigration Court deportation proceedings or to alleviate facility overcrowding. USMS and INS detainees are moved most frequently and in the largest numbers; however, BOP also transports a significant number of sentenced prisoners. All confinees must be moved by ground or air in a safe, secure, timely, and cost-effective manner.

The DOJ uses JPATS airlifts, air charters, and regular commercial airlines to transport prisoners and detainees. In addition, some state and local jurisdictions use JPATS to transport prisoners on a reimbursable basis. On the ground, DOJ components use buses and vans (either independently or as part of the JPATS ground transportation network), as well as commercial ground transportation.

48. While only 48% of aliens taken into custody during FY 2001 were identified as criminal aliens, at fiscal year-end 2001, 65% of aliens held in custody were *criminal* aliens.

	USMS	BOP	INS	NON-FED	MILITARY	TOTAL	TOTAL COST
FY95	89,405	56,891	10,378	4,966	126	161,766	0*
FY96	99,297	52,891	31,085	5,385	131	188,789	0*
FY97	103,891	51,791	41,527	4,621	70	201,900	0*
FY98	113,900	52,109	52,280	4,084	51	222,424	0*
FY99	109,679	56,176	60,202	3,571	0	229,628	58,921
FY00	109,055	63,319	74,808	3,061	0	250,243	83,029
FY01	114,752	68,973	75,613	3,405	0	262,743	91,681

* JPATS revolving fund was established in FY 99.

Table 8

United States Marshals Service

One of the functions of the USMS is the housing and transportation of criminal defendants charged with a federal offense who the federal Court have ordered detained pending adjudication and, if convicted, committed to the custody of the BOP. The USMS is restricted with respect to the location of facilities that can be used for housing criminal detainees. Because detainees under the jurisdiction of the USMS are awaiting trial and sentencing, they need to be located within the proximity of the federal court city in which the case is being adjudicated. The BOP facilities operated specifically to house federal detainees – Metropolitan Correctional Centers (MCCs), Metropolitan Detention Centers (MDCs), and Federal Detention Centers (FDCs) – are generally located in large cities or areas with historically large numbers of federal prosecutions and/or detentions. To meet its greater need for detention space, the USMS acquires detention space from state and local jurisdictions through Inter-governmental Agreements (IGAs) and contracts with private operators of detention facilities. During FY 2001, approximately 61% of criminal detainees were held in state correctional facilities or local jails, 28% were held in BOP facilities, 11% in privately-operated facilities, and less than 1% in INS Service Processing Centers or local medical facilities (table 9).

As a result of the increased need for detention space, the USMS has become increasingly reliant on state and local governments to provide needed detention space. Nationally from FY 1994 to 2001, approximately 60% (or 12,318 beds) of the additional detention space was acquired from state and local governments; 22% (4,599 beds) from the BOP; and 18% (3,917 beds) from private facilities. In the 7 judicial districts with the greatest increase in the number of criminal detainees – Arizona (1,722), Puerto Rico (985), New Mexico (788), Western District of Texas (2,615 additional detainees), Southern District of Texas (2,325), Southern District of California (1,189), and the District of Columbia (707) – the USMS acquired 51% of the additional detention space from state and local governments, 29% from privately-operated facilities, and 20% from the BOP.

Between FY 1994 and 2001, detention related expenditures by the USMS more than doubled, increasing from \$257 million to \$619 million. The majority of this increase resulted from increased expenditures for detention space. Expenditures for detention space increased from \$238 million to \$562 million, expenditures for contract guard services increased from approximately \$7 million to \$10 million and expenditures for medical services increased from

Table 9. Detained criminal defendants under the custodial jurisdiction of the USMS, by type of facility, FY 1994-2001.

Year	Total ^a	Type of facility				
		Federal		State & local	Private ^b	Medical ^c
		BOP	INS			
1994	18,231	6,218	1	11,416	512	63
1995	22,193	7,542	0	13,454	1,115	77
1996	23,964	7,694	7	14,822	1,324	103
1997	27,017	8,178	1	17,029	1,696	101
1998	31,470	8,907	7	20,307	2,128	107
1999	33,649	9,447	4	21,010	3,034	110
2000	35,720	10,454	0	21,402	3,719	121
2001	38,950	10,817	2	23,734	4,429	126

Notes: Statistics represent population of September 30 of each year.

a. "Total" includes observations where the type of facility was not identified.

b. Includes private facilities operated under contract and local facilities operated by contractors.

c. Does not include detainees held in BOP medical facilities. Includes detainees found not criminally-responsible by reason of insanity and housed in St. Elizabeth's Hospital in Washington, DC.

Data source: USMS, Prisoner Tracking System, fiscal year.

\$12 million to \$37.5 million.⁴⁹ Additionally, during FY 2001 the BOP expended an estimated \$275 million to house detainees under the jurisdiction of the USMS.⁵⁰

The increased expenditures for detention space between FY 1994 and 2001 can be attributed to four factors: (1) the increase in the number of defendants detained pending adjudication and commitment to the BOP, (2) the increase in the amount of time that a defendant was detained pending adjudication and commitment, (3) the decrease in the proportion of bed-days provided to the USMS by the BOP, and (4) the increase in the daily rate paid by the USMS.

During FY 1994 and 2001, an estimated:

- 60% (or \$193 million) of the increase in detention expenditures by the USMS can be attributed to the increase in the number of defendants detained during the course of each year, which increased from a total of 61,613 to 93,886;
- 34% (or \$111 million) can be attributed to the increase in the amount of time a defendant was detained, which increased from an average of 72 to 102 days; and
- 6% (or \$20 million) can be attributed to the average daily rate, which increased from \$54.08 to \$59.01.⁵¹

The \$193 million increase in the detention expenditures resulting from the increase in the number of defendants detained in IGA or contract facilities is partially attributable to a decrease in proportion of bed-days provided to the USMS by the BOP. During FY 1994, the BOP provided approximately 36% of 6.9 million bed-days required by the USMS. By contrast, during FY 2001, the BOP provided only 30% of the 13.5 million bed-days required by the USMS. Consequently, approximately 8% (or \$24 million) of the increase in USMS expenditures for detention space can be attributed to the decrease in the proportion of bed-days provided by the BOP.

The USMS has controlled the increase in the average daily rate. During the FY 1994-2001 period, the average annual increase in the daily rate was 1.25%. By contrast, the average annual increase in the Consumer Price Index (CPI) was 2.6%. Had the daily rate paid by the USMS increased at the same rate as the CPI, the average daily rate for a jail bed would have been \$64.62 – approximately \$3 per day higher than the rate actually paid by the USMS.

During FY 2001, the average daily rate paid by the USMS to house criminal detainees in state, local, or contract facilities was \$59.01. However, the per-diem paid varied substantially within and across judicial districts. For instance, in the 25% of judicial districts with the highest average per-diem, the average per-diem exceeded \$70; by contrast, in the 25% of judicial districts with the lowest average per-diem, the average per-diem was less than \$44. By comparison, the average daily cost of housing detainees in BOP-operated facilities was \$68.09.⁵² Generally, the USMS paid a higher per-diem to state, local, and contract facilities located in urban areas (an average of \$82.27) than non-urban areas (\$59.46).

Immigration and Naturalization Service

The core mission of the INS is to fairly and effectively administer and enforce the Nation's immigration laws. This mission includes not only enforcement and deterrence responsibilities, but also responsibility for the provision of immigration services and benefits. In the enforcement context, the INS mission includes (1) determining who may be admitted to the United States and (2) enforcing immigration laws along the Nation's borders and within its interior. To accomplish the INS enforcement mission, INS law enforcement officers – Border Patrol Agents, Immigration Inspectors, Investigators and Detention and Removal Officers, and Special Agents/Criminal Investigators – apprehend and detain both aliens who enter the United States illegally, as well as those who entered legally but later violated the conditions of entry through overstaying their visa, seeking employment, or committing a criminal offense. The primary mission of the Border Patrol is to secure the Nation's borders and prevent illegal entry into the United

49. USMS, 1994 ANNUAL REPORT (Table 00) (1995); USMS, 2001 ANNUAL REPORT (Table 00) (2002).

50. Sufficient data to estimate the cost to BOP for housing USMS detainees during the FY 1994-2000 period was not provided to the Office of the Federal Detention Trustee.

51. Represents the average daily rate paid for bed space; rate does not include costs associated with medical or guard services paid by the USMS.

52. BOP expenditures is the product of total detention days in BOP operated facilities as reported by the USMS (4 million) and the average daily rate (\$68.09) for FY 2001 provided by the BOP. BOP expenditures reflect average daily rate inclusive of support costs.

States, interdict drug smugglers and other criminals, and compel those persons seeking admission to present themselves legally at established ports of entry for inspection. Immigration Inspectors inspect all those seeking entry to the United States at ports of entry in order to facilitate the entry of bona-fide travelers, make determinations on who may be admitted into the country, and screen out those who are not legitimate entrants. The primary mission of INS investigations is the enforcement of immigration laws within the interior of the United States on matters relating to terrorism, violent crime, document fraud, drug trafficking, alien smuggling, and various forms of organized crime that involve both aliens and citizens. They also work to identify *criminal* aliens incarcerated in federal and state prisons and local jails. The primary mission of the Detention and Removal program is to locate, apprehend, and remove those aliens found to be removable from the United States.

Between FY 1994 and 2001 the number of detainees under the custodial jurisdiction of the INS increased from 7,444 to 19,079 (table 10). During this period, the INS, similar to the USMS, became increasingly reliant on the state and local governments to provide needed detention space. Approximately 71% of the additional detention space required by the INS was acquired from state and local governments, 18% from private facilities, and 5% from the Bureau of Prisons (BOP). During FY 2001, approximately 51% of criminal detainees were held in state correctional facilities or local jails, 19% in INS Service Processing Centers (SPCs), 16% in privately-operated facilities, 13% in BOP facilities, and approximately 1% in all other facilities, including local medical facilities. Between FY 1994 and 2001, detention related expenditures by the INS SPCs for medical services were not provided.⁵³

Most (94%) of the deportable aliens apprehended by the INS were apprehended along the southwest border. Further, outside of the major ports of entry into the United States, the INS has less law enforcement presence or need for detention space within the interior of the United States (figure 16, page 22, figure 17, page 22, and figure 18, page 23). Because INS detainees are awaiting adjudication and removal, they need to be housed within the proximity of the 54 EOIR court locations located in 42 metropolitan areas.

Table 10. Detained aliens under the custodial jurisdiction of the INS, by type of facility, FY 1994-2001.

Year	Total ^a	Type of facility					
		Federal		State & local	Private ^b	Medical ^c	Other
		BOP	INS				
1994	7,444	1,851	2,846	1,364	1,012	0	122
1995	8,591	2,068	2,798	1,830	709	0	104
1996	9,303	2,184	2,943	3,153	764	4	127
1997	13,056	2,221	3,143	5,770	1,700	2	186
1998	15,486	2,061	3,448	7,548	2,211	5	209
1999	17,527	2,137	3,495	9,334	2,334	7	219
2000	19,395	2,350	3,834	9,911	3,053	16	230
2001	19,079	2,476	3,609	9,647	3,068	15	264

Notes: Statistics represent population of September 30 of each year. Total includes observations where the type of facility was not identified.

a. "Total" includes observations for which the type of facility was not reported.

b. Includes private facilities operated under contract and local facilities operated by contractors.

c. Does not include detainees held in BOP medical facilities.

Data source: INS, Deportable Alien Control System (DACS), fiscal year.

53. Information requested from INS but not received; therefore, detailed analysis of INS detention expenditures was not possible.

Number of detainees under the custodial jurisdiction of the INS, by location of facility, FY 2001

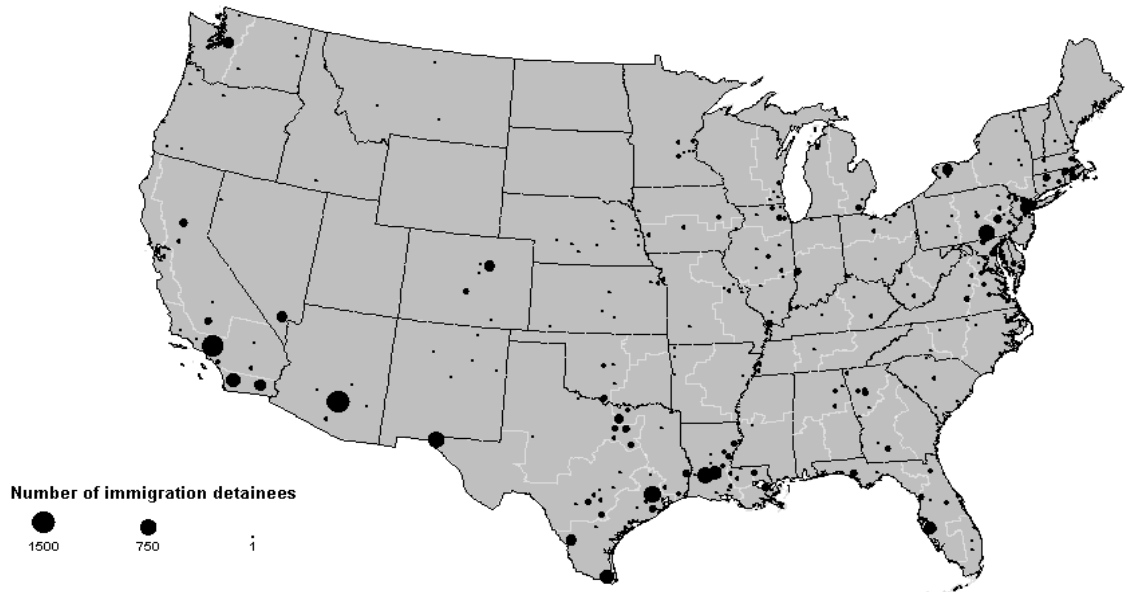


Figure 16

Number of detainees under the custodial jurisdiction of the USMS, by location of facility, FY 2001

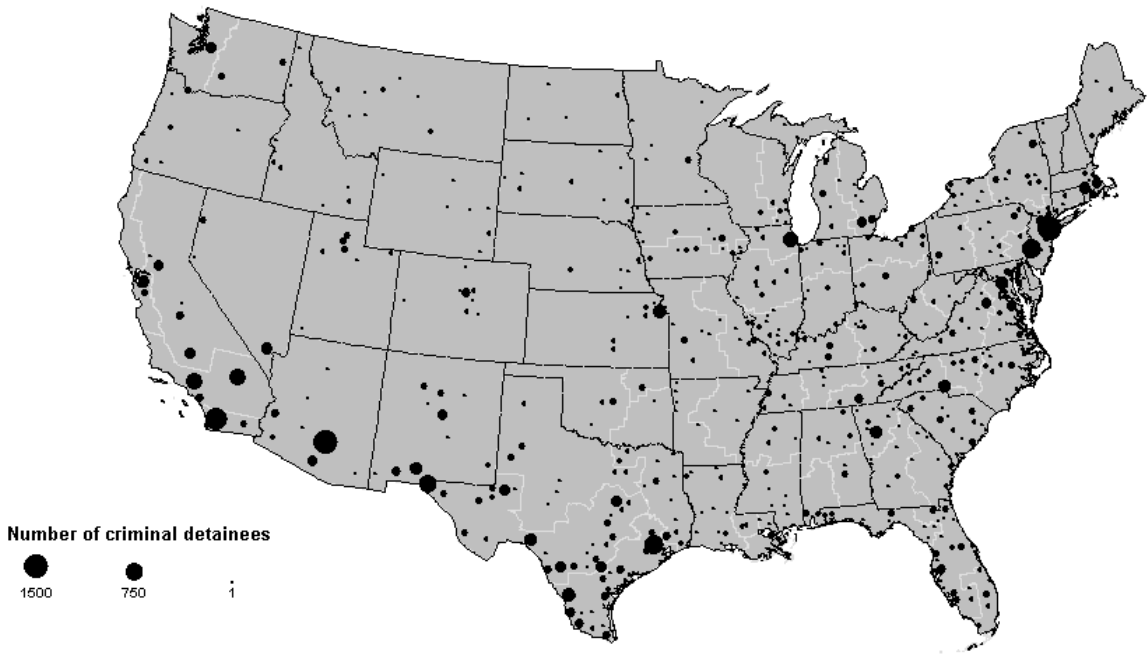
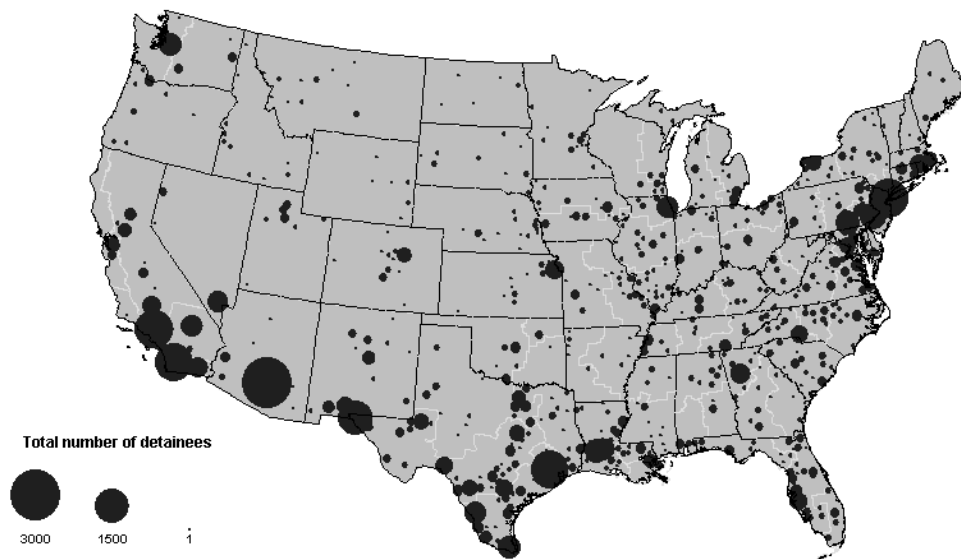


Figure 17

Total number of federal detainees, by location of facility, FY 2001



Figur

re 18

Compliance with Department of Justice Core Detention Standards

While jail administrators generally attempt to comply with national standards set forth by organizations such as the American Correctional Association (ACA), not all facilities are able to achieve accreditation by the ACA or other professional organizations. Additionally, some facilities have been subject to prisoner or third-party litigation because of substandard conditions of confinement. As part of a national survey of jail facilities, the Bureau of Justice Statistics collected information enumerating the number of jails under a court order or consent decree to improve conditions of confinement.⁵⁴ Of the 3,084 jail jurisdictions surveyed, 265 reported that, as of June 30, 1999, they were subject to a court order or consent decree. Of these, 60% were ordered to redress more than one condition of confinement:

- 66%, overcrowding;
- 41%, recreation and exercise;
- 39%, medical services;
- 38%, staffing;
- 35%, food services;
- 33%, visitation, mail, and telephone policies;
- 31%, library services;
- 30%, inmate classification;
- 30%, grievance procedures or policies;
- 28%, fire hazards;
- 27%, disciplinary procedures or policies;
- 23%, administrative segregation practices and policies;
- 22%, religious practices;
- 22%, search policies and practices;
- 20%, education and training programs;
- 15%, counseling programs;
- 16%, other.

54. See, Bureau of Justice Statistics, *Census of Jails*, (2001).

Of the 1,524 local and private jail facilities with which the USMS and INS have an IGA (726 actively used as of year-end 2001), 62 reported that they were subject to a court order or a consent decree, and 65% must redress more than one condition of confinement. As of September 30, 2001, the USMS (922) and INS (2,247) housed 3,169 federal detainees in these 62 facilities subjected to court monitoring. Of the 62 facilities, 29 were exclusively used by the INS, 23, exclusively by the USMS, and 10 by other agencies.

With the increase in the number of federal detainees housed in non-federal facilities, monitoring the quality and safety of such facilities to ensure that detainees are housed under safe, secure, and humane conditions that protect statutory and constitutional rights has become increasingly important and difficult. Accordingly, in order to facilitate the evaluation of non-federal facilities, the DOJ through the BOP, the USMS, the INS, and the Department's Civil Rights Division, issued a set of 59 core standards with which non-federal facilities housing federal detainees are required to comply. While many of these core detention standards are consistent with national standards, some are unique to the DOJ. The core standards are divided into nine functional areas:

- administration and management which addresses discrimination, equal access to programs, sexual misconduct, and appropriate interaction the detainee may have with staff;
- health care which addresses general health care, mental health, and dental services provided by the institution;
- security and control which addresses the issuance and proper promulgation of policies to staff, use of force and/weapons, use of restraints, detainee searches, detainee accountability and general security, and maintenance of adequate incident logs;
- food service which addresses basic sanitation and adequacy of meals provided to detainees;
- staff/detainee communication which describes grievance policies against correctional officers and outlines the conditioning under which correctional staff must participate in diversity programs;
- safety and sanitation which addresses the adequacy of fire safety programs, control of dangerous materials, general facility environment (including air quality, noise levels, and sanitation and hygiene programs), adequacy of clothing and bedding, and protection from infectious diseases;
- services and program which addresses detainee security classification, religious practices, work assignments, availability of exercise programs, access to legal materials, access to legal representation, access to a telephone, handling of detainee mail and other correspondence, and visitation privileges;
- workforce integrity which addresses the adequacy of the correctional officer hiring process, staff training and licensing/certification, adequacy of systems to report and address staff misconduct; and
- discrimination prevention which addresses the adequacy of policies and procedures to prevent discrimination against detainees based on their gender, race, religion, national origin, or disability.

Each component may supplement the core standards to address the uniqueness of the population for which it is responsible. For instance, in November 2000, the INS issued its own National Detention Standards. The standards applied to all Service Processing Centers operated by the agency, all contract detention facilities and all state or local government facilities used by the INS under IGAs to hold detainees for more than 72 hours. The standards cover 36 topics including access to legal materials, telephone access, group legal presentations on legal rights, visitation, medical care, and security issues. The standards were designed to benefit the INS's population of detained immigrants and asylum seekers. However, these standards were implemented as of March 2002. While the INS standards are consistent with the DOJ's core standards, the INS standards are more relevant to the unique and diverse population serviced by the INS, e.g., the INS affords detainees greater telephone privileges, access to specific legal documents relating to U.S. immigration law that are normally not included in the prison/jail libraries accessible to criminal detainees/prisoners, group legal presentations on legal rights, and greater visitation privileges.

Each component has in place procedures for monitoring compliance with the DOJ's core standards and its respective supplements. The policy of the USMS is to inspect each state and local facility operating under an IGA and contract facilities on an annual basis. The policy of INS is to inspect facilities, including the INS Service Processing Centers

(SPCs), on an annual basis. However because of the lack of adequate staff resources, facilities are not consistently inspected and training of inspection staff has not been completed. For instance, the USMS has adopted the practice of accepting recent reviews of state agencies with oversight authority over the facility.

As part of an effort to design, pilot, evaluate, and implement facility review procedures corresponding to the 59 core standards, the DOJ initiated and recently completed a comprehensive review of the 40 state, local or contract facilities with the greatest use by the USMS and INS. At the time this review was initiated, these 40 facilities housed approximately 30% of all federal detainees. As part of the review process, the DOJ evaluated facilities on each of the 59 core standards to determine if (1) adequate policies existed, (2) policies were being implemented successfully, and (3) policies achieved the desired outcomes. Reviews included on-site inspections and interviews with jail administrators, facility staff, and detainees.

The preliminary findings of the reviews indicate that, overall, the facilities reviewed were at least partially compliant with the 59 core standards: facilities were fully compliant with 65% of the core standards, partially compliant with 28%, and non-compliant with 7% (table 11). The two areas with the lowest average compliance were health care and safety and sanitation; facilities were fully compliant with only 50% of the standards describing these functional areas. The areas of deficiency were expansive.

Functional area	Percentage of facilities		
	Fully-compliant	Partially-compliant	Non-compliant
Overall	65 %	28 %	7 %
Administration and management	72	22	6
Health care	50	35	15
Security and control	60	31	8
Food service	68	26	5
Staff/detainee communication	74	21	9
Safety and sanitation	53	38	3
Services and programs	80	17	2
Workforce integrity	74	24	0
Discrimination prevention	83	17	6

Data source: U.S. DOJ, Office of the Federal Detention Trustee.

Of the 40 facilities reviewed, the results below are displayed in the pie chart (figure 19, page 26):

Health care

- 19, adequacy of mental health care staff to assess suicide risk;
- 18, lack of comprehensive mental health evaluations;
- 15, intake screening to include infectious disease control;
- 13, suicide prevention;
- 13, informed consent and involuntary treatment;
- 12, general access to health care; and
- 11, detainee death policies.

Safety and sanitation

- 20, fire drills, use of fire extinguishers, and/or fire control plan;
- 18, labeling and storage of hazardous and bio-medical wastes;
- 18, laundry/clothing issues;
- 15, monthly sanitation inspections; and
- 11, deposition of tuberculosis (TB) and meningitis cases.

Security and control

- 21, written agreements for assistance in the event of an emergency to include transportation, housing, and medical care of detainees;
- 20, care of dangerous kitchen implements to include tethers to reduce use as weapons and adequate inventory records;
- 17, notification procedures regarding use of force against detainees;
- 12, care, handling, and use of firearms; and
- 12, adequate surveillance of detainees

Conditions and Confinement Summary

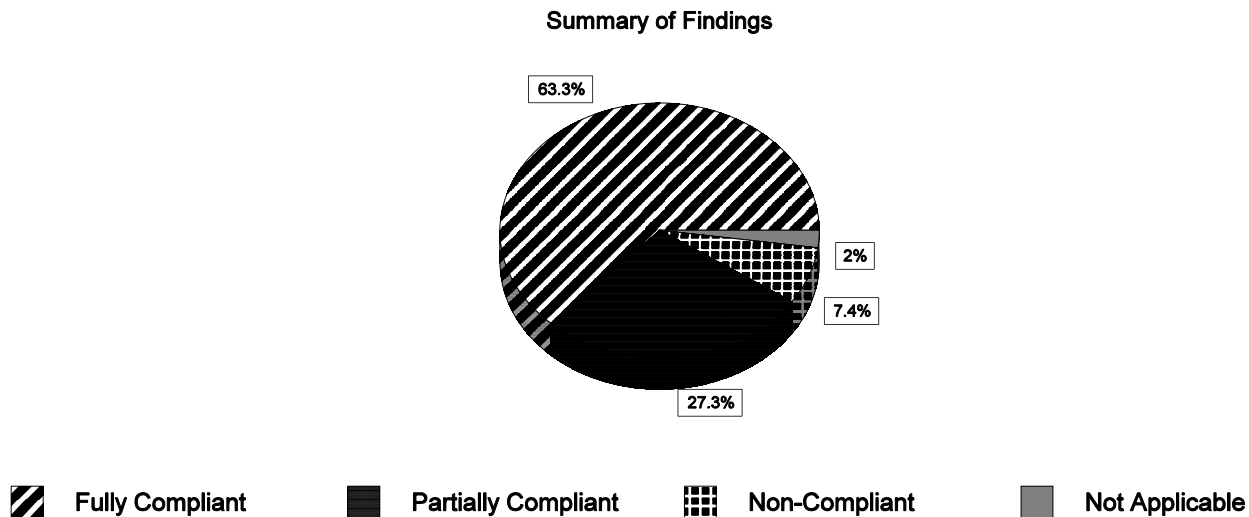


Chart Based on: 40 Reviews

Figure 19

Data Sources

The primary data sources for tabulations and figures presented in this report are: (1) the United States Marshals Service Prisoner Tracking System, (2) the Immigration and Naturalization Service Deportable Alien Control System, (3) the Executive Office for U.S. Attorneys LIONS data system, (4) the Administrative Office of the U.S. Court, pretrial services data system, and (5) the Office of Personnel Management. Except where otherwise noted, analyses were performed by the Office of the Federal Detention Trustee using data extracts provided by each of the agencies. Additionally, the Bureau of Prisons (BOP) provided specific information describing detainees in its custody and time intervals between sentencing and designation and designation and commitment.

The **United States Marshals Service** maintains information describing persons arrested for federal criminal offenses and defendants ordered detained pending adjudication, sentencing, and/or commitment to the BOP. These data describe key characteristics of defendants, number of days detained, facility(ies) where defendants were detained, and cost of detention. The Prisoner Tracking System (PTS) is one of three data systems maintained by the USMS. PTS's function is to automate many of the clerical functions associated with the booking, detention, and transport of criminal detainees. PTS is a distributed data system, existing as a separate database in each of the 94 federal judicial districts. As a result of its distributed structure, deputy marshals can not access information describing federal detainees outside of its judicial district. As a result, the USMS has difficulty adequately tracking the status of separatees (detainees who cannot be housed together across judicial districts). Data from each of the 94 districts can be polled, as needed, to create a national database describing the activity of the USMS.

The **Immigration and Naturalization Service** maintains information describing aliens under docket control, *i.e.*, those aliens who have attempted to enter, or who were apprehended after unlawfully entering, the United States. These data describe the key characteristics of the alien, number of days detained, facility(ies) where aliens were detained, and dates aliens were removed from the United States. The Deportable Alien Control System (DACS) automates many of the clerical docket control functions associated with the arrest, detention, and deportation of illegal aliens. DACS is a centralized, nationwide system that permits headquarters, regional, and district-level staff to access information concerning the status and disposition of individual aliens as well as statistical and summary information needed for routine management reports. DACS data are stored at the Department of Justice Data Center in Dallas, Texas.

The **Executive Office for U.S. Attorneys** maintains information describing defendants prosecuted in the federal Court. These data describe the offense charged, case processing time, and disposition of the criminal case.

The **Administrative Office of the U.S. Court** maintains information describing defendants presented for a pretrial release or detention hearing. These data describe key characteristics of defendants, including many of the factors the federal Courts consider in making release/detention decisions, outcome of hearings, conditions of release, and behavior of defendants while on pretrial release.

The **Office of Personnel Management** maintains information describing federal employment. Specific information obtained describes the number of federal law enforcement officers, number of federal employees with detention-related duties and responsibilities, and other employees through the federal criminal justice system.

The **Bureau of Prisons** maintains information describing offenders under its jurisdiction serving a sentence of imprisonment or otherwise in its custody.