

Byrne Justice Assistance Grants (JAG) and Public Defense Providers: Bringing all Stakeholders to the Table



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The purpose of this fact sheet is to provide information on a section of the Justice for All Reauthorization Act (JFAA) of 2016, which provides new requirements on the Edward Byrne Memorial Justice Assistance Grant (Byrne JAG) Program, authorized through the Omnibus Crime Control and Safe Streets Act of 1968, and the implications of them for state administering agencies and public defense providers.¹

Every person who confronts the criminal justice system is entitled to the rights provided by the Sixth Amendment to the United States Constitution.² The Sixth Amendment provides for speedy and public trials, impartial juries, information about the alleged charges, and access to defense representation. The cornerstone of all these rights is access to effective representation. Today, many of our public defense providers are not included in criminal justice planning conversations, contributing to their inability to provide each and every client effective representation, an oversight that has far reaching consequences both for individuals who encounter the system and the system as a whole. A recent change in the law begins to address this issue. This fact sheet details how this change provides a new mechanism for state and local policy makers to include defense providers in broader discussions about the importance of effective representation and the resources needed to achieve this.

Funding Issues and Potential Solutions

One factor contributing to failures in public defense systems is a lack of adequate funding. David Simon noted in a Harvard Law Review article that, “of the more than \$146.5 billion spent annually on criminal justice, over half is allocated to support the police officers and prosecutors who investigate and prosecute cases, while only two to three percent goes to indigent defense.”³ This disparity in funding highlights the need for states to evaluate how they make budgetary decisions, including how they distribute the Byrne JAG grants. Byrne JAG is a source of federal funding authorized under 42 U.S.C. §§ 3750-3758 that is administered by the U.S. Department of Justice, BJA to

state and local governments. Byrne JAG is used broadly to address the needs of law enforcement, prosecution, public defense, courts, crime prevention and education, corrections and community corrections, drug treatment and enforcement, planning, evaluation, technology improvement, and crime victim and witness initiatives and mental health programs and related law enforcement and corrections programs, including behavioral programs and crisis intervention teams.⁴

How Byrne JAG Recently Changed

Byrne JAG funds are the primary source of federal justice funding to state and local justice jurisdictions. Byrne JAG funds are awarded by formula, based on population and crime rate. Sixty percent of the state’s funding allocation is awarded to the state’s criminal justice plan-

ning agency known as State Administering Agencies (SAAs), which, in turn, awards the funds, often by competitive grant, to local governments and non-profit service providers. The remaining 40 percent is awarded directly by BJA to local governments.⁵ It is worth noting that since Byrne JAG began in 2005, state administering agencies and their subgrantees have broadened how they use these funds. For more information on the history of Byrne JAG, visit: <http://www.ncjp.org/byrne-jag/history>.

All SAA grantees and their potential subgrantees should be aware of three key changes to Byrne JAG contained in the 2016 Justice for All Reauthorization Act, Section 14: “Effective Administration of Justice.”

1. Starting in 2019, states must submit strategic plans detailing how grants received will be used to improve the administration of the criminal justice system;
2. Strategic plans must be developed in consultation

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.”

-Sixth Amendment, United States Constitution

with criminal justice system actors, including judges, prosecutors, law enforcement, corrections, public defense providers, providers of victim services, juvenile justice delinquency prevention programs, community corrections, and reentry services; and

3. States will now have access to training and technical assistance through funding from the Bureau of Justice Assistance for strategic planning and for the protection of constitutional rights outlined in the Sixth Amendment.⁶

BJA further explains that:

In December of 2016, Congress passed the Justice for All Reauthorization Act stating that by 2019 States will be required to have a strategic plan in place that identifies stakeholders, describes evidence-based approaches, and illustrates how the State will allocate funding.⁷

The Power of SAAs and Public Defense Providers Collaborating in Strategic Planning

The Byrne JAG changes detailed above explicitly reference that public defense providers are to be included in the strategic planning process, which is new. By including public defense providers, states can begin to address resource disparities in the criminal justice system. Only by having representation from all system actors can strategic plans be appropriately balanced and take into account the needs of the entire juvenile and criminal justice systems. The flexibility of the Byrne JAG grants provides a variety of options to public defense providers, allowing them to identify and address their own unique challenges.

Information on Training and Technical Assistance Services

There are many options for training and technical assistance for state administering agencies and public defense providers.

American University's Justice Programs Office offers TTA on the Right to Counsel (R2C) National Campaign, which is a public awareness initiative that uses value-based communication tactics to inform policy-makers, criminal justice stakeholders, and the public about the importance of carrying out the Sixth Amendment's right to counsel, the ways in which this right is not being implemented, the roles everyone from law enforcement officers to prosecutors to judges and court managers can play in ensuring that the constitutional right to counsel is upheld, and how to reform

the public defense system with low-cost or no-cost policy solutions. R2C also seeks to elevate the defender voice in criminal justice reform conversations and provides new opportunities for citizens to become engaged advocates, ensuring effective public defense delivery systems in all courts across the country. For more information, please visit www.rtcnationalcampaign.org.

Bureau of Justice Assistance (BJA):

BJA's National Training and Technical Assistance Center (NTTAC) is a training and technical assistance center that can provide your agency free assistance to address your community's justice-related challenges. NTTAC supports a wide variety of services – from onsite and distance learning training to assistance in implementing evidence-based programs – to address the unique needs of your community.

Bureau of Justice Assistance's Sixth Amendment Initiatives website: <https://www.bja.gov/sixthamendment/>

As described on the website, the Sixth Amendment Training and Technical Assistance (TTA) Program is authorized by the Justice for All Act of 2016 (JFAA). The Sixth Amendment Program provides TTA to ensure that states and local government are provided with the capacity and tools necessary to meet the obligations established by the Sixth Amendment. The Program will also support pathways for evidence-based best practices to reach courts and defender systems at the state and local levels that support authentic adoption, implementation, and sustainment of effective approaches. The Program will disseminate information about practices, structures, and models that can be replicated and made available through training, technical assistance, and strategic planning services to courts and defender systems at state and local levels.

BJA Sixth Amendment Initiative's TTA providers include:

The Center for Court Innovation (CCI): <https://www.courtinnovation.org/>

The National Legal Aid and Defender Association (NLADA): <http://www.nlada.org/>

The Sixth Amendment Center (6AC): <http://sixthamendment.org/>

National Criminal Justice Association (NCJA): <http://www.ncja.org>

Examples of Effective Defense Support through Byrne JAG Funding:

While specifically highlighting public defense is new, SAAs and public defense providers have successfully collaborated for many years. Examples include the following:

- In 2009, the Office of the State Appellate Defender in Illinois received funding for three full-time appellate defenders. The program was given \$344,574 in funding for FY 2009. These defenders work on systemic sentencing issues—such as improper admonishments, incorrect sentencing credit, extended terms, negotiated sentences, enhanced sentences, mandatory consecutive sentences, and constitutional challenges to sentences. They work with clients during the life of the case, up to and including engaging in judicial oral arguments. By focusing on this part of the appeals process, a timelier response to challenges are given, which reduces the backlog of appeals. It also provides the quality representation encompassed in the Sixth Amendment and solidified in *Gideon*.⁸
- Connecticut used Byrne JAG funding from 2012 to 2014 to transform their public defender juvenile case IT system. The Division of Public Defender Services received \$300,000 of the \$1,890,018 FY2014 Connecticut Byrne JAG award. The Division of Public Defender Services used the following goals to determine how to distribute the Byrne JAG funding:
 - Collect and analyze data from all juvenile public defender offices;
 - Increase the ability to provide evidence-based practices to their clients;
 - Achieve multi-level collaboration in representing juvenile clients;
 - Ensure continuity of services for juvenile clients later represented by adult defender offices;
 - Foster collaborative relationships between clients and defense teams; and,
 - Share and implement the results of the program to increase the technological knowledge base in the field of juvenile defense.

Following, roughly two-thirds of the money was used to purchase new technology to provide necessary infrastructure. This included computers, servers, and other peripherals. The remaining third was used to hire technical experts to both design the system and provide training to maximize the utility for system users.⁹

- In 2015, the Rhode Island Public Defender received a \$25,000 Byrne JAG award to fund their Community Partnership Program. The Community Partnership Program is run by the Office of the Public Defender with the goal of developing and maintaining relationships with the client community to better tailor services to client needs. Among other things, these services include advising clients of their rights, engaging directly with client communities, and partnering with other community organizations.¹⁰
- In 2016, the Office of the State Public Defender in Colorado was granted \$38,121 to partner with the Colorado Criminal Defense Institute to provide counsel to clients seeking post-conviction relief including criminal record sealing. The sealing process is long and complicated. The help returning citizens received from the Institute resulted in individuals experiencing fewer barriers to finding gainful employment or obtaining a professional license. This in turn has been connected to reduced recidivism.¹¹

The examples highlighted above show the variety of ways that Byrne JAG can be used to support public defense systems. Funding can be used for, but is not limited to, providing skill trainings, piloting innovative public safety initiatives with public defense providers, implementing evidenced-based defense programs, working with client communities to inform them about public defense services, upgrading information technology for public defender use, or assisting public defenders with providing legal assistance outside of the courtroom. These forms of support create a system that provides more effective counsel, greater ability to track clients and their legal histories, and allows for a smoother transition back to the community for returning citizens. As a result, communities see better outcomes, such as reduced numbers of innocent people in jail, increased public safety, reduction in the number of unduly long stays in jails and prison, increased access to alternative to incarceration, relief in overcrowding in correctional facilities, and saved taxpayer dollars.

NCJA is the memberships organization for SAAs and provides opportunities for professional development, assists with strategic planning, grant management, and administration, and provides opportunities for peer-to-peer exchange.

Through a grant provided by BJA, NCJA is working intensively with all SAAs to improve and expand outreach to their stakeholder communities, development of strategic plans, and access and use of data for planning, policy development, and program evaluation.

For more information, please contact the Justice Programs Office at (202) 885-2875 or via email at justice@american.edu. You can also visit our website at <http://www.american.edu/spa/jpo/>

Endnotes

¹Justice for All Reauthorization Act of 2016, S.2577, 114th Congress.

²U.S. Const. amend. Vi, Sec 1.

³Simon, David A. "Equal before the Law: Toward a Restoration of Gideon's Promise." 43.2 Harv. C.R.-C.L. L. Rev. 581, 594 (2008).

⁴SAAs: Who They Are & What They Do. PDF. Washington, D.C.: NCJA Center of Justice Planning, 2014.

⁵For more information on SAAs, visit the National Criminal Justice Association's website at <https://www.ncja.org/home>

⁶Justice for All Reauthorization Act of 2016, S.2577, 114th Congress.

⁷"Edward Byrne Memorial Justice Assistance Grant (JAG) Program Frequently Asked Questions (FAQs)," pg. 17, August 2017, Bureau of Justice Assistance, Department of Justice, <https://www.bja.gov/Funding/JAGFAQ.pdf>.

⁸"Systemic Sentencing Issues Appeals Program," Bureau of Justice Assistance, U.S. Department of Justice, accessed September 12, 2017, <https://www.bja.gov/SuccessStoryDetail.aspx?ssid=7>.

⁹Byrne/JAG Annual Progress Report SFY 2014, PDF, State of Connecticut: Office of the Chief Public Defender, April 16, 2014.

¹⁰Rhode Island Department of Public Safety, 2015 Annual Report. North Scituate, RI: Rhode Island Department of Public Safety, Public Safety Grant Office, 2017 <http://psga.ri.gov/documents/2015AnnualReport.pdf>.

¹¹Colorado. Department of Public Safety. 2016 Justice Assistance Grant Awards. Denver, CO: Division of Criminal Justice, Department of Public Safety, 2016. <https://cdpsdocs.state.co.us/oajja/JAG/2016JAGAWards.pdf>.

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