



Nationwide Justice Trends: Prosecution and Courts (including Indigent Defense) Byrne JAG Purpose Area

The Edward Byrne Memorial Justice Assistance Grant program (Byrne JAG) is the nation's cornerstone public safety grant program. Under the law, states and localities may invest the funds across the entire justice system under eight broad purpose areas.* One of those, the **Prosecution and Courts (including Indigent Defense)** purpose area, may include prosecution programs that target specific offenses or prosecutor-led diversion, specialty and problem-solving courts, defense initiatives focused on restorative justice or family re-integration, and more.

States and territories have used, or plan to use, Byrne JAG funds to implement and support a broad range of such activities, including, but not limited to:

- Community justice centers
- Court efficiency and security improvements through technology
- Diversion initiatives for special populations
- Information sharing technology and inter-agency collaboration
- Pretrial diversion and bail reform
- Specialized prosecution (e.g., white collar crime, gun crime, drug crime, domestic violence and sexual abuse)
- Training and continuing education court personnel and attorneys

NCJA provides training and technical assistance (TTA) to the state administering agencies (SAAs) in each state and territory responsible for planning how Byrne JAG funds will be allocated. This brief provides a high-level overview of trends and agency needs in the Prosecution and Courts (including Indigent Defense) purpose area that states may find valuable as they conduct Byrne JAG strategic planning.

National Prosecution and Courts (including Indigent Defense) Trends

A scan of national Prosecution, Courts and Indigent Defense programming trends found several current areas of focus. These include:



Prosecution Trends

Some recent work, like that done in many of the MacArthur Foundation's Safety and Justice Challenge (SJC) sites, seeks to reduce the footprint of the justice system through **policy or**

statute changes. For example, some jurisdictions have begun pre-arraignment diversion programs for teens charged with first-time nonviolent misdemeanors, implemented initiatives to end the criminal prosecution of thousands of nonviolent offenses below the misdemeanor level, instituted policy changes to decline prosecution of marijuana possession cases, eliminated gang designation as a disqualifier for diversion programs, and more. These

* To learn about the Byrne JAG program and the eight purpose areas, see NCJA's Investing Byrne JAG webpage. (<https://www.ncja.org/investing-byrne-jag>)



changes have drastically reduced the workload of prosecutors, allowing them to focus resources on high-level offenses; reduced the number of defendants being held in jail; and reduced the impact the criminal justice system has on communities of color.

Some jurisdictions have created **conviction integrity units** to revisit charging and sentencing decisions, particularly in cases without unanimous jury decisions, to ensure fair and proportionate outcomes. There is little to show yet that these units produce outcomes that are more fair than the original dispositions, but they do reflect a recognition that some cases suffer from conviction-focused and overzealous prosecution.

Family justice centers meet the needs of victims of family violence through wrap-around services. They **have been shown** to reduce homicides, increase victim safety, increase efficiency in collaborative services to victims among service providers, increase prosecution rates, among other benefits.

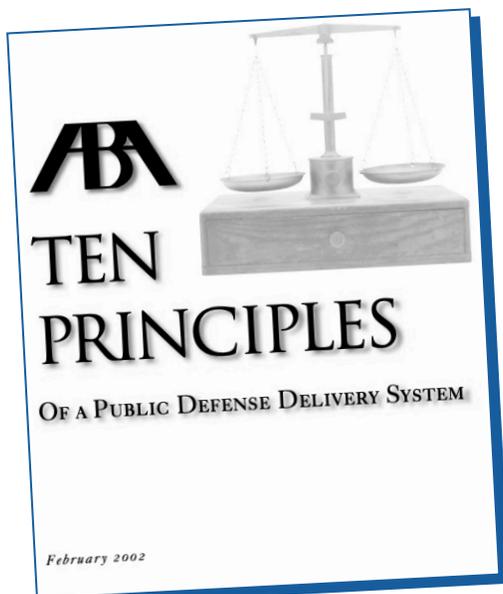


Public Defense Trends

Efforts to strengthen public defense tend to focus on access to counsel, effective representation, research and data capacity, and sustaining these

improvements. The [Center for Court Innovation](#), in partnership with the Bureau of Justice Assistance (BJA) operates the [Sixth Amendment Initiative](#), a 10-site strategic planning and training and technical assistance (TTA) project to address these issues. One focus of this work has been ensuring that representation is provided at the earliest stage possible, especially when a person's liberty is at stake. BJA and the [National Legal Aid & Defender Association](#) (NLADA) partner on the [Innovative Solutions in Public Defense Initiative](#) in several sites throughout the country.

Some states and localities are working to **align defense practices with national standards and best practices**. Many states, especially those without a central public defenders' office, are not aware of, or working to meet, professional standards. The American Bar Association (ABA) created a list of [10 public defense principles](#) to guide agencies. Some of these principles, like ensuring "parity between defense counsel and the prosecution with respect to resources" and ensuring public defense is "included as an equal partner" require participation and buy-in from other system partners. Others, such as ensuring "the same attorney continuously represents the client until completion of the case" may be within the scope of each agency.



The American Bar Association published [ABA Ten Principles of a Public Defense Delivery System](#) as "a practical guide for governmental officials, policymakers, and other parties who are charged with creating and funding new, or improving existing, public defense delivery systems. The Principles constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney."



Court Trends

Since the late 1980s [specialty or problem-solving courts](#) have proliferated nationwide. These specialized dockets are meant to address the underlying circumstances that lead many people into justice system contact. Most specialty courts are post-plea or post-adjudicatory intensive supervision treatment programs designed for high-risk and high-need individuals. They seek to reduce recidivism through early intervention, appropriate treatment, intensive supervision, and consistent judicial oversight.

The National Association of Drug Court Professionals (NADCP) published [Defining Drug Courts: The Key Components](#), which also serve as useful standards for most other specialty courts. Specialty courts may address issues such as domestic violence, mental health, substance use disorders, veterans, family violence and more.

Investments are being made in efforts to improve **court operations** through a variety of approaches, including:

- [Caseflow management](#) to adopt proven practices such as case-disposition time standards, early court intervention and continuous court control of case progress, meaningful and reliable schedules, and limiting of continuances;
- People management to limit high caseloads, appropriate staffing levels, court security and emergency preparedness;
- Cross-jurisdictional and cross-agency information sharing information, with a specific focus on systems compatibility.

Judicial Education that addresses [court and bench culture](#) has been shown to impact operations and outcomes. The awareness of judges of all options available to them or of the larger implications of changes to policy and practice can greatly impact other efforts at improvement.

For example, pretrial reform efforts to shift away from using financial conditions for pretrial release (i.e., money bail) have incorporated judicial education in two ways. First, to increase awareness when judges [favor money bail](#)—often out of habit—despite the availability of other non-financial conditions. Second, to address cases of [judges overriding new rules](#) guiding pretrial release decisions.

National Prosecution and Courts (including Indigent Defense) Needs

All areas within the Prosecution and Courts (including Indigent Defense) purpose area would benefit from better and more accurate data collection, sharing and analysis. This need is present in all sectors of criminal justice systems, but especially acute in the context of case backlogs (exacerbated by the COVID-19 pandemic) and the interplay between multiple offices and agencies at the post-arrest/pre-adjudication stage of the justice process.

Additionally, as more jurisdictions implement diversion and deflection initiatives for people with substance use disorders, mental health conditions or other public health reasons, these systems will need personnel that are trained in these issues.



Endnotes

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- 15 Lartey, J. (2020, April 23). New York Rolled Back Bail Reform. What Will Other States Do? The Marshall Project. <https://www.themarshallproject.org/2020/04/23/in-new-york-s-bail-reform-backlash-a-cautionary-tale-for-other-states>

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