

Byrne JAG: Penalty and Incentive

Introduction

- Members of Congress eager to incentivize certain policies and practices in state and local juvenile and criminal justice systems have limited tools available to them. Without the constitutional authority to require state and local governments to change their criminal code or adopt certain practices, Congress has limited options for incentivizing change: educate on best practices; appropriate grant money to address certain tasks; and/or, penalize existing grant funds for noncompliance with new mandates.
- Congress often seeks to use the Byrne Justice Assistance Grant (Byrne JAG) program as penalty for non-compliance with certain practices. Three penalties, totaling 25 percent of a state's award, are in current law and new bills with penalty provisions are introduced regularly.

Byrne JAG's contribution to policing budgets is far too low to be an effective incentive

- Byrne JAG contributes less than one-quarter of one percent (0.22%) to state and local governments' own expenditures for justice system services. See [fact sheet](#).
- Further, Byrne JAG reaches fewer than 1,500 of the nation's 18,000 local law enforcement agencies, thereby providing no leverage at all over the majority of local law enforcement agencies.

Penalties do not work to incentivize compliance

- States know from 20 years of experience that penalties are ineffective for incentivizing action when the costs or hurdles to compliance are too high. The Sex Offender Registration and Notification Act, passed in 2006, imposed a 10 percent penalty on Byrne JAG. Almost 15 years later only 18 states are in compliance; the remainder forfeit the penalty every year.

Policing bill penalties are cumulative and would eliminate current programs

- The penalties are additive. The Justice in Policing Act includes eight separate penalties totalling 700 percent of a state's annual award. Some provisions hold the state responsible for the action of every local jurisdiction regardless of whether or not those localities receive any Byrne JAG funds.
- Any funds penalized for non-compliance with an unrelated mandate means states are forced to terminate funding for the many hundreds of Byrne JAG-funded programs and practices now operating in communities across America: specialty courts will be forced to cease operations; law enforcement-led programs collaborations between with behavioral health services will be discontinued; diversion programs cancelled; reentry planning and referral to services curtailed; and more.
- Given the short deadlines, the costs of compliance, and accumulating penalties, it is likely that most states and localities – no matter how determined to adopt the bills' reforms – would forfeit most, if not all, of their Byrne JAG award in the first years, and many would be unable to fully comply for many more.

New mandates should be fully funded and barriers to compliance removed

- All new federal requirements should be fully funded and formula-based to ensure broad reach.
- Further, the DOJ should be given responsibility for removing as many barriers to compliance as possible. This is vital for small and rural communities who have neither the resources to apply for federal grants nor the capacity to assume the burden of complex new requirements.