

Byrne JAG and Policing Reform: Why Penalties Will Not Incentivize Compliance

Introduction

- The Justice in Policing Act, [H.R. 7120](#), and the JUSTICE Act, [S. 3985](#), seek reform in policing by setting standards and establishing expectations for police conduct in states and local communities nationwide.
- Failure to achieve the standards will result in penalties to a state or local government's Byrne Justice Assistance Grant (Byrne JAG) and, to a lesser extent, COPS Hiring grant funds.
- While penalties on a federal grant program can be effective to get the attention of a state or locality, they are ineffective as an incentive to achieve any new mandate that is too costly or complex.
- Both bills rely almost exclusively, however, on grant program penalties for achieving compliance.
- As a result, compliance will be illusory, and the withdrawal of the grant funds will mean the immediate closure of hundreds of important Byrne JAG-funded reforms and programs in communities across the country.

Penalties do not work to incentivize compliance

- States know from 20 years of experience that penalties are ineffective for incentivizing action when the cost or hurdles to compliance are too high.
- The Sex Offender Registration and Notification Act (SORNA), passed in 2006, imposed a 10 percent penalty on Byrne JAG. Fourteen years later only 18 states have met all requirements of the Act; the remainder forfeit the penalty every year because the cost (in dollars and/or policy change) are too high.
- Currently there are two other penalties attached to Byrne JAG. The Prison Rape Elimination Act includes a 5 percent penalty and the Death in Custody Reporting Act includes a discretionary 10 percent penalty.

Byrne JAG funding is too low to incentive compliance with extensive new mandates

- Funding for Byrne JAG has decreased dramatically in recent years. Current funding is far too low to compel compliance with extensive new mandates.
- ***Byrne JAG contributes less than one-seventh of one percent (.14%) of state and local governments' own expenditures for justice system services.*** See [fact sheet](#).
 - State and local governments spent \$226 billion on justice system services in 2015, compared to \$319 million for Byrne JAG (after carve-outs).
 - Together Byrne JAG and COPS Hiring (\$274 million) contribute one-quarter of one percent (.26%).
- Further, the threat of penalty provides no leverage over the majority of local law enforcement agencies as fewer than 2,000 of the nation's 18,000 local law enforcement agencies receive any Byrne JAG or COPS funds.

The penalties in both bills are cumulative, and compliance will be complex and costly

- Nearly every provision in both the House and Senate bills add new penalties on Byrne JAG and COPS.
- The penalties are additive:
 - The Justice in Policing Act includes eight separate penalties totalling 700 percent of a state's annual award
 - The JUSTICE Act includes six separate penalties totalling 300 percent of a state's award.
- Some provisions hold the state responsible for the action of every jurisdiction regardless of whether or not those jurisdictions receive any Byrne JAG or COPS funding.
- Both bills require states to spend a portion of their Byrne JAG grant on a particular activity.

- Many of the requirements in both bills will be complicated, expensive and require time to achieve.
 - For instance, the trainings required in both bills are most effective when conducted in person over multiple days. The Department of Justice (DOJ) and the states will need time to certify curriculum and to procure and deliver this training.
- Further, one-time start-up costs for new reporting requirements are costly and not easily absorbed.

The penalties will eliminate current Byrne JAG-funded programs

- The Byrne JAG program plays an outsized role in reforming criminal justice policy and practice.
- Distributed by formula, Byrne JAG reaches every state and territory.
- These flexible funds allow states and local communities to address needs and fill gaps in prevention, diversion, enforcement, courts, prosecution, defense, corrections, victim assistance, mental health and substance use disorder treatment, and other community-based supports. Read [The Byrne JAG: Leading Change in State and Local Justice Systems](#) for information about how states and local communities invest Byrne JAG funds.
- 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 – will forfeit most, if not all, of their Byrne JAG award in the first years, and many will be unable to fully comply for many more.
- This means states will be forced to suddenly terminate funding for the many hundreds of Byrne JAG-funded reform-focused programs and practices now operating in communities across America: drug courts, veterans treatment courts and mental health courts will be forced to cease operations; collaborations between law enforcement and behavioral health services will be discontinued; training programs for individuals returning from incarceration will close; pretrial reform and diversion programs will be cancelled; reentry planning and referral to services will be curtailed; and more.

New mandates should be fully funded

- All new requirements should be fully funded, and the DOJ given responsibility for streamlining reporting and removing as many barriers to compliance as possible.
- New funds should be by formula, to the extent possible, to prevent local law enforcement agencies from having to spend time writing numerous federal grant applications.
- The Byrne JAG program and State Administering Agencies can play this role with strong established pathways for funds to all states and many localities.
- The JUSTICE Act authorizes a new training fund within Byrne JAG. This is a sensible approach and could be expanded to fund other requirements too.

The importance of reallocating penalties for achieving compliance

- If Congress chooses to impose penalties on the Byrne JAG program, all penalized funds must be reallocated back to the state or locality for the purpose of achieving compliance.
- Withdrawing the funding from the state entirely will sever any leverage a penalty may provide.
- Reallocation to states already in compliance will cause a massive shift in funding to the few states able to comply quickly.
- Further, if states are made responsible for the compliance of every locality in the state, whether or not they are grantees, some states will never be able to fully comply because some localities simply will be unable, or unwilling, to make the changes required in the law, making that shift in funds across states essentially permanent.