

## Navigating Byrne JAG and Other Federal Resources: Defender Programs Benefit from Proactive Engagement with SAAs

Brief Survey Offers Insight into Federal Resources Access

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### Introduction

For most state and local entities working to uphold Sixth Amendment obligations, and in particular for public defender organizations, the primary source of supplemental federal funding is the Edward Byrne Memorial Justice Assistance Grant (Byrne JAG) Program, which is administered by the Bureau of Justice Assistance (BJA), Office of Justice Programs at the U.S. Department of Justice. This paper briefly discusses resources distributed through the Byrne JAG mechanism, including a special appropriation authorized in response to needs arising from the coronavirus pandemic, as well as resources distributed annually through the regular Byrne JAG program. Information here is intended as a quick aid for entities seeking support in upholding obligations under the Sixth Amendment to the U.S. Constitution. Additional resources are provided at the end.

### Byrne JAG Funding

The BJA-administered Byrne JAG program is the leading source of federal justice funding to state and local jurisdictions. It provides states, tribes, and local governments with critical funding necessary to support a range of program areas, including law enforcement, prosecution, indigent defense, courts, crime prevention and education, corrections and community corrections, drug treatment and enforcement, planning, evaluation, technology improvement, crime victim and witness initiatives, and mental health programs, including behavioral programs and crisis intervention teams. Resources identified at the end of this paper provide detailed information on the Byrne JAG program. This brief focuses on Byrne *formula* grants, which make their way to support state and local criminal justice activities through decisions made by the 56 State Administering Agencies (SAAs) serving all states, territories, and the District of Columbia,<sup>1</sup> plus various units of local government.

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<sup>1</sup> As explained by the National Criminal Justice Association (NCJA): “State Administering Agencies (SAAs) are entities within state and territorial governments and the District of Columbia that are responsible for comprehensive criminal justice planning and policy development. In addition, these agencies allocate resources statewide and distribute, monitor and report on spending under the federal Edward Byrne Memorial Justice Assistance Grant (Byrne JAG) program and, in most cases, other grant programs. As required by federal statute, the SAA is designated by the Governor, or in the case of territories and the District of Columbia, the head of the executive branch.” State Administering Agencies, NAT’L CRIMINAL JUSTICE ASS’N, <https://www.ncja.org/ncja/policy/about-saas>. State by state directories of SAAs are available through BJA at <https://www.ojp.gov/funding/state-administering-agencies/overview> and through NCJA at <https://www.ncja.org/agency-directory>.

The Byrne JAG formula funding mechanism is a sensible way to coordinate justice agency needs for federal resources on a state or local system level. Historically, indigent defense, courts, and prosecution initiatives have received relatively little support compared to law enforcement initiatives through the Byrne JAG program. For example, data collected by the National Criminal Justice Association (NCJA) on Byrne JAG distribution in 2016 show that prosecution and indigent defense initiatives collectively made up 6.8% of Byrne JAG spending, compared to 50.7% for law enforcement.<sup>2</sup> Prosecution and court-related initiatives received over \$17 million, whereas indigent defense initiatives received over \$1.8 million. By comparison, law enforcement initiatives (including community policing initiatives, equipment and technology, operations, task forces, training, and other programs) received over \$62.8 million.<sup>3</sup> To maximize their participation in these resources, it is important for defender and other justice system agencies to understand Byrne JAG distribution channels and connect with their SAAs.

### Coronavirus Aid, Relief, and Economic Security Act

The coronavirus (COVID-19) pandemic triggered unexpected sea changes in justice system operations across the country. Chief among these were operational changes and advocacy efforts taken to help minimize transmission of the coronavirus in courts, jails, and offices. Those measures placed unexpected fiscal strain on justice system agencies just as state and local revenues that go toward supporting those very agencies were unexpectedly dropping.

In March 2020, the federal stimulus package known as the CARES Act (Coronavirus Aid, Relief, and Economic Security Act) provided \$850,000,000 in emergency funds to states, localities, and tribes to help in **preventing, preparing for, and responding to the COVID-19 pandemic**. For expediency, Congress directed that these **Coronavirus Emergency Supplemental Funds (CESF)** be distributed through the established Byrne JAG program formula funding infrastructure, giving decision-making on allocation of pandemic relief resources to SAAs and units of local government.

Defender organizations, courts, and prosecutor agencies were eligible to apply for CESF grants, just as they may apply for Byrne JAG funds. Given the historic allocation patterns of Byrne JAG funding, the National Legal Aid & Defender Association (NLADA) and the Center for Court Innovation (the Center) wanted to learn whether defenders, courts and prosecutors applied for CESF and, if so, whether they were successful.

In July 2020, NLADA and the Center sent a short survey to fifteen entities that receive Training and Technical Assistance under the BJA Sixth Amendment Initiative to learn whether they applied for CESF; for what purposes they sought to use these grant funds; and whether the funds were awarded. They were also asked whether they had applied in recent years for Byrne JAG funds.<sup>4</sup>

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<sup>2</sup> NCJA is a membership organization that represents state, local and tribal governments on crime control and crime prevention issues and, among other things, provides support for State Administering Agencies.

<sup>3</sup> This information and additional comparison points are available through NCJA's [Byrne JAG fact sheets](#).

<sup>4</sup> TTA recipients surveyed included indigent defense organizations and court agencies at local and state levels, and county governments.

## CESF Survey Responses

Out of thirteen respondents, six entities applied for CESF through either their SAA (5) or through a local government unit (1).

Among those who applied, funds were requested to cover:

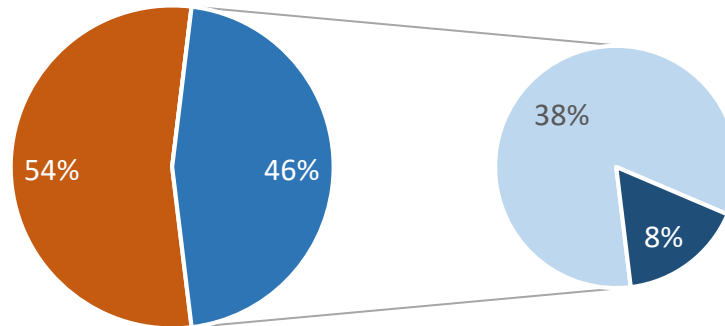
- laptops/tablets (mentioned in three responses);
- personal protective equipment (PPE) (two responses);
- one or more attorneys;
- one or more social workers;
- cell phones; and
- videoconferencing equipment, including cameras and mobile internet access.

Among the seven respondents who did not apply for CESF, reasons given for not applying included:

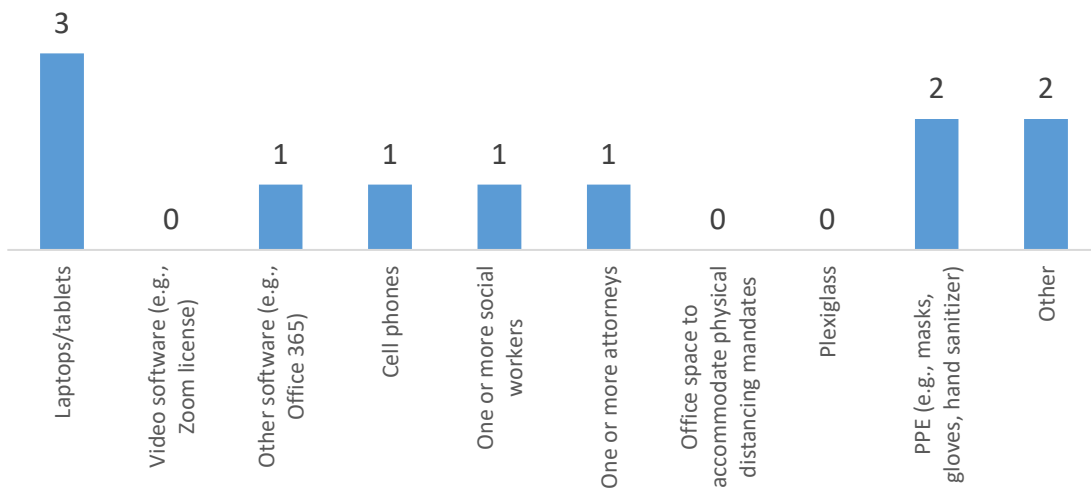
- two respondents received COVID-19 response funds from other sources;
- one respondent indicated that the SAA had other higher priorities;
- one respondent was not eligible due to rules set by its SAA (e.g., “not eligible as a state agency”); and
- one respondent was not aware of the program.

### Did Your Organization Apply for CESF?

■ No    
 ■ Yes, applied through SAA    
 ■ Yes, applied through local government unit

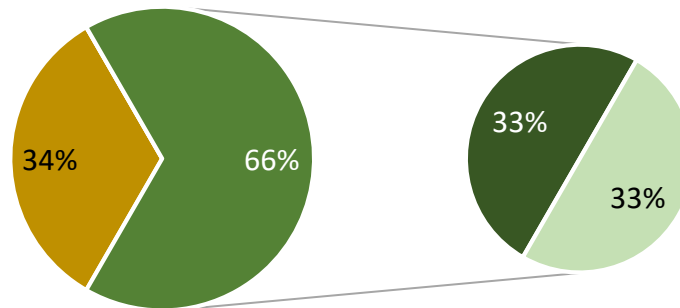


### Proposed Uses of Requested CESF



### If You Applied, Was Your Request Funded?

■ No    
 ■ Yes, fully    
 ■ Yes, in part



Another noted, “We have not [applied] yet. But I don’t think we are precluded from applying to the SAA in the future.” Indeed, as with Byrne JAG funds, SAAs can hold back CESF reserves to release later in the grant period, which for CESF is two years, for unexpected needs.

Additional information on CESF disbursements was collected by NCJA in September and October 2020. NCJA distributed a short survey to the 56 SAAs asking how they had allocated, and intended to allocate, their CESF dollars. Out of the 50 SAAs that responded, 29 percent (15 states) indicated they provided some funding for public defense.<sup>5</sup>

### [NCJA Webinar on CESF and Byrne JAG](#)

Also in July, the National Criminal Justice Association hosted a webinar in conjunction with NLADA called *Supporting Indigent Defense Programs During Times of Crisis*. The purpose of the webinar was to message to both defender organizations and to SAAs the types of needs for which defenders were seeking CESF resources, and more broadly, to discuss defender program access to Byrne JAG funds. The [slides](#) and [recording](#) from this session are available for download.

The webinar featured experiences of two defender programs that sought CESF, the Michigan State Appellate Defender Office, and the Guam Public Defender Service Corporation.<sup>6</sup> Additionally, Christian Kervick, Executive Director of the SAA in Delaware, the Delaware Criminal Justice Council (CJC), shared the approach taken by the CJC to allocate CESF resources. The CJC developed a plan using CESF resources to keep personnel of courts, prosecution, law enforcement, and defenders safe while continuing to work during the pandemic. The plan was developed collaboratively with input from all of those entities. Due to uncertainty about the virus, the CJC held back some of its CESF funds, as is often done with Byrne JAG funds, in case unforeseen needs arose during the two-year grant period. Kervick also discussed Byrne JAG more generally, and shared that the state public defender organization in Delaware had received a good amount of Byrne JAG and other federal funding support for many years.

### [Spotlight on Byrne JAG Support for Public Defense in Delaware](#)

Strategic planning for the proper allocation of federal resources is a big part of the work of all state administering agencies. Congress periodically modifies priority funding areas and eligibility rules for Byrne JAG funding. Most recently, the Justice for All Reauthorization Act, passed in December 2016, required all applicants for Byrne JAG formula grant awards to include a comprehensive statewide strategic plan that addresses resource allocation, use of data, and implementation of evidence-based practices. Critically for defenders, the Act specifies this comprehensive plan must be created in consultation with local governments and a diverse group of stakeholders, named as “representatives of all segments of the criminal justice system, including judges, prosecutors, law enforcement personnel, corrections personnel, and **providers of indigent defense services**, victim services, juvenile justice delinquency prevention programs, community corrections, and reentry services.”<sup>7</sup> This language is a door opener to defender programs that was not previously explicit. Active engagement from defender organizations during the comprehensive planning process is the best way to ensure that SAAs understand their needs.

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<sup>5</sup> See NCJA report, [State Investments of Coronavirus Emergency Supplemental Funding \(CESF\)](#), (December 2020)

<sup>6</sup> Both offices are recipients of TTA under the BJA Sixth Amendment Initiative.

<sup>7</sup> Justice for All Reauthorization Act of 2016, Pub. L. No. 114-324, § 14(b)(2) (codified as amended at 34 U.S.C. § 10153(a)(6)(A)) (emphasis added).

For two decades, leadership at the Office of Defense Services in Delaware has been consistently and actively involved with the Delaware CJC. The Office of Defense Services has a seat on all of the key groups contributing to the CJC's strategic planning, including its Juvenile Justice Advisory Group; Domestic Violence Coordinating Council; and various committees focusing on re-entry, human trafficking, and more. For the past twenty years, the chief public defender has been the chair of what Kervick calls one of the state's most significant funding subcommittees, the Byrne JAG Drug and Violent Crime Advisory Sub-Committee. And the current chief defender, Brendan O'Neill, serves as the Chair of the CJC's Byrne Grant Subcommittee as well as Vice-Chair of the Executive Committee of the CJC.

That longstanding engagement of the Public Defender with the CJC ensures consideration of defender issues in planning efforts. Those plans have paved the way for important grants awarded to support defender program needs. Byrne JAG and other federal awards to support defender practice over the last twenty years have been made to support:

- attorney training in use of DNA evidence (early 2000s);
- augmented funding for use of DNA expert witnesses (early 2000s);
- forensic nurses to assist defenders and provide forensic evidence for plea deals and trials (2003);
- paralegals and psycho-forensic evaluators to develop a responsible pre-trial release program to reduce jail population (2005);
- two in-house mitigation specialists to assist with capital cases, and later, supplemental support for the defender program to bring in outside mitigation experts in capital cases before death penalty was repealed in 2016;
- a juvenile mental health court that supported all key participating agencies, including defenders (funded by a 2008 Juvenile Accountability Block Grant);
- equal preservation of jobs of prosecutors and defenders (funded by the 2009 Recovery Act);
- attorneys working in response to statutory changes that made registration for juvenile sex offenders discretionary (2014); and
- participation in Partners for Justice, an organization that seeks to support legal system stakeholders and act as a force multiplier to serve more clients and vulnerable communities.

Kervick offered valuable advice to help other defender organizations in working with their SAAs. In short, his advice is that defenders should proactively reach out to their SAA. They should "be involved and be vocal." Kervick urged defenders to provide information about the county(ies) or region(s) in which they work, and to note any special populations served. Defenders should explain to SAAs why adequately funding public defender agencies benefits the overall criminal justice system. Such information exchange can lead to SAAs facilitating project collaborations between defender organizations and other agencies to work collectively toward shared public safety goals, such as reduced reliance on pretrial detention and improved outcomes for individuals. Kervick stressed the importance of defenders learning the "ins and outs" of Byrne JAG solicitations, and to understand possibilities for discretionary federal grants, which can be pursued in addition to the formula Byrne JAG awards.<sup>8</sup> SAAs

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<sup>8</sup> For more on the ins and outs of Byrne JAG grants and federal discretionary fund opportunities, see *Accessing Federal Grants, Foundation Funds and Other Supplemental Resources: A Toolkit for Public Defenders*, NLADA March 2020.

may be able to offer guidance, such as pointers on application preparation, to defender organizations that are pursuing discretionary grants.

## Conclusion

Byrne JAG and other federal resources are designed to support all components of state and local criminal justice systems, including indigent defense organizations and courts. However, the organizations that allocate Byrne JAG funds – SAAs and units of local government – are typically positioned as part of a state’s executive branch law enforcement infrastructure. In some states, that positioning has limited indigent defense agencies’, and even courts and prosecution agencies’, access to federal funds.

As exemplified in Delaware, SAA-defender relationships take time to build. But the more an SAA hears from defenders, and learns about the importance and inter-connectedness of their work in the justice system, the greater the likelihood is that federal resources will be directed toward them. And in times of crisis, such as the COVID-19 pandemic, having already established relationships with SAAs will optimally position defenders to act swiftly and reach out to access newly available federal resources.

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## Resources About the Byrne JAG Program

Additional in-depth information about accessing Byrne JAG resources is available from BJA, NCJA and NLADA.

From BJA:

- Edward Byrne Memorial Justice Assistance Grant (JAG) Program Overview (<https://bj.a.ojp.gov/program/jag/overview>) – Provides solicitation information and guidelines for applying for and using Byrne JAG funds.

From NCJA:

- Slides from July 2020 webinar, *Supporting Indigent Defense Programs During Times of Crisis* <https://files.constantcontact.com/c6639bfd701/f3ab415f-5319-4bad-a5d3-b54b4428e93f.pdf>
- Recording of July 2020 webinar: <https://www.youtube.com/watch?reload=9&v=o2fj6wPmUOE&feature=youtu.be>
- *Investing Byrne JAG* (<https://www.ncja.org/investing-byrne-jag>) – Breakdown of how states invest Byrne JAG funds.
- *The Byrne Justice Assistance Grant Program Formula Explained* [https://370377fc-459c-47ec-b9a9-c25f410f7f94.filesusr.com/ugd/cda224\\_2ee2edf6f0a046af990dfbcab60d9d7c.pdf](https://370377fc-459c-47ec-b9a9-c25f410f7f94.filesusr.com/ugd/cda224_2ee2edf6f0a046af990dfbcab60d9d7c.pdf)

From NLADA:

- *Accessing Federal Grants, Foundation Funds and Other Supplemental Resources: A Toolkit for Public Defenders* (<http://www.nlada.org/sites/default/files/pictures/Accessing%20Federal%20Grants.pdf>) – Report for defenders with strategies about planning and funding successful projects, with detailed information about Byrne JAG resources.

- *Accessing Federal Funds for State and Local Criminal Justice Activities: The Edward Byrne Memorial Justice Assistance Grant (JAG) Program*  
(<http://www.nlada.org/sites/default/files/ByrneJAGInfoSheet.May112020.pdf>) – Factsheet for defenders about Byrne JAG program.
- *Time Sensitive Information for Defender Organizations About Federal Resources Available NOW to Assist Defender Agencies in Coronavirus Response*  
(<http://www.nlada.org/sites/default/files/CARES.guidance.May.8.2020.pdf>) - Information about emergency federal resources made available through the CARES Act.

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