

## Purposes for Which Funds Awarded Under the Edward Byrne Memorial Justice Assistance Grants (JAG) Program May Be Used

Subject to certain specific prohibitions,<sup>1</sup> 34 U.S.C. § 10152(a)(1) provides that JAG award funds are to be—

use[d] to provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice,<sup>[2]</sup> including for any one or more of the following programs:

- (A) Law enforcement programs.
- (B) Prosecution and court programs.
- (C) Prevention and education programs.
- (D) Corrections and community corrections programs.
- (E) Drug treatment and enforcement programs.
- (F) Planning, evaluation, and technology improvement programs.
- (G) Crime victim and witness programs (other than compensation).
- (H) Mental health programs and related law enforcement and corrections programs, including behavioral programs and crisis intervention teams.
- (I) Implementation of State crisis intervention court proceedings and related programs or initiatives, including but not limited to:
  - (i) mental health courts;
  - (ii) drug courts;
  - (iii) veterans courts; and
  - (iv) extreme risk protection order programs, which must include, at a minimum-
    - (I) pre-deprivation and post-deprivation due process rights that prevent any violation or infringement of the Constitution of the United States, including but not limited to the Bill of Rights, and the substantive or procedural due process rights guaranteed under the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied to the States, and as interpreted by State courts and United States courts (including the Supreme Court of the United States). Such programs must include, at the appropriate phase to prevent any violation of constitutional rights, at minimum, notice, the right to an in-person hearing, an unbiased adjudicator, the right to know opposing evidence, the right to present evidence, and the right to confront adverse witnesses;
    - (II) the right to be represented by counsel at no expense to the government;
    - (III) pre-deprivation and post-deprivation heightened evidentiary standards and proof which mean not less than the protections afforded to a similarly situated litigant in Federal court or promulgated by the State's evidentiary body, and sufficient to ensure the full protections of the Constitution of the United States, including but not limited to the Bill of Rights, and the substantive and procedural due process rights guaranteed under the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied to the States, and as interpreted by State courts and United States courts (including the Supreme Court of the United States). The heightened

evidentiary standards and proof under such programs must, at all appropriate phases to prevent any violation of any constitutional right, at minimum, prevent reliance upon evidence that is unsworn or unaffirmed, irrelevant, based on inadmissible hearsay, unreliable, vague, speculative, and lacking a foundation; and  
(IV) penalties for abuse of the program.

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<sup>1</sup> *See, e.g.*, 34 U.S.C. § 10152(d):

Notwithstanding any other provision of [the Omnibus Crime Control and Safe Streets Act of 1968], no funds provided under [34 U.S.C. ch. 101, subch. V, pt. A] may be used, directly or indirectly, to provide any of the following matters:

- (1) Any security enhancements or any equipment to any nongovernmental entity that is not engaged in criminal justice or public safety.
- (2) Unless the Attorney General certifies that extraordinary and exigent circumstances exist that make the use of such funds to provide such matters essential to the maintenance of public safety and good order—
  - (A) vehicles (excluding police cruisers), vessels (excluding police boats), or aircraft (excluding police helicopters);
  - (B) luxury items;
  - (C) real estate;
  - (D) construction projects (other than penal or correctional institutions); or
  - (E) any similar matters.

<sup>2</sup> *See* 34 U.S.C. § 10251(a)(1), pursuant to which, as used in 34 U.S.C. ch. 101—

“criminal justice” means activities pertaining to crime prevention, control, or reduction, or the enforcement of the criminal law, including, but not limited to, police efforts to prevent, control, or reduce crime or to apprehend criminals, including juveniles, activities of courts having criminal jurisdiction, and related agencies (including but not limited to prosecutorial and defender services, juvenile delinquency agencies and pretrial service or release agencies), activities of corrections, probation, or parole authorities and related agencies assisting in the rehabilitation, supervision, and care of criminal offenders, and programs relating to the prevention, control, or reduction of narcotic addiction and juvenile delinquency[.]

JAG award funds *also* “may be used for any purpose for which a grant was authorized to be used under either or both of the programs specified in section 10151(b) of [title 34, U.S. Code],<sup>[3]</sup> as those programs were in effect immediately before January 5, 2006,” pursuant to 34 U.S.C. § 10152(a)(2).

*As “in effect immediately before January 5, 2006,” 42 U.S.C. § 3751 authorized awards under the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs—*

(a) [for] the purpose of . . . carrying out specific programs which offer a high probability of improving the functioning of the criminal justice system, with special emphasis on a nationwide and multilevel drug control strategy by developing programs and projects to assist multijurisdictional and multi-State organizations in the drug control problem and to support national drug control priorities[;]

(b) . . . for the purpose of enforcing State and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. § 801 *et seq.*) and to improve the functioning of the criminal justice system with emphasis on violent crime and serious offenders[and] provide additional personnel, equipment, training, technical assistance, and information systems for the more widespread apprehension, prosecution, adjudication, and detention and rehabilitation of persons who violate these laws, and to assist the victims of such crimes (other than compensation), including—

- (1) demand-reduction education programs in which law enforcement officers participate;
- (2) multijurisdictional task force programs that integrate Federal, State, and local drug law enforcement agencies and prosecutors for the purpose of enhancing interagency coordination, intelligence, and facilitating multijurisdictional investigations;
- (3) programs designed to target the domestic sources of controlled and illegal substances, such as precursor chemicals, diverted pharmaceuticals, clandestine laboratories, and cannabis cultivations and to remove any hazardous substance or pollutant or contaminant associated with the illegal manufacture of amphetamine or methamphetamine;
- (4) providing community and neighborhood programs that assist citizens in preventing and controlling crime, including special programs that address the problems of crimes committed against the elderly and special programs for rural jurisdictions;
- (5) disrupting illicit commerce in stolen goods and property;
- (6) improving the investigation and prosecution of white-collar crime, organized crime, public corruption crimes, and fraud against the government with priority attention to cases involving drug-related official corruption;

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<sup>3</sup> The two “programs specified in section 10151(b)” of title 34, U.S. Code, are “the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, [and] the Local Government Law Enforcement Block Grants program.” 34 U.S.C. § 10251(b)(1).

(7)(A) improving the operational effectiveness of law enforcement through the use of crime analysis techniques, street sales enforcement, schoolyard violator programs, gang-related and low-income housing drug control programs; [and]

(B) developing and implementing antiterrorism plans for deep draft ports, international airports, and other important facilities;

(8) career criminal prosecution programs including the development of proposed model drug control legislation;

(9) financial investigative programs that target the identification of money laundering operations and assets obtained through illegal drug trafficking, including the development of proposed model legislation, financial investigative training, and financial information sharing systems;

(10) improving the operational effectiveness of the court process, by expanding prosecutorial, defender and judicial resources, and implementing court delay reduction programs;

(11) programs designed to provide additional public correctional resources and improve the corrections system, including treatment in prisons and jails, intensive supervision programs, and long-range corrections and sentencing strategies;

(12) providing prison industry projects designed to place inmates in a realistic working and training environment which will enable them to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families, and for support of themselves in the institution;

(13) providing programs which identify and meet the treatment needs of adult and juvenile drug-dependent and alcohol-dependent offenders;

(14) developing and implementing programs which provide assistance to jurors and witnesses, and assistance (other than compensation) to victims of crimes;

(15)(A) developing programs to improve drug control technology, such as pretrial drug testing programs, programs which provide for the identification, assessment, referral to treatment, case management and monitoring of drug dependent offenders, enhancement of State and local forensic laboratories[;] and

(B) [developing programs to improve criminal justice information systems (including automated fingerprint identification systems) to assist law enforcement, prosecution, courts, and corrections organizations];

(16) innovative programs that demonstrate new and different approaches to enforcement, prosecution, and adjudication of drug offenses and other serious crimes;

(17) addressing the problems of drug trafficking and the illegal manufacture of controlled substances in public housing;

- (18) improving the criminal and juvenile justice system’s response to domestic and family violence, including spouse abuse, child abuse, and abuse of the elderly;
- (19) drug control evaluation programs which the State and local units of government may utilize to evaluate programs and projects directed at State drug control activities;
- (20) providing alternatives to prevent detention, jail, and prison for persons who pose no danger to the community;
- (21) programs of which the primary goal is to strengthen urban enforcement and prosecution efforts targeted at street drug sales;
- (22) programs for the prosecution of driving while intoxicated charges and the enforcement of other laws relating to alcohol use and the operation of motor vehicles;
- (23) programs that address the need for effective bindover systems for the prosecution of violent 16- and 17-year-old juveniles in courts with jurisdiction over adults for the crimes of—
  - (A) murder in the first degree;
  - (B) murder in the second degree;
  - (C) attempted murder;
  - (D) armed robbery when armed with a firearm;
  - (E) aggravated battery or assault when armed with a firearm;
  - (F) criminal sexual penetration when armed with a firearm; and
  - (G) drive-by shootings as described section 36 of title 18, United States Code;
- (24) law enforcement and prevention programs relating to gangs, or to youth who are involved or at risk of involvement in gangs;
- (25) developing or improving in a forensic laboratory a capability to analyze deoxyribonucleic acid (hereinafter in this title referred to as “DNA”) for identification purposes;
- (26) . . . develop[ing] and implement[ing] antiterrorism training programs and to procure equipment for use by local law enforcement authorities;
- (27) enforcing child abuse and neglect laws, including laws protecting against child sexual abuse, and promoting programs designed to prevent child abuse and neglect;
- (28) establishing or supporting cooperative programs between law enforcement and media organizations, to collect, record, retain, and disseminate information useful in the identification and apprehension of suspected criminal offenders[; and]
- (29) improving the quality, timeliness, and credibility of forensic science services for criminal justice purposes[; and]
- (c) [for e]ach program funded under this section[,] an evaluation component, developed pursuant to guidelines established by the National Institute of Justice, in consultation with the Bureau of Justice Assistance. . . .

Additionally, further to **42 U.S.C. § 3753(a)**, as “*in effect immediately before January 5, 2006,*” awards under the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs could be used to defray the costs of developing, implementing, and carrying out the following items, which were application requirements under those programs immediately before that date:

- (1) A statewide strategy for drug and violent crime control programs which improve the functioning of the criminal justice system, with an emphasis on drug trafficking, violent crime, and serious offenders[, which] strategy shall . . . contain—
  - (A) a definition and analysis of the drug and violent crime problem in the State, and an analysis of the problems in each of the counties and municipalities with major drug and violent crime problems;
  - (B) an assessment of the criminal justice resources being devoted to crime and drug control programs at the time of the application;
  - (C) coordination requirements;
  - (D) resource needs;
  - (E) the establishment of statewide priorities for crime and drug control activities and programs;
  - (F) an analysis of the relationship of the proposed State efforts to the national drug control strategy; and
  - (G) a plan for coordinating the programs to be funded under this part [42 U.S.C. §§ 3750 *et seq.*] with other federally funded programs, including State and local drug abuse education, treatment, and prevention programs[;]

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- (6) following the first fiscal year covered by an application and for each fiscal year thereafter, a performance evaluation and assessment report concerning the activities carried out pursuant to this section[, to] be submitted to the Bureau[;]
- (7) . . . provision for fund accounting, auditing, monitoring, and such evaluation procedures as may be necessary to keep such records that the Bureau shall prescribe to assure fiscal control, proper management, and efficient disbursement of funds reviewed under this section[;]
- (8) . . . maint[enance of] such data and information and submit[ting] such reports in such form, at such times, and containing such data and information as the Bureau may reasonably require to administer other provisions of this subpart [42 U.S.C. §§ 3751 *et seq.*];

(9) . . . meet[ing] all the requirements of this section, . . . appropriate[ly] coordinat[ing] with affected agencies, and . . . comply[ing] with all provisions of this subpart [42 U.S.C. §§ 3751 *et seq.*] and all other applicable Federal laws[;]

(10) . . . initiatives to reduce, through the enactment of innovative penalties or increasing law enforcement efforts, the demand for controlled substances by holding accountable those who unlawfully possess or use such substances[;]

(11) . . . a plan under which the State will provide without fee to the Immigration and Naturalization Service, within 30 days of the date of their conviction, notice of conviction of aliens who have been convicted of violating the criminal laws of the State and under which the State will provide the Service with the certified record of such a conviction within 30 days of the date of a request by the Service for such record[;]

(12) [i]f any part of funds received . . . is to be used to develop or improve a DNA analysis capability in a forensic laboratory—

(A) . . . satisfy[ing] or exceed[ing] then current standards for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 210303 of the DNA Identification Act of 1994 [42 U.S.C. § 14131];

(B) [providing that] DNA samples obtained by, and DNA analyses performed at, such laboratory will be accessible only—

(i) to criminal justice agencies for law enforcement identification purposes;

(ii) in judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules;

(iii) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or

(iv) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes; and

(C) [providing that] such laboratory, and each analyst performing DNA analyses at such laboratory, will undergo semiannual external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 210303 of the DNA Identification Act of 1994 [42 U.S.C. § 14131;]

(13) [i]f any part of the amount received . . . is to be used to improve the quality, timeliness, and credibility of forensic science services for criminal justice purposes, [providing] that, as of the date of enactment

of this paragraph [enacted Dec. 21, 2000], the State, or unit of local government within the State, has an established—

- (A) forensic science laboratory or forensic science laboratory system, that—
  - (i) employs 1 or more full-time scientists—
    - (I) whose principal duties are the examination of physical evidence for law enforcement agencies in criminal matters; and
    - (II) who provide testimony with respect to such physical evidence to the criminal justice system;
  - (ii) employs generally accepted practices and procedures, as established by appropriate accrediting organizations; and
  - (iii) is accredited by the Laboratory Accreditation Board of the American Society of Crime Laboratory Directors, the National Association of Medical Examiners, or any other nonprofit, professional organization that may be recognized within the forensic science community as competent to award such accreditation, or will use a portion of the grant amount to prepare and apply for such accreditation by not later than 2 years after the date on which a grant is initially awarded under this paragraph; or
- (B) medical examiner's office (as defined by the National Association of Medical Examiners) that—
  - (i) employs generally accepted practices and procedures, as established by appropriate accrediting organizations; and
  - (ii) is accredited by the Laboratory Accreditation Board of the American Society of Crime Laboratory Directors or the National Association of Medical Examiners, or will use a portion of the grant amount to prepare and apply for such accreditation by not later than 2 years after the date on which a grant is initially awarded under this paragraph.

Finally, awards under Local Government Law Enforcement Block Grants program “before January 5, 2006,” were made “pursuant to **H.R. 728 as passed by the House of Representatives on February 14, 1995,**” through an incorporation by reference in each annual Department of Justice appropriations act, which typically *limited* such awards to “the purposes



set forth in paragraphs (A), (B), (D), (F), and (I) of section 101(a)(2) of H.R. 728” and typically also *expanded* their purposes to include the following:

establishing crime prevention programs involving cooperation between community residents and law enforcement personnel in order to control, detect, or investigate crime or the prosecution of criminals.

Pursuant to § 101(a)(2) of H.R. 728, as passed by the House of Representative on February 14, 1995, award amounts were to be—

used . . . for reducing crime and improving public safety, including but not limited to, 1 or more of the following purposes:

- (A)(i) [h]iring, training, and employing on a continuing basis new, additional law enforcement officers and necessary support personnel[;]
- (ii) [p]aying overtime to presently-employed law enforcement officers and necessary support personnel for the purpose of increasing the number of hours worked by such personnel[; and]
- (iii) [p]rocurring equipment, technology, and other material directly related to basic law-enforcement functions[;]
- (B) [e]nhancing security measures—
  - (i) in and around schools; and
  - (ii) in and around any other facility or location that is considered by the unit of local government to have a special risk for incidents of crime[;]
- (C) [e]stablishing crime prevention programs that may, though not exclusively, involve law enforcement officials and that are intended to discourage, disrupt, or interfere with the commission of criminal activity, including neighborhood watch and citizen patrol programs, sexual assault and domestic violence programs, and programs intended to prevent juvenile crime[;]
- (D) [e]stablishing or supporting drug courts[;]
- (E) [e]stablishing early intervention and prevention programs for juveniles, in order to reduce or eliminate crime[;]
- (F) [e]nhancing the adjudication process of cases involving violent offenders, including the adjudication process of cases involving violent juvenile offenders[;]
- (G) [e]nhancing programs under subpart 1 of part E of [title I of] the Omnibus Crime Control and Safe Streets Act of 1968[;]
- (H) [e]stablishing cooperative task forces between adjoining units of local government to work cooperatively to prevent and combat criminal activity, particularly criminal activity that is exacerbated by drug or gang-related involvement[; and]
- (I) [e]stablishing a multi-jurisdictional task force, particularly in rural areas, composed of law enforcement officials representing units of

local government, that works with Federal law enforcement officials to prevent and control crime.