



The Bulletin

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Online Sentencing and Corrections Policy Updates



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Front Page

Justice ARRA Funds Aid Beleaguered Corrections Budgets

Justice assistance grants in some states are contributing to investments in recidivism reduction.

States are using federal recovery act funds provided for under Edward Byrne Memorial Justice Assistance Grants (Byrne JAG) for a variety of criminal justice functions including community supervision of certain offenders in lieu of prison and for enhancing parole supervision and offender reentry. Some states are looking to these programs as investments to help reduce recidivism and control prison populations.

The [American Recovery and Reinvestment Act \(ARRA\) of 2009](#) included \$1.2 billion for states to use for purposes authorized under Byrne JAG. Including additional Byrne JAG stimulus funds that still are going to localities, recovery funds for criminal justice will total about \$2 billion.

This infusion of funds follows sharp fluctuations in justice assistance grants in recent years. Totalling \$520 million in FY 2007, Byrne JAG funds were cut significantly to about \$170 million in FY2008, imperiling many state and local law enforcement, prosecution, court, community supervision, treatment and prevention programs that make up criminal justice systems. (See chart, “10 Years of Byrne JAG Funding” on page 2)

State ARRA Funds

In late 2009, NCSL’s Fiscal Affairs Program surveyed legislative fiscal directors to collect information on the uses of Byrne JAG state-administered ARRA funds. Fiscal directors in 30 states provided information which includes states use of this money and the potential effect of these funds on state corrections expenditures.

Probation and other programs to supervise offenders in the community are being funded with stimulus dollars in California, Colorado, Iowa, New Hampshire and Wisconsin. About a third of state ARRA funds in California will support evidence-based probation, and another third will go to offender drug treatment programs. Drug courts are benefiting from ARRA/Byrne JAG funds in at least six states, including Florida, Indiana, Michigan, Oklahoma, Oregon and Washington. A mental health court also is receiving ARRA funds in Oklahoma.

Several state-level projects in Colorado are receiving ARRA funds, including a training center for evidence-based practices. The center will develop and implement an initiative to expand the criminal justice system’s capacity to implement proven offender supervision and services programs. Iowa also is supporting existing successful programs for mental health, substance treatment and offender reentry.

Specialized drug task forces are among the many law enforcement programs commonly supported by Byrne JAG in the recovery act in several states, including Alabama, Alaska, California, Connecticut, Indiana, Iowa, Kentucky, Montana, Nebraska, Nevada, Oklahoma and West Virginia. Other specialized law enforcement efforts

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funded include violent crime or gang enforcement units in Arizona, North Carolina, Texas and West Virginia. Texas also is using funds to improve border security, and West Virginia is addressing domestic violence. In Washington, Byrne JAG funds in the recovery package are being used for gang mitigation within the Department of Corrections. In a 2008 [letter to Congress](#), the NCSL Law and Criminal Justice Committee documented the valuable effects of law enforcement programs in states to combat illegal drugs and gangs.

A number of corrections-based programs that are receiving the federal funds provide for offender rehabilitation and reintegration programming. In Alabama, this includes prison drug treatment, prison chaplains and other reentry-focused programs. Other prison rehabilitation and reentry programs are receiving AARA funds in Kansas, Kentucky, Indiana, Iowa, Nevada, Oklahoma and Wisconsin. In Indiana, ARRA funds via the state's Criminal Justice Institute contribute to corrections programs that include therapeutic communities for drug treatment and reentry.

Community-based programs related to parole and offender reentry are ARRA-funded in California, Delaware, Indiana, Washington and Wisconsin. This includes parole reentry courts in California.

Use of Byrne JAG stimulus funds to improve criminal justice systems through justice information systems and

sharing also has been a priority in some states. Connecticut is improving parole case management information, and Montana is addressing crime statistics. Other records systems improvements are being funded in Arkansas, Indiana, Nevada, Oklahoma, Vermont and West Virginia.

In Connecticut, Indiana, New Hampshire and Montana, justice assistance stimulus funds are contributing to forensic DNA improvements. This includes a state police cold case unit in New Hampshire, along with other forensic functions.

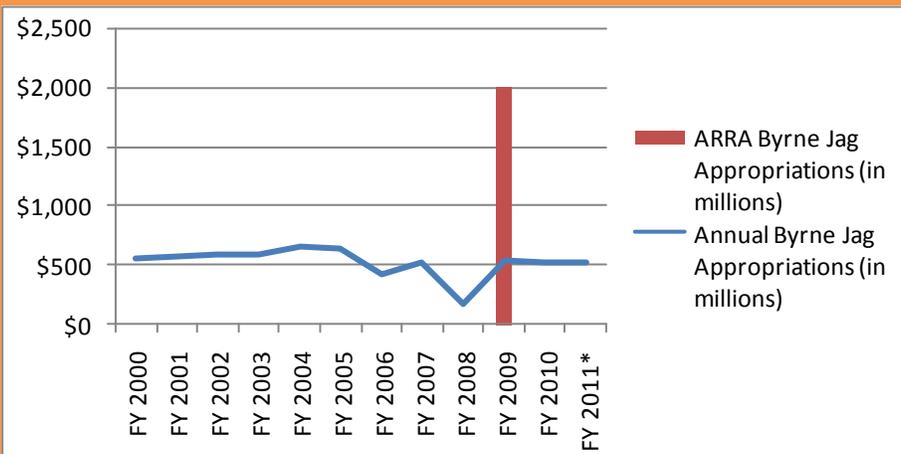
New Hampshire also is funding victim assistance and child advocacy services with justice ARRA funds, and cybercrime units are receiving recovery dollars in Florida and West Virginia.

BJA Highlights Justice Assistance Grants

Edward Byrne Memorial Justice Assistance Grants are administered by the [Bureau of Justice Assistance](#) in the U.S. Department of Justice, [Office of Justice Programs](#). The grants provide perennial support to state, local and tribal jurisdictions, which tailor programs to fit their needs in reducing and preventing crime; addressing crime, violence and drug abuse; and supporting other functions that contribute to and improve the criminal justice system. The Bureau of Justice Assistance [highlights](#) successful Byrne JAG-funded programs. The

programs exemplify the various purposes for which states and localities use federal criminal justice funding, including improving employment prospects of probationers and parolees; enhancing the ability to investigate financial and computer crimes; effectively implementing data-driven policing; providing specialized court-supervised treatment for U.S. veterans who otherwise might be in prison; and offering residential treatment programs for offenders who have co-occurring mental health and substance abuse needs.

10 Years of Byrne JAG Funding



*FY 2011 funds are not final, amount is the budget request as of May 2010

Source: National Criminal Justice Association data and yearly justice appropriations bills, FY 2000 - 2011.

On The Fiscal Front

The Condition of State Corrections Budgets

State Finances are temporarily aided by stimulus funds.

The steep drop in state revenues appears to be subsiding, yet the state fiscal situation for FY 2011, FY 2012 and beyond remains troubling, according to NCSL's [State Budget Update: March 2010](#). Thirty-eight states and Puerto Rico project a gap of \$89 billion in FY 2011; 31 states and Puerto Rico foresee at least a \$73.5 billion budget gap for 2012; and 21 states project a gap of at least \$64.7 billion gap as far out as FY 2013.

The bulk of state fiscal problems can be traced to revenue declines, yet more than half the states reported spending overruns in their FY 2010 budgets. In FY 2010, corrections or public safety programs were above budgeted levels—Louisiana, Maryland, South Carolina, Texas, Vermont and Washington. Louisiana reports housing for state inmates in local facilities is \$23 million over budget, and state prison costs are running \$7 million over. In South Carolina, the Department of Corrections is projecting a \$28.8 million shortfall due to mandatory mid-year budget reductions. Texas noted that its correctional health care program is running significantly over budget.

The only bright spot in state budgets has been federal stimulus funds from the American Recovery and Reinvestment Act (ARRA). These funds have been critical in helping shore up state budgets. How ARRA funds are contributing to states' recidivism reduction efforts is

highlighted in the cover story "Justice ARRA Funds Aid Beleaguered Corrections Budgets". Although some ARRA funds are available for FY 2011 budgets, the funds are declining and will virtually disappear by FY 2012. The loss of ARRA funds is a key reason for state budget gaps in FY 2012 and FY 2013.

Federal Justice Assistance

The \$2 billion in criminal justice-related stimulus funding provided states with an influx of money for various crime-prevention and crime-fighting programs authorized under the Edward Byrne Memorial Justice Assistance Grant Program (Byrne JAG). This comes after recent fluctuations in justice assistance grants. (See chart, "10 Years of Byrne JAG Funding" on page 2)

Byrne JAG is a cornerstone federal crime prevention, crime-fighting program that enables communities to target resources to their most pressing local needs. Many innovative programs have been funded by Byrne JAG. (See NCSL's [state-by-state listing](#)). These programs provide vital flexibility, innovation and cooperation to support statewide enforcement approach.

Byrne JAG funds maintain two types of funding streams. Direct funding (40 percent) goes to law enforcement officers, for task forces, equipment, vehicles, computers and communication devices. The remaining 60 percent is distributed through competitive grants to support programs that prevent violent crime and build strong communities.

Information in *State Budget Update: March 2010* is based on data collected from legislative fiscal directors in all 50 states and Puerto Rico in March 2010.

States Consider SORNA, Byrne Dollars

States face losing 10% of their federal Byrne JAG funds.

The Adam Walsh Child Protection and Safety Act of 2006 requires that states comply with Title I Sex Offender Registration and Notification Act (SORNA) provisions. The Act specifies information that must be collected; defines tiers of sex offenders registration duration; requires periodic verification of registration information; and requires Internet-based information that contributes to a national registry. States face a 10 percent loss of Byrne JAG funds for noncompliance, although funds for implementation are not included in this act or any appropriations bill.

Under new proposed guidelines recently released by the Department of Justice Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART Office) states will have to annually certify that they are continuing to meet SORNA standards as part of their Byrne JAG application process. This will involve submitting additional information as directed by the SMART Office so that it can verify compliance.

As of May 14, 2010—Ohio, Delaware and Florida—have substantially implemented the SORNA guidelines. All other states have until July 27,

2010, to comply, request a one-year extension or face the 10 percent cut. (See the NCSL [chart](#) that lists Byrne JAG funds by state; the FY 2010 enacted and FY 2011 president's budget; and the estimated 10 percent funding loss, by state, for SORNA noncompliance).

In 2006, the [Justice Policy Institute determined](#) it would be more costly for states to implement SORNA than to lose 10 percent of the Byrne JAG funding. More recently state funding fluctuations have made it difficult for states to analyze the dollar amount of a 10 percent loss of justice assistance grants. As states [weigh the costs and benefits of implementation](#), they also must consider the impact of the recession and overall revenue and spending reductions.

NCSL's webpage "[Adam Walsh Child Protection and Safety Act](#)" maintains information and updates relevant to state legislatures. See also NCSL's Law and Criminal Justice Committee's [Adam Walsh Policy](#).

Issue in Focus

Three Years of Conditional Release Laws

At least 22 states passed laws between 2007 and 2009 that address conditional release of inmates.

The length of time offenders sentenced to prison will actually spend behind bars can be complex. Various factors—truth-in-sentencing laws or other sentencing policies adopted over the years; the role of a releasing authority; and conditional release options—will affect when an inmate will actually walk out of prison gates.

Conditional release laws provide a targeted group of inmates with the opportunity to be released from prison before expiration of their sentence. State laws govern which offenders are eligible to participate and often provide for a revocation process if offenders do not abide by program rules and regulations. Two types of conditional release laws—sentence credits and medical parole—are discussed.

Sentence Credits

Sentence credits accelerate the

release of certain inmates who abide by prison rules or participate in and successfully complete a variety of rehabilitative programs offered in prison. At least 15 states passed laws between 2007 and 2009 that address sentence credits for inmates.

In 2009, Oregon and Wisconsin joined at least 31 other states that have earned time laws, according to the 2008 NCSL report, [Cutting Corrections Costs: Earned Time Policies for State Prisoners](#).

Earned time is a type of sentence credit that inmates can receive for participating in or completing productive activities such as educational courses, vocational training, treatment and work programs. Oregon created a one-time, 60-day credit for inmates who receive an educational degree or certificate.

Kansas (2007) and Pennsylvania (2008) added earned time programs. Pennsylvania's [Recidivism Risk Reduction Incentive](#) permits eligible non-violent offenders to reduce their minimum sentence by as much as one-fourth for completing recommended programs. Eligibility

is determined by the sentencing judge, and the defendant must agree to participate in the program.

Earned time is distinguished from, and can be offered in addition to, "good time" credits. Good time credits generally are given to offenders who follow prison rules and participate in required activities,

Colorado and Wisconsin recently created new good time programs. Colorado's 2009 law created a one-time, 60-day, good time credit for nonviolent inmates and increased the number of days an inmate can earn per month. Officials project the policy will save almost [\\$12 million](#) over the next three years. The [legislation](#) allows savings gained to be appropriated to recidivism reduction programs beginning in FY 2012.

Sentence credits are given as one-time rewards or on a recurring basis, such as monthly. Between 2007 and 2009 at least eight states increased the amount of time inmates can earn. Louisiana and Mississippi removed the limit on the total amount of earned time inmates can earn for program participation.

California, Kansas, Louisiana, Nevada and Oregon increased the amount of time inmates are eligible to earn per month. New York and Tennessee now permit inmates to gain a one-time credit for completion of certain education and treatment programs, in addition to earning a monthly sum.

Four states expanded eligibility for sentence credits. Credits usually are made available to lower-risk inmates, risk level is determined by conviction offense and behavior in prison. In California, a law permitting inmates in conservation camps to earn time was expanded to include inmate firefighters. Parole violators now are eligible for credits in Colorado and Nevada. Indiana created a "credit restriction felon" that permits certain sex offenders to earn a limited amount of time.

Colorado, Texas, West Virginia and Wisconsin expanded sentence credits to inmates in local jails. Inmates in Texas and Wisconsin can earn time for participation in work programs.

Laws generally instruct corrections departments to create policies and procedures for forfeiture and restoration of credits; three states addressed this in 2009. Illinois added a law that permits revocation of time for misconduct in a county jail. Louisiana authorized restoration of time previously forfeited. A Texas law allows good time to be suspended, rather than forfeited, for a violation of prison rules. Inmates' previously earned credits can be revoked for violating prison rules, filing frivolous lawsuits, or escaping or attempting to escape from custody.

Medical Parole

Medical parole grants certain inmates, who have an incapacitating or terminal medical condition, early release to seek care in a environment more suited to treat medical needs. At least 13 states passed laws between 2007 and 2009 that address release on medical parole.

As of 2009, at least 39 states had laws governing medical parole. Alabama, Maryland, North Carolina, Pennsylvania and Wyoming enacted medical parole laws during their 2008 legislative sessions. Medical conditions that qualify an inmate for release vary from state to state, but include physical or mental incapacitation, a medical condition that renders an

inmate unable to pose a risk to public safety, terminal illness, or an illness or inability to care for oneself due to age.

The Alabama, North Carolina and Wyoming laws provide consideration of release for geriatric inmates. According to the [Vera Institute of Justice's](#) recent report [It's About Time: Aging Prisoners, Increasing Costs, and Geriatric Release](#), 15 states have medical parole laws that apply specifically to elderly inmates.

Maine, New York, Texas, Washington and Wisconsin expanded eligibility for medical parole. In 2008, Maine, New York and Wisconsin passed laws allowing inmates with non-terminal illnesses to be considered for release. These states previously limited eligibility to inmates with terminal illnesses.

Incapacitated inmates may be ineligible for medical parole due to the length of time served in prison or because of conviction offense. Mississippi eliminated a time served requirement in 2008 for terminally ill inmates but still requires non-terminal inmates to serve at least one year before they can be considered for release. Louisiana prohibits medical parole for certain violent offenders, sex offenders, drug offenders and habitual offenders. In 2008, the Legislature created a temporary release policy for inmates when death is expected within 60 days; only inmates on death row are denied such release under the new policy.

In 2009, the Minnesota Legislature instructed the commissioner of corrections to increase the use of compassionate release or other less costly alternatives for elderly and infirm inmates. The NCSL [State Health Notes](#) article "[With Soaring Prison Costs, States Turn To Early Release of Aged, Infirm Inmates](#)", describes state action and cost implications for medical parole policies.

Revocation of medical parole generally is permitted by statute if a parolee's conditions improve enough so that he or she no longer meets the medical criteria or for a violation of the rules of their release. Inmates whose parole is revoked will serve the remainder of their sentence in prison or remain there until their health deteriorates again. Maryland's 2008 law provides that, if the State Parole Commission believes a medical parolee's condition has improved so that he or she could present a danger to society, they must return a parolee to a correctional facility.

A state by state list of recently enacted legislation from [2007 and 2008](#) and [2009](#) includes sentence credits, medical parole and other significant sentence and corrections enactments.

On A Related Note

On the Hill

On May 11, 2010, the U.S. House of Representatives [Committee on the Judiciary](#) conducted a hearing on the “[Criminal Justice Reinvestment Act of 2009](#)”, [H.R. 4080](#), and “[Honest Opportunity Probation with Enforcement Act of 2009](#)”, [H.R. 4055](#). Testimony from the Honorable Jerry A. Madden, vice-chair of the Texas House Corrections Committee and current chair of NCSL’s Law and Criminal Justice Committee; Adam Gelb, director of the Public Safety Performance Project of the Pew Center on the States; and others can be found on the Judiciary Committee’s [website](#).

The Criminal Justice Reinvestment Act of 2009 would provide grants to state and local governments to analyze criminal justice data and implement policies identified by the data. The Honest Opportunity Probation with Enforcement Act of 2009 would provide grants for probation demonstration programs that reduce drug use, crime and recidivism by requiring swift, predictable and graduated sanctions for noncompliance with conditions of probation.

Recent Reports

[Prison Count 2010](#), a new report by the Public Safety Performance Project of the Pew Center on the States, finds that the state prison population declined for the first time in 38 years.

[It’s About Time: Aging Prisoners, Increasing Costs and Geriatric Release](#), from the Vera Institute of Justice, examines state laws that permit release of geriatric inmates

NOTE: Links to external websites and reports are for information purposes only and do not indicate NCSL’s endorsement of the content on those sites.

This newsletter is prepared under a partnership project of NCSL’s Criminal Justice Program in Denver, Colorado and the Public Safety Performance Project of the Pew Center on the States, based in Washington, D.C. The NCSL project is designed to help states tap the best research and information available to put a fiscal lens to sentencing and corrections

Mark Your Calendars



[NCSL’s 2010 Legislative Summit](#) is in Louisville, Ky. July 25–28, 2010

Can’t-Miss Criminal Justice Sessions!

Issue Forums

Changing the Course of Delinquency

Tuesday, July 27, 2010 – 10:30 am – 12:00 pm

Reexamining the Death Penalty

Tuesday, July 27, 2010 – 2:45 pm – 4:15 pm

A Data-Driven Approach to Reduce Prison Spending

Wednesday, July 28, 2010 – 8:00 am – 9:30 am

More information on these and other issue forums is available on NCSL’s [Legislative Summit Issue Forum Web Page](#)

Ancillary Session

Maximizing Investments in Tight Budget Times

Tuesday, July 27, 2010 – 7:15 am – 8:45 am

A full searchable agenda is available on [NCSL’s Legislative Summit Online Agenda](#).