



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

---

May 11, 2005

Joint Committee on Finance

Paper #122

### **Federal Byrne and Penalty Surcharge Funding (DOA -- Office of Justice Assistance, DOA -- General Agency Provisions, Corrections, District Attorneys, DHFS -- Community Aids and Supportive Living, and Justice)**

[LFB 2005-07 Budget Summary: Page 23, #8, Page 46, #4, Page 47, #5, Page 48, #7, Page 130, #15, Page 144, #3, Page 145, #5, Page 304, #16, and Page 323, #12]

---

#### **CURRENT LAW**

Under the federal budget for federal fiscal year (FFY) 2005, the Byrne Formula and Local Law Enforcement Block Grant programs have been replaced with the new Edward Byrne Memorial Justice Assistance Grant Program. Federal Justice Assistance Grant funding may be utilized for any one or more of the following purpose areas: (1) law enforcement programs; (2) prosecution and court programs; (3) prevention and education programs; (4) corrections and community corrections programs; (5) drug treatment programs; and (6) planning, evaluation, and technology improvement programs. In addition, any law enforcement or justice initiative eligible for funding under the prior Byrne and Local Law Enforcement Block Grant programs remains eligible for Byrne Justice Assistance Grant funding. Under prior law projects funded with federal Byrne dollars, other than anti-drug task forces, victim assistance programs and criminal records projects, were generally limited to a maximum of four-years of funding. Under the new Justice Assistance Grant program, projects remain eligible for funding beyond the four-year limit previously imposed under Byrne.

As with the former Local Law Enforcement Block Grant program, a portion of the state's Justice Assistance Grant award is allocated directly to the state (60%), while the remaining portion of the award (40%) is allocated to eligible local units of government. Further, the new Justice Assistance Grant program continues the previous Byrne program practice of requiring the state to pass on its share of the award to local units of government in proportion to the local government's share of all criminal justice expenditures. Approximately 62% of the state's total

Justice Assistance Grant allocation, less the state's costs of administration, must be passed on to local units of government.

The new federal Byrne Justice Assistance Grant program is administered by DOA's Office of Justice Assistance (OJA). However, unlike the previous Byrne program, the new Justice Assistance Grant program does not require states to provide a 25% state match in order to receive the federal funding. For purposes of providing the required 25% state match under the previous Byrne program, OJA was appropriated approximately \$2.2 million PR in 2004-05 from penalty surcharge revenues.

The state's FFY 2004 award under the previous federal Byrne program totaled \$8,804,000 FED. OJA has indicated that the state's FFY 2005 award under the new Byrne Justice Assistance Grant program amounts to \$4,264,200 FED. Under the President's FFY 2006 federal budget proposal submitted to the Congress, the Justice Assistance Grant program would be eliminated. Based on discussions with OJA staff, the U. S. Senate's version of the criminal justice portion of the federal budget would continue the Byrne Justice Assistance Grant award program, but at a significantly reduced level to reflect the further consolidation of federal grant programs, while the U. S. House of Representatives has adopted the President's position of eliminating Justice Assistance Grant program funding in its entirety.

## **GOVERNOR**

Delete \$4,322,600 FED annually in federal Byrne anti-drug enforcement program funding to reflect a decrease in federal Byrne award amounts. This recommendation includes the deletion of \$150,000 FED annually associated with federal Byrne funding for state projects and the deletion of \$4,172,600 FED annually associated with federal Byrne funding for local projects.

Delete \$807,800 PR annually in penalty surcharge funding match money for the federal Byrne anti-drug enforcement program to reestimate Byrne match requirements in light of the reduced federal funding allocation to the state. This reestimate reflects the deletion of \$107,300 PR annually in state penalty surcharge match money and \$700,500 PR annually in local penalty surcharge match money.

## **DISCUSSION POINTS**

1. The state's funding award under the reconstituted Byrne Justice Assistance Grant program of \$4,264,200 FED in FFY 2005 represents approximately 48% of the state's FFY 2004 allocation of \$8,804,000 FED under the previous Byrne program. The FFY 2005 Justice Assistance Grant award will provide federal grant funding for the 2005-06 state fiscal year. According to OJA staff, the FFY 2006 Justice Assistance Grant award (which would fund program activities in the 2006-07 state fiscal year) may either be eliminated or significantly reduced from the FFY 2005 funding level.

2. Table 1 summarizes the funding allocations under the previous Byrne program and associated penalty surcharge state matching funds for 2004-05 and the annual allocations from the new Byrne Justice Assistance Grant program and penalty surcharge funding, as recommended by the Governor. The Justice Assistance Grant program and penalty surcharge allocations are the same for both 2005-06 and 2006-07.

**TABLE 1**  
**Current and Proposed Byrne and Penalty Surcharge Allocations**

<u>Programs</u>	2004-05 <u>Byrne</u>	2004-05 Penalty <u>Surcharge</u>	Annual Allocations <u>in 2005-06 and 2006-07</u>	
			Justice Assistance Grants	Penalty Surcharge
<b>Local Programs</b>				
Local Anti-Drug Task Forces	\$4,000,000	\$800,000	\$2,089,100	\$417,800
Mentoring, Truancy and Supervision	825,000	165,000	430,900	86,200
County Victim-Witness Programs	709,000	141,800	370,300	74,100
Re-allocated Funding*	428,100	142,700	0	0
GLECC Set-Aside (Special Projects)	358,500	71,700	187,300	37,500
Wisconsin Incident Based Reporting System	319,500	63,900	166,800	33,400
Jail Literacy Programs	250,000	50,000	130,600	26,100
Anti-Drug Prosecutors--Milwaukee County	221,100	73,700	115,500	38,500
Restorative Justice Prosecutors	85,500	28,500	44,700	14,900
Anti-Drug Prosecutors--Dane County	72,000	24,000	37,600	12,500
Milwaukee Youth Development Center	60,000	20,000	31,300	10,400
Court-Appointed Special Advocates Program	37,500	12,500	19,600	6,500
Children's Safe House Child Care Program	37,500	12,500	19,600	6,500
Milwaukee Police Athletic League	<u>3,900</u>	<u>1,300</u>	<u>0</u>	<u>0</u>
Subtotal	\$7,407,600	\$1,607,600	\$3,643,300	\$764,400
Uncommitted Funding				<u>142,700</u>
Total Appropriated Funding				\$907,100
<b>State Programs</b>				
District Attorney Information Technology	\$1,402,400	\$350,600	\$732,400	\$244,100
Corrections' 5th Offense OWI Program	348,600	116,200	182,000	60,700
OJA Administration	<u>0</u>	<u>0</u>	<u>0</u>	<u>54,700</u>
Subtotal	\$1,751,000	\$466,800	\$914,400	\$359,500
OJA Administration	\$314,000	\$161,000	\$164,000	\$181,500
Total	\$9,472,600	\$2,235,400	\$4,721,700	\$1,448,100

\*Funding vetoed by the Governor under the 2003-05 biennial budget that was earmarked by the Legislature for 11.0 FTE prosecutor positions. OJA staff indicate that the funding has been utilized primarily to support the Governor's mentoring, truancy and supervision initiative.

3. The penalty surcharge funding appropriated to OJA under the bill is budgeted under three separate appropriations: (a) \$907,100 PR annually is appropriated under OJA's anti-drug enforcement program (local) appropriation to support local projects; (b) \$359,500 PR annually is appropriated under OJA's anti-drug enforcement program (state) appropriation for state projects; and (c) \$181,500 PR annually is appropriated under OJA's law enforcement programs and youth diversion appropriation to support the Office's administrative costs. In total, the bill would appropriate \$1,448,500 PR annually of penalty surcharge funding to these three appropriations.

4. While the bill would appropriate \$907,100 PR annually of penalty surcharge funding for local projects, only \$764,400 PR annually of penalty surcharge funding is actually budgeted for local projects, as identified in Table 1. The expenditure authority under the appropriation and the amounts budgeted do not match because penalty surcharge funding originally provided to match "re-allocated funding" was not deleted under AB 100. However, the new Byrne Justice Assistance grant program does not require a state match. Consequently, the Committee has additional flexibility with respect to how it might choose to allocate the entire \$907,100 PR annually of penalty surcharge funding provided for local projects.

5. Further, of the \$359,500 PR annually of penalty surcharge funding appropriated under the bill for state programs, \$54,700 PR annually has been double budgeted for OJA administrative costs. The Committee will also need to determine the allocation of these funds.

6. Under the previous federal Byrne program, most of the Byrne-funded projects were limited to a maximum of four-years of funding. The only exceptions to this limitation were: (a) anti-drug task forces; (b) victim assistance programs; and (c) projects funded under the Criminal Justice Records Improvement Program.

7. Under the new Byrne Justice Assistance Grant program, the state's FFY 2005 allocation of \$4,264,200 FED for awards in 2005-06 represents approximately a 52% reduction from the state's FFY 2004 allocation of \$8,804,000 FED under the previous Byrne program. Further, since there is a distinct possibility that FFY 2006 awards under the Justice Assistance Grant program will either be eliminated or further reduced from FFY 2005 levels, the state would appear to be at a crossroads with respect to determining how projects currently funded under the revised Byrne-program will continue to be supported under these changed circumstances.

8. The following discussion reviews two groups of projects and programs that are currently funded with Byrne funds: (a) those projects funded under 2003 Wisconsin Act 33 (the 2003-05 biennial budget act) with the understanding that they would only be supported by Byrne funds for up to four years; and (b) and those Byrne-funded programs not previously subject to the general four-year limitation on federal funding.

### **Projects Previously Subject to the Four-Year Limit on Federal Funding**

9. *Mentoring, Truancy and Supervision.* These local programs received initial funding under the 2003-05 biennial budget. Mentoring programs recruit, select, and train community

members to act as mentors for at-risk youth referred by schools, human services agencies, or law enforcement agencies. Mentoring programs provide counseling, homework assistance, adult guidance, and recreational outlets. Truancy programs typically involve the coordination of law enforcement, social service and school personnel to address the at-risk behavior of program participants and to provide needed services. Intensive supervision programs permit youth who would otherwise be assigned to an out-of-home placement facility to remain at home. Case workers have daily face-to-face contact and use electronic monitoring as tools to reduce recidivism. Under the bill, these programs would be allocated \$430,900 FED and \$86,200 PR annually in federal Justice Assistance Grant and penalty surcharge funding.

10. *Department of Corrections 5<sup>th</sup> Offense Operating While Intoxicated Program.* This program serves substance-abusing males incarcerated for a fifth or greater offense of operating while intoxicated. The goals of the programs are to: (a) identify and evaluate treatment components that have an impact on the drinking and criminal behavior of the program participants; (b) implement victim impact awareness into all treatment regimens; (c) develop harm reduction strategies; and (d) develop community reintegration strategies. Under the bill, this project would be allocated \$182,000 FED and \$60,700 PR annually in federal Justice Assistance Grant and penalty surcharge funding.

11. *Governor's Commission on Law Enforcement and Crime (GLECC) Special Projects.* Funding for special projects is not specifically earmarked at this time to any local project but would instead be distributed during the next biennium in accordance with determinations made by the Commission. Under the bill, special projects would be allocated \$187,300 FED and \$37,500 PR annually in federal Justice Assistance Grant and penalty surcharge funding.

12. *Jail Literacy Programs.* These county jail literacy programs are intended to expand literacy and career services to sentenced and pre-sentence inmates who will likely serve 30 or more days in a county jail. Under the bill, jail literacy programs would be allocated \$130,600 FED and \$26,100 PR annually in federal Justice Assistance Grant and penalty surcharge funding.

13. *Restorative Justice Prosecutors.* These prosecutor positions (1.0 FTE each in Milwaukee County and Outagamie County) are responsible for establishing restorative justice programs that provide support to the victim of a crime, help reintegrate the victim into community life, and provide a forum where an offender may meet with the victim or engage in other activities to do all of the following: (a) discuss the impact of the offender's crime on the victim or on the community; (b) explore potential restorative responses by the offender; and (c) provide methods for reintegrating the offender into community life. This program was originally established on a four-year pilot basis in two counties by the 2001-03 biennial budget. Under current law, the program is scheduled to sunset on June 30, 2005. While the provisions of AB 100 would repeal the statutory language that governed the work of these prosecutors, partial funding for these positions has been inadvertently retained in the budget. Under the bill, these deleted positions would be allocated \$44,700 FED and \$14,900 PR annually in federal Justice Assistance Grant and penalty surcharge funding.

14. *Career Youth Development Center.* The Career Youth Development Center in Milwaukee receives funding for the provision of alcohol and drug abuse prevention, intervention, and treatment services for minority youth. This program provides substance abuse intervention services through education and awareness training. Under the bill, this program would be allocated \$31,300 FED and \$10,400 PR annually in federal Justice Assistance Grant and penalty surcharge funding.

15. *Court-Appointed Special Advocate Programs.* The project provides funding to court-appointed special advocate programs to perform advocacy services for minors who are involved in children in need of protection and services (CHIPS) proceedings. Under the bill, this project would be allocated \$19,600 FED and \$6,500 PR annually in federal Justice Assistance Grant and penalty surcharge funding.

16. *Children's Safe House Child Care Program.* The Children's Safe House is a group foster home that provides around-the-clock childcare and family support services designed to assist families in crisis, prevent child abuse and neglect, and increase family stability. Under current law, state funding supports the crisis child care nursery program, which provides emergency and planned child care services for children, 12 years of age and younger, from low-income families. Under the bill, this project would be allocated \$19,600 FED and \$6,500 PR annually in federal Justice Assistance Grant and penalty surcharge funding.

#### **Programs Not Previously Subject to a Four-Year Limit on Federal Funding**

17. *Local Anti-Drug Task Forces.* Over half of the state's federal Byrne award dedicated to local programs and projects is currently awarded to multi-jurisdictional anti-drug enforcement task forces. These task forces are local programs that integrate the services of various law enforcement agencies and prosecutors to enhance interagency coordination, intelligence, and facilitation of multi-jurisdictional investigations. Under the bill, these multi-jurisdictional task forces would be allocated \$2,089,100 FED and \$417,800 PR annually in federal Justice Assistance Grant and penalty surcharge funding.

18. *Anti-Drug Prosecutors.* Additional prosecutor positions in Milwaukee County and Dane County that staff these counties' local multi-jurisdictional anti-drug enforcement task forces have historically been individually budgeted under the Byrne program. Under the bill, 1.5 prosecutor positions in Milwaukee County would be allocated \$115,500 FED and \$38,500 PR annually in federal Justice Assistance Grant and penalty surcharge funding. Also under the bill, a 0.5 prosecutor position in Dane County would be allocated \$37,600 FED and \$12,500 PR annually from these same funding sources. Compared to the funding levels budgeted in 2004-05 for these Milwaukee County and Dane County prosecutor positions, the reduced funding level provided under the bill would translate into a loss of 1.5 prosecutor positions in Milwaukee County and a loss of 0.5 prosecutor position in Dane County.

19. *County Victim-Witness Programs.* Counties are eligible under current law to receive reimbursement from the state for not more than 90% of their costs incurred in providing services to

crime victims and witnesses. The focus of these services is to assist victims and witnesses with the court process. Under the bill, county victim-witness programs would be allocated \$370,300 FED and \$74,100 PR annually in federal Justice Assistance Grant and penalty surcharge funding.

20. *Wisconsin Incident Based Reporting System.* States have traditionally reported crime data to the Federal Bureau of Investigation (FBI) using the summary-based Uniform Crime Reporting (UCR) program. Under the UCR program, law enforcement agencies provide OJA with a monthly aggregate count of the number of offenses and arrests for certain categories of offenses. OJA, in turn, reports these statistics to the FBI. OJA staff indicate that within the next few years, the FBI will require states to report crime data using an incident-based reporting system. The advantages of the Wisconsin Incident Based Reporting System and similar reporting systems are that data collection is not restricted to a limited number of offense categories and that a variety of specific details related to an individual crime incident may be collected and analyzed. The program provides grants to local law enforcement agencies to develop software that will be compatible with the Wisconsin Incident Based Reporting System so that local law enforcement agencies' databases may be integrated into the state's incident-based reporting system. Under the bill, this program would be allocated \$166,800 FED and \$33,400 PR annually in federal Justice Assistance Grant and penalty surcharge funding.

21. *District Attorney Information Technology.* DOA currently provides information technology (IT) services to district attorney offices on a statewide basis. The IT services provided by DOA include: (a) computers for every attorney in the district attorney office along with an office computer network; (b) software, including legal research tools; (c) internet access; (d) access to criminal history information; (e) electronic access to the Department of Justice's legal brief bank, operating while intoxicated prosecutor's manual, and a district attorney case management system; (f) high-speed telecommunications access; (g) toll-free help desk support; (h) software training; (i) on-site computer hardware maintenance; and (j) hardware and software upgrades. Under the bill, the DOA-supported district attorney IT function would be allocated \$732,400 FED and \$244,100 PR annually in federal Justice Assistance Grant and penalty surcharge funding.

22. Under the Governor's recommendations, all of the programs and projects subject to a four-year funding limitation under the previous Byrne program and all of the long-term projects funded from that same source, but not subject to the four-year funding limit, would all be reduced by approximately 52% to reflect the reduction to the state's FFY 2005 funding allocation (for state fiscal year 2005-06 awards) under the new Justice Assistance Grant program. Further, the provisions of the bill assume that the state's FFY 2006 Justice Assistance Grant award (for state fiscal year 2006-07 allocations) will be the same as the FFY 2005 funding levels. As noted previously, based on the status of current congressional budget deliberations, it is likely that continued funding for Justice Assistance Grant awards for FFY 2006 will either be zeroed out or sharply reduced from current levels.

23. The Governor's approach continues to support all currently-funded programs and projects by spreading the known Justice Assistance Grant funding reduction across all recipients. Virtually all the existing grantees would continue to receive funding, and the funding that is made

available has been reduced across all programs and projects. The Committee could consider supporting the approach.

24. However, there is a real likelihood that funding under the revised federal Byrne program will be further reduced or eliminated before the end of the 2005-07 state fiscal biennium. Under these circumstances, the Committee may wish to reallocate available penalty surcharge funding to support those activities that reflect the Legislature's priorities during the remainder of the biennium.

25. These penalty surcharge funds would become available for reallocation because they are no longer required for the purpose of meeting a 25% state match requirement under the newly-revised federal Byrne program. Under this approach, penalty surcharge funds would be reallocated from certain programs to those of the Legislature's choosing that have a higher priority. While these reallocations would have the effect of reducing the funding available to certain short-term projects by up to 25%, these programs are likely to be further reduced or completely unfunded later in the biennium given the current status of FFY 2006 federal budget deliberations. OJA would be expected to utilize the state's current FFY 2005 Byrne Justice Assistance Grant award to assist these existing programs to transition from federal and state assistance during 2005-06.

26. Given the current uncertain future of the Byrne Justice Assistance Grant program and the recent change to federal law such that the state is no longer required to provide matching funds for its federal Byrne allocations, the Committee could consider prioritizing the use of penalty surcharge dollars to three programs that have not previously been limited to four years of funding under the old Byrne program. All of these on-going programs face potential federal funding elimination before the end of the 2005-07 state biennium, if federal FFY 2006 Byrne Justice Assistance Grants are deleted by Congress.

27. These programs are: (a) the local anti-drug task forces (including anti-drug prosecutor positions); (b) the county victim-witness programs; and (c) the district attorney information technology support.

28. It could be argued that this alternative merits support because these programs: (a) represent long-standing priorities of the Legislature; and (b) have come to depend on the continued availability of Byrne funding. By contrast, the programs previously limited to four-years of funding under the prior Byrne program have all operated with the understanding that the funding support would be of a limited duration only. [While the Wisconsin Incident Based Reporting System initiative was not limited to four-years of funding under the old Byrne program, this initiative has only been supported since the 2003-05 biennial budget act.]

29. Under the bill, a total of \$1,266,600 PR of penalty surcharge funding has been budgeted as Byrne program matching funds under OJA's anti-drug enforcement program, penalty surcharge (local) appropriation (\$907,100 PR annually) and under its anti-drug enforcement program, penalty surcharge (state) appropriation (\$359,500 PR annually). These funds could be reallocated to one or more of the above programs, if the Committee views these programs as higher

priority undertakings which should be assured of continued funding. (Such a reallocation would also resolve the issues cited above of \$54,700 PR annually that has been double budgeted for OJA administration and \$14,900 PR annually that has been budgeted for repealed restorative justice prosecutor positions.)

30. The following table identifies the total amount of federal Byrne and penalty surcharge funding budgeted for these three long-term Byrne-funded programs in 2004-05:

<u>Programs</u>	<u>2004-05 Funding</u>	<u>% of Total</u>
Local Anti-Drug Task Forces *	\$5,190,800	67%
County Victim-Witness Programs	850,800	11
District Attorney Information Technology	<u>1,753,000</u>	<u>22</u>
Total	\$7,794,600	100%

\*Includes funding for Milwaukee County and Dane County anti-drug prosecutors.

31. If these percentages were applied to allocate the available \$1,266,600 PR annually of penalty surcharge funding to these three programs, these programs would receive funding as identified in the following table. The table also identifies the penalty surcharge funding appropriated for these programs under AB 100.

<u>Program</u>	<u>Annually Allocations</u>	
	<u>AB 100</u>	<u>Alternative</u>
Local Anti-Drug Task Forces *	\$468,800	\$848,600
County Victim-Witness Programs	74,100	139,300
District Attorney Information Technology	<u>244,100</u>	<u>278,700</u>
Total	\$787,000	\$1,266,600

\*Includes funding for Milwaukee County and Dane County anti-drug prosecutors.

32. The effect of these reallocations to these programs (or to other programs of the Legislature's choosing) would be to cushion these higher priority programs from the impact of likely revised Byrne Justice Assistance Grant reductions in the second year of the 2005-07 biennium. Depending on the scope of the federal funding reductions, the Legislature may still be required to find additional funding in that fiscal year if it wishes to continue these higher priority programs at current levels.

33. Penalty surcharge appropriations already exist under DOA and the Department of Justice (DOJ) respectively to fund district attorney information technology and county victim-witness programs. Thus, if the Committee adopts this alternative, it could transfer the amounts

identified above for these programs to the relevant penalty surcharge appropriations. As DOJ is responsible for administering a statewide drug enforcement program to stem the flow of drugs into and within the state, the Committee could also consider creating a PR annual appropriation under DOJ from which the funding for local anti-drug task forces would be allocated.

34. Alternatively, OJA has administered funding for local anti-drug task forces for many years under the previous Byrne program and has developed relationships with these task forces. Consequently, the Committee could also consider leaving these funds at OJA under a new PR annual appropriation from which the penalty surcharge funds for local anti-drug task forces would be disbursed.

35. Finally, because the Byrne Justice Assistance Grant program no longer requires state match funding, if the Committee adopts the alternative to reallocate penalty surcharge funding to the local anti-drug task forces, county victim-witness programs and district attorney information technology, the Committee may wish to consider deleting the state and local Byrne match funding appropriations under OJA.

## ALTERNATIVES

### A. Funding

1. Approve the Governor's recommendation to delete \$4,322,600 FED annually in federal Byrne anti-drug enforcement program funding to reflect a decrease in federal Byrne award amounts. Delete \$807,800 PR annually in penalty surcharge funding associated with the federal Byrne anti-drug enforcement program.

2. *Adopt Alternative 1, as modified by:* (a) deleting an additional \$907,100 PR annually in penalty surcharge funding provided to OJA's anti-drug enforcement program-local appropriation and delete the appropriation; (b) deleting an additional \$359,500 PR annually in penalty surcharge funding provided to OJA's anti-drug enforcement program-state appropriation and delete the appropriation; and (c) providing funding to the local anti-drug task forces, county victim-witness programs and District Attorney Information Technology program as identified in the table.

<u>Program</u>	<u>Funding</u>
Local Anti-Drug Task Forces *	\$848,600
County Victim-Witness Programs	139,300
District Attorney Information Technology	<u>278,700</u>
Total	\$1,266,600

\*Includes funding for Milwaukee County and Dane County anti-drug prosecutors.

**B. Administration**

*[If the Committee adopts Alternatives A2, it must adopt either Alternative B1 or B2 to appropriate the reallocated funding.]*

1. Create a new PR annual local anti-drug task forces appropriation under OJA to allocate funding for the program.
2. Create a new PR annual local anti-drug task forces appropriation under DOJ to allocate funding for the program.

Prepared by: Paul Onsager