SOUTHWEST BORDER PROSECUTION INITIATIVE GUIDELINES

Fiscal Year 2013

Beginning in Fiscal Year 2013, the Bureau of Justice Assistance (BJA) will only be able to reimburse prosecution costs and will no longer be able to reimburse detention costs under the Southwest Border Prosecution Program.

APPLICATION PROCESS

All Southwest Border Prosecution Initiative (SWBPI) applications must be submitted online at **http://southwest.ojp.gov**. Eligible county and state governments in Arizona, California, and Texas, and state governments in New Mexico may apply for funds, in accordance with established reporting periods and funding availability.

NON-COMPETITIVE APPROVAL PROCESS

Applications are reviewed and approved on the basis of their adherence to program guidelines, and funding availability. Applicants will receive up to 100 percent of eligible case costs, based on the availability of funds. Should application amounts exceed available funding, applicants will receive funds on a uniform, pro-rata basis.

ELIGIBLE JURISDICTIONS

A state government in Arizona, California, New Mexico, or Texas may participate if it prosecuted a defendant in a federally initiated and declined/referred criminal case that was disposed of during the applicable reporting period. *In New Mexico, prosecution services are provided through state agencies and will be reflected in a state-level application.*

ELIGIBLE APPLICANTS

An applicant must be the Chief Executive Officer (CEO) or an authorized designee of any eligible jurisdiction in Arizona, California, New Mexico, or Texas. CEOs are the highest ranking administrative or elected official of a unit of general government, such as the Governor, President of the County Commissioners, County Executive, or County Judge (for counties in Texas). Only employees, such as a Sheriff or County Prosecutor, of the applicant jurisdiction can serve as an authorized designee for SWBPI.

APPLICANT COST PROFILE

An applicant must submit the following information in its SWBPI profile for each reporting period it is requesting reimbursement of SWBPI funds:

Total Felony Cases: The number of all felony cases prosecuted and resolved during the reporting period in the jurisdiction. This number should include federally declined as well as regular, resolved felony cases.

Total Misdemeanor Cases: The number of all misdemeanor cases prosecuted and resolved during the reporting period in the jurisdiction. This number should include federally declined as well as regular, resolved misdemeanor cases.

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APPLICANT SALARY PROFILE

An applicant must submit the following information in its SWBPI profile for each reporting period it is requesting reimbursement of SWBPI funds. If a jurisdiction is only entering felony cases, they must enter only personnel who work on felony cases. If a jurisdiction is only entering misdemeanor cases, they must enter only personnel who work on misdemeanor cases. The number and salary costs for each personnel category should reflect the personnel who work on all felony or misdemeanor cases, not only federally initiated cases.

- *Total Salary and Number of Prosecutors on Staff*: This total must reflect the total salaries and wages paid to full- and part-time prosecutors who are assigned to prosecuting cases.
- *Total Salary and Number of Judges on Staff*: This total must reflect the total salaries and wages paid to full- and part-time judges who are assigned to hearing cases.
- *Total Salary and Number of Public Defenders on Staff*: This total must reflect the total salaries and wages paid to full- and part-time public defenders who are assigned to defending cases.
- *Total Salary and Number of Clerical Staff*: This total must reflect the total salaries and wages paid to full- and part-time clerical staff whose primary responsibility was to assist with the tracking, scheduling or processing of cases.
- *Total Salary and Number of Paralegals on Staff*: This total must reflect the total salaries and wages paid to full- and part-time paralegals whose primary responsibility was to assist with the prosecution of cases.
- *Total Salary and Number of Indigent Screening Personnel*: This total must reflect the total salaries and wages paid to full- and part-time personnel whose primary responsibility was to conduct indigent defendant screening for cases.
- The reported sum for each personnel category should total the jurisdiction's actual salary expenditures for the reporting period, not an estimate or average.
- All salary costs may include benefits and overtime required by negotiated contract, statute, or regulation such as union agreements, contractual obligations, and required post staffing minimums.

ELIGIBLE CASES

- Federally initiated criminal case. Jurisdictions **must** have supporting documentation that shows the submitted cases were federally initiated.
- Declined/referred to a county or state jurisdiction after October 1, 2005.
- Prosecuted by a state or county prosecutor.
- Disposed of during a designated reporting period.
- Each defendant represents a separate case; one case with multiple defendants should be claimed as separate cases.
- One defendant charged in multiple cases should be claimed as only one case to the extent the defendant's cases are being investigated and/or prosecuted during concurrent periods of time.

A case is eligible, regardless of:

- The level, type, or number of criminal offenses involved.
- The defendant's age or citizenship status at the time of the federal referral.
- Whether the case was formally declined/referred by a U.S. Attorney, or declined/referred through a blanket federal declination-referral policy; accepted federal law enforcement practice; or federal prosecutorial discretion.

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- Whether state or local law enforcement participated with federal authorities in the investigation or arrest (federal/state task forces).

INELIGIBLE CASES

- Federally referred case declined and not prosecuted by state or county prosecutors.
- Probation or parole violation or revocation hearings. A new charge(s) not independently prosecuted, but used as a basis for a probation or parole revocation hearing, is in eligible for reimbursement
- Extradition cases.
- Cases not accepted by state or county prosecutors.

CASE REPORTING PERIOD
FY 2013 Reporting Period: July 1, 2011 through June 30, 2012

Cases are eligible for SWBPI submission only during the reporting period in which the case was resolved.

FEDERALLY INITIATED CASES
A federally initiated case results from a criminal investigation or an arrest involving federal law enforcement authorities for a potential violation of federal criminal law, including task forces on which a federal agency or officer participates in the investigation or arrest process. Jurisdictions applying for SWBPI funds must enter the referring federal agency on each case submitted for prosecution costs in the online application.

FEDERAL DECLINATION/REFERRAL
A federal declination/referral occurs when, during an investigation or following an arrest, a U.S. Attorney or a federal law enforcement official decides not to pursue federal criminal charges against a defendant (declination) and requests that a state or local jurisdiction prosecute the defendant for possible violation of state or local criminal statutes (referral).

Should a decision be made by a U.S. Attorney to subsequently pursue federal charges against a previously referred defendant, the time spent by the state or local jurisdiction in their prosecution and/or detention of the defendant on state criminal charges is eligible for SWBPI funding.

Jurisdictions unable to provide a declination/referral from the U.S. Attorney for their area will not be eligible to receive SWBPI funds.

CASE RESOLUTION
For SWBPI purposes, case resolution refers to the time between a suspect's arrest and the resolution through dismissal, plea, conviction, or sentencing of the criminal charges through a county or state judicial or prosecutorial process. For defendants not physically arrested, alternative start dates are the date of indictment, date of the initial criminal summons, or date of the summons to appear.

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CASE APPLICATION REQUIREMENTS
For each case submitted for SWBPI funds, the jurisdiction must provide the following information:

- Docket or Case Number.
- Defendant's Last Name.
- Defendant's First Name.
- Defendant's Middle Initial, if known.
- Referring Federal Agency.
- Referred Date.
- Resolution.
- Resolved Date.

PROSECUTION AWARD CALCULATION
The number of federally declined cases divided by the total felony or misdemeanor cases for a jurisdiction equals the percentage of federally declined cases the jurisdiction resolved during the reporting period among all of the felony or misdemeanor cases in the jurisdiction. The percentage is then multiplied by the total salary costs to equal to the total prosecution costs.

FINAL APPLICATION VALUE
Total Prosecution Costs = Total Application Value

UNALLOWABLE COSTS

- Time spent by prosecutors on judicial appeals. Time spent by prosecutors on interlocutory appeals brought prior to trial, pleas or dismissal is allowable.
- Incarceration time for sentenced offenders.
- Detention costs.

DOCUMENTATION
Documents supporting a federally initiated and declined/referred case must be retained for three years after the submission of the case for SWBPI funds. Documents can include paper or electronic case files, e-mails from the U.S. Attorney's Office, case notes, or documentation of telephone or face-to-face meetings with U.S. Attorney's Office staff or federal law enforcement officials. Court and arrest records for each case submitted for SWBPI funding may be requested by the Bureau of Justice Assistance for pre- and post-award review. Any cases that do not have the corresponding court and arrest records will not be considered for SWBPI funding.

OTHER FEDERAL PROSECUTION
Documentation must be maintained to support that SWBPI funds, when combined with other federal prosecution funds, do not exceed 100 percent of the prosecution costs for SWBPI cases.

REQUEST ELECTRONIC PAYMENTS
Once the BJA review of awards is complete, SWBPI participants will be notified to login to the SWBPI system and request payment. Each jurisdiction will have 45 days to complete the certification and payment request. After 45 days, the funds may no longer be available.

USE OF FUNDS

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While funds from SWBPI federal payments may be used by applicant jurisdictions for any purpose not otherwise prohibited by federal law, using funds for the support and enhancement of prosecutorial services is encouraged.

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