U.S. Department of Justice
Office of Justice Programs
National Institute of Justice

National Institute of Justice

Research Report

National Assessment of the Byrne Formula Grant Program:

The Anti-Drug Abuse Act of 1988— A Comparative Analysis of Legislation

Report 2

Submitted by
Terence Dunworth, Ph.D.
Scott Green
Peter Jacobson
Aaron J. Saiger

December 1996

Support for the study was provided by a grant from the National Institute of Justice (grant #91-IJ-CX-K024), Office of Justice Programs, U.S. Department of Justice, to the RAND Corporation. Points of view in this document are those of the author(s) and do not necessarily represent the official position of the U.S. Department of Justice. At later stages of the work, Abt Associates Inc., was involved in the study. The Bureau of Justice Assistance, Office of Justice Programs, also provided support.

NCJ 163382

PREFACE

This document is the second in a series of five reports emanating from the National Assessment of the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program. The five reports are as follows:

1. *Where the Money Went: An Analysis of State Subgrant Funding Decisions Under the Byrne Formula Grant Program*
2. *The Anti-Drug Abuse Act of 1988: A Comparative Analysis of Legislation*
3. *State and Local Responses to the Byrne Formula Grant Program: A Seven State Study*
4. *The National Assessment of the Byrne Formula Grant Program: A Policy-Maker's Overview*
5. *The National Assessment of the Byrne Formula Grant Program: Executive Summary*

The purpose of the National Assessment has been to conduct a nation-wide examination of the federal assistance to state and local criminal justice agencies that was authorized by the 1988 Anti-Drug Abuse Act. It's objectives are summarized by the following questions:

- How has federal funding disbursed via the formula grants of the Anti-Drug Abuse Act formula been distributed across various types of drug and crime control programs and across jurisdictions?
- What have been the consequences of the conceptual framework that the Anti-Drug Abuse legislation imposes -- i.e., its use of formula and discretionary grants, its emphasis on state planning, and so on? How do these features compare to those contained in earlier legislation, to what extent might they be open to change, and with what possible effects?
- How has the complex of federal efforts undertaken as a result of the Anti-Drug Abuse Act -- formula and discretionary grants, training, technical assistance, research, evaluation, and so on -- affected state and local activities in criminal justice and drug control?

Our observations in the first and third of these areas are the subject of the reports subtitled *Where the Money Went* and *A Seven State Study.* The second question, provided a review of the authorizing legislation, is addressed in the present document.

Where the Money Went is an analysis of state funding decisions that is geographically and longitudinally comprehensive. It utilizes the U.S. Department of Justice Bureau of Justice Assistance (BJA) in-house data base on individual subgrants, known as the Individual Project Reporting system. This data set, though not without limitations (discussed in the first report), is the best available national-level statement of the projects that the formula grant program has supported since its inception. Through its use, it is possible to look at state decision-making primarily from the viewpoint of the state/subgrantee relationship, rather than the federal/state relationship. The report describes the state-by-state allocation of funds across different purpose areas, and considers the relationship between funding allocation patterns and type of recipient -- by, for example, calculating how much federal aid has gone to state, county and city governments. It also looks at changes over time in the proportion of annual appropriations that are directed by states to different kinds of activities -- enforcement, prevention, treatment, and so on.

The *Seven State Study* -- focusing on state and local responses to the program -- looks at the way in which states and local governments have reacted to the 1988 Act and considers the influence on state and local anti-drug abuse efforts of federal evaluation, training and technical assistance, and the discretionary and formula grant programs. We stress that the work should not be considered in any sense an evaluation of the performance or activities of the seven states that were generous enough to open their doors to us. The objective is to use the experiences of the seven states and information they reported to us as illustrative material with respect to the Byrne program as a whole and to identify the main themes pertaining to the state and local level implementation of the program. A separate Executive Summary of the *Seven State Study* is provided as a companion document to the main report.

This document -- the *Comparative Analysis of Legislation* -- focuses entirely on the federal level, and examines the criminal justice component of the legislation. Other block grant programs (such as those administered by the U.S. Department of Health and Human Services and the U.S. Department of Education) are introduced for illustrative

purposes. A longitudinal analysis of criminal justice grants-in-aid is provided, with particular emphasis on the Safe Streets Act of 1968, and the resulting activities conducted by the Justice Department's Law Enforcement Assistance Administration.[1] This helps to establish a framework for documenting some of the strengths and weaknesses of the current authorizing legislation for federal criminal justice assistance, and for assessing the extent to which successful elements of other models might be incorporated into future anti-drug crime programs.

Each of these three reports can be considered preparatory for the fourth, which is the general policy document of the study. That report -- *The National Assessment Overview* -- synthesizes the contents of the first three, and brings together, in summary form, all work done to date. It also adds a set of policy observations and recommendations about the primary areas of concern in federal criminal justice assistance. An *Executive Summary* of the Policy Overview report highlights the main findings of the Overview.

Comments are invited and should be sent to:

Dr. Terence Dunworth
Abt Associates, Inc.
55 Wheeler St.
Cambridge, MA 02138.

[1] The Law Enforcement Assistance Administration administered the largest federal criminal justice assistance program in the history of federal aid, from 1969 to 1980. See Section 2 of this report for more details.

ACKNOWLEDGMENTS

This report has been reviewed by a number of people, and has been the beneficiary of comments from participants and audiences in a number of National Institute of Justice and Bureau of Justice Assistance workshops and conferences. Though the individuals who commented, verbally or in writing, are too numerous to mention individually, our thanks go to all of them. We express our particular appreciation to Gwen Holden, Executive Vice President of the National Criminal Justice Association, who read the entire document with a careful editorial eye and offered many useful comments on its substance.

Despite the help we have received, the views and opinions expressed in this report, and the interpretations we make of our findings, are of course ours alone, and we are responsible for any flaws or errors that exist in the report. Inevitably, decisions had to be made about what facts and issues to incorporate and what to exclude, and there will no doubt be differing opinions about the soundness of the judgments we made. In particular, we stress that endorsement of the content of this report by any of the individuals or organizations who have provided assistance should not be inferred.

TABLE OF CONTENTS

LIST OF TABLES

1 INTRODUCTION

1.1 Background to this Report

This review of federal criminal justice assistance legislation is the second in a series of five reports produced by the National Assessment of the Edward Byrne Memorial State and Local Law Enforcement Assistance Program.[2] The purpose of the Assessment has been to conduct a nation-wide examination of the federal assistance to state and local criminal justice agencies that was authorized by the 1988 Anti-Drug Abuse Act. The study's objectives are summarized by the following questions:

- How has federal funding disbursed via the Anti-Drug Abuse Act formula grants been distributed across various types of drug and crime control programs and across jurisdictions?
- What have been the consequences of the conceptual framework that the Anti-Drug Abuse legislation imposes -- i.e., its use of formula and discretionary grants, its emphasis on state planning, and so on? How do these features compare to those contained in earlier legislation, to what extent might they be open to change, and with what possible effects?
- How has the complex of federal efforts undertaken as a result of the Anti-Drug Abuse Act -- formula and discretionary grants, training, technical assistance, research, evaluation, and so on -- affected state and local activities in criminal justice and drug control?

---

[2] The National Assessment of the Byrne Formula Grant Program has been supported by a grant from the National Institute of Justice. The work was begun at the RAND Corporation and concluded at Abt Associates, Inc. The other reports are: Terence Dunworth and Aaron J. Saiger, *Where the Money Went: State Subgrant Funding Decisions Under the Byrne Formula Grant Program,* National Institute of Justice, 1996, Report 1; Terence Dunworth, Peter Haynes, and Aaron J. Saiger, *A Seven State Study: An Analysis of State and Local Responses to the Byrne Formula Grant Program:,* National Institute of Justice, 1996, Report 3; Terence Dunworth, Peter Haynes, and Aaron J. Saiger, *A Policy Makers Overview,* National Institute of Justice, 1996, Report 4; and Terence Dunworth, Peter Haynes, and Aaron J. Saiger, *National Assessment of the Byrne Formula Grant Program: Executive Summary,* National Institute of Justice, 1996. Earlier work that also focuses on federal aid to state and local criminal justice has was published by the National Institute of Justice in 1992: Terence Dunworth and Aaron J. Saiger, *State Strategic Planning Under the Drug Control Formula Grant Program,* National Institute of Justice, 1992; *Monitoring Guidelines for the Drug Control Formula Grant Program.*

As noted in the *Preface*, our observations in the first and third of these areas are the subject of two other reports. The second area is what we address in the present document.

The *Comparative Analysis of Legislation* focuses entirely on the federal level, and primarily emphasizes the criminal justice component of the 1988 legislation. Its purpose is to provide legislative, administrative, and regulatory information that can be used as source material to inform subsequent stages of the Assessment and future analysis.[3] Other block grant programs (HHS, DOE) are introduced for illustrative purposes. A longitudinal analysis of criminal justice grants-in-aid is provided, with particular emphasis on the Safe Streets Act of 1968, and the resulting activities conducted by the Law Enforcement Assistance Administration. This helps to establish a framework for documenting some of the strengths and weaknesses of the current authorizing legislation for federal criminal justice assistance, and for assessing the extent to which successful elements of other models might be incorporated into future anti-drug crime programs.

After this introduction, which considers in its second section the various mechanisms that have been utilized to implement federal grants-in-aid, section 2 provides an historical, longitudinal analysis of federal aid to criminal justice from 1966 up to and including the initial Anti-Drug Abuse Act of 1986. The goals, administrative processes, and programmatic structures of the several pieces of legislation that have been enacted are presented. In additional, an account of the legislative background and rationale for the legislation is given.

---

[3] As defined by the National Institute of Justice award, the focus of the National Assessment is on the 1988 Act. Fast moving political changes in the political environment in the past few years have, in fact, introduced a new era of federal assistance that challenges the way in which aid has been provided during the past thirty years. The Violent Crime Control and Law Enforcement Act of 1994 establishes direct federal-to-local aid for community policing which completely bypasses states. Further, Republican challenges to that legislation, introduced in Congress during 1995, also call for direct aid to local governments, though without the community policing requirement. These are clearly significant developments. However, in order to establish a manageable boundary for the National Assessment of the Byrne program, we do not, in this report, examine the 1994 legislation or its proposed replacements in anything but the most general terms. In the Final Report of the National Assessment, however, the implications of the recent legislation are considered in more detail.

Section 3 then turns to the Byrne program itself, and, in somewhat greater detail, documents its main components and procedures. It summarizes the major legislative provisions that define the program, reviews the regulatory apparatus that governs the grants, and discusses the regulatory and administrative changes that have affected the program since it was inaugurated. This information is meant to provide a foundation for the analysis of the implementation of the Byrne program, which is the centerpiece of the Assessment's final report.

Section 4 describes, in brief, the legislative and administrative provisions of the other major grants-in-aid programs established or amended by the 1988 Anti-Drug Abuse Act in order to provide comparisons between the institutional framework of the Byrne grants and of grant programs in related areas. These are the health, education and public housing assistance programs that the 1988 Act also authorizes.

A final section offers some concluding observations on the strengths and weaknesses of the persistent legislative themes that have been woven into Congressional approaches to federal aid over the past thirty years.

1.2 Administrative mechanisms for federal grants-in-aid

The Edward Byrne Memorial State and Local Law Enforcement Assistance Grant program (identified as the Byrne program hereafter) was first established by the Anti-Drug Abuse Act of 1986 and was then reauthorized by the Anti-Drug Abuse Act of 1988. It consists of formula and discretionary grants. Both sets of grants are awarded annually by the Bureau of Justice Assistance (BJA) to states and localities for the purpose of drug and violent crime control. The legislation authorizes 80 percent of the funds for formula grants to states[4], which are given wide latitude to establish procedures and priorities for a redistribution of funds to local and state agencies. The balance of the funds are

[4] Since the inception of the program Congress has actually allocated 90% of appropriations to the formula program.

authorized for discretionary grants awarded directly to operational agencies at the federal, state, and local levels.

In creating the Byrne program, the Congress chose a structure from a menu of possible administrative arrangements. The variety of federal grant mechanisms can be broadly categorized into three general types: categorical awards, block grants, and revenue sharing. These categories lack precise definitions, and are not mutually exclusive; rather, they form a spectrum of funding mechanisms, bracketed on one side by purely categorical awards and the other by general revenue sharing. Block grants, not a sharply defined category, are in the middle (Advisory Commission on Intergovernmental relations [ACIR], 1978).

The categorical grant process involves a state, county, or city governmental unit in an application process, often competitive, that responds to a narrowly drawn solicitation by an administering federal agency. The amount of money awarded to an applicant is not necessarily small, but in fact it often is, particularly when compared to the level of other federal, state or local funds expended in the program area that includes the categorical grant topic. There is no presumption that the applicant, or indeed any agency in the applicant's state, is entitled to funding. On example of the categorical structure is the discretionary component of the Byrne block grants. Grants awards are determined by the BJA, usually after an open competition, and although applications are entertained over a wide substantive area, the BJA gives preference to proposals that reflect quite specific national priorities or initiatives. No agency or group is entitled to an award.

General revenue sharing is the antithesis of the categorical grant program (Oates 1975). Funds are provided to state and local governments on an entitlement basis, with relatively few strings attached and with no application being necessary. Population, tax base, and need have all been used as criteria for determining the amount given to any particular state.

Block grants such as the Byrne formula grant[5] occupy the middle ground between categorical funding and revenue sharing. Until 1994, they were the primary mode of federal criminal justice assistance. The Violent Crime Control and Law Enforcement Act of 1994, however, modified the approach by establishing in Title I of the Act, a program of direct federal assistance to local governments that are willing to initiate or expand community policing efforts.

The Advisory Committee on Intergovernmental Relations (ACIR) has identified a set of common characteristics that distinguish block grants from other types of inter-governmental funding programs (ACIR 1977a):

- Federal aid is authorized for a wide range of activities within a broadly defined functional area.
- Recipients have substantial discretion in identifying problems and designing programs and allocating resources to deal with them.
- Administrative, fiscal reporting, planning, and other federally imposed requirements are kept to a minimum amount necessary to ensure that national goals are being accomplished.
- Federal aid is distributed on the basis of a statutory formula, which results in narrowing federal administrators' discretion and provides a sense of fiscal certainty to recipients.
- Eligibility provisions are statutorily specified and favor general purpose governmental units as recipients and elected officials and administrative generalists as decision makers.

Until the late 1960s, virtually all aid programs were categorical (Wright 1968). However, opposition to the categorical approach developed for a number of reasons. Foremost among these was the fact that the federal government determined the categories that would be funded. To many, this made no sense, since state and local officials are closer to the problems they must deal with than their federal counterparts, and so would

---

[5] The terms "block" and "formula" refer to the same type of aid -- an allotment of funds for a general area (e.g. criminal justice) that is a lump sum that may be spent by recipients in accordance with general guidelines established by statute or administrative order. The difference between them is that the formula grant allocates awards to recipients (e.g. states) on the basis of a predetermined formula (such as proportion of U.S. population), whereas a pure block grant need not necessarily do so.

presumably be better versed in their jurisdiction's problems. Furthermore, application and reporting requirements were considered as overly stringent and inflexible (Commission on the Organization of the Federal Branch of the Government [the "Hoover Commission"] 1949).

These problems combined to produce a call for a change to a different funding approach. For a time, revenue sharing seemed to be a possible alternative, but, by its nature, it lacked the very elements that are most desired for funding programs meant to address a particular area of legislative concern--namely, a specific target and a way of seeing that state and local governments focus their attention on it.[6] Block grants, sitting between the categorical grant on one hand and revenue sharing on the other, then came to be seen as the most viable funding vehicle. The characteristics of block grants led proponents to believe that the approach would allow the achievement of federal goals while avoiding both the pitfalls endemic to the categorical grant process and the lack of federal influence inherent in revenue sharing.

The Congressional adoption of the block grant approach began with the Partnership for Health Act of 1966 and continued with the Omnibus Crime Control and Safe Streets Act of 1968 (hereinafter the Safe Streets Act). The latter was the first federal block grant-in-aid to the states for crime control purposes. Three additional block grants were enacted in the early and mid-1970s (GAO 1982b).

In 1981, the Congress embraced the block grant concept wholeheartedly in the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Pub. L. 97-35). This act left the older block grants in place while consolidating more than 80 categorical grants into nine new block grants (see Table 1). At the time, this was widely seen as a bold redirection of federal policy, and a victory for the proponents of a "new federalism" within the Reagan Administration (Conlan 1984). Nonetheless, some dissenting voices were heard

---

[6]Revenue sharing began in 1972, and consisted of several billion dollars given annually to more than 37,000 state and local governmental units. Appropriations declined drastically during the early 1980s and by the middle of the decade, the program was to all intents and purposes defunct. See Table 2 below.

(Lesparre and Bloom 1981), and subsequent Reagan administration proposals to consolidate even more existing categorical programs into block grants were largely unsuccessful (Conlan 1984).

Table 1: Federal Block Grant Programs, 1966-1981

Prior to 1981	Budget Reconciliation Act of 1981
Partnership for Health Act (1966)	Social Services
Safe Streets Act (1968)	Low-Income Home Energy Assistance
Comprehensive Employment and Training (1973)	Alcohol, Drug Abuse, and Mental Health Services (ADMS)
Community Development Block Grants (CDBG) (1974)	Community Services and Maternal and Child Health Services
Title XX Social Services (1975)	Preventive Health and Health Services
	Primary Care, Small Cities Program, and Education — Chapter II

By 1989, there were almost 150 formula grants, containing more than 1000 separate programs, defined as "allocations of money to States or their subdivisions in accordance with a distribution formula prescribed by law or administrative regulation, for activities of a continuing nature not confined to a specific project" (Executive Office of the President 1989).

Total grants rose steadily throughout the 1970s and 1980s. In 1968, the year the Safe Streets Act was enacted, federal grants-in-aid totaled $15 billion; in 1989, they totaled $118 billion (unadjusted dollars).

Federal grants are also an important revenue source for state and local governments. In fiscal year 1986-87, nearly 15 percent of all state and local government expenditures--$114 billion out of a total of $777 billion--came from federal grants-in-aid (Bureau of the Census 1990).[7]

---

[7]Three primary data sources provide documentation on the federal grants system as a whole. First, the Office of Management and Budget produces an overview of the grant-in-aid system (Office of Management and Budget 1990). The Bureau of the Census also conducts a Census of Government Finances, which includes an accounting of transfer payments (Bureau of the Census 1990). Finally, the National Income and Product Accounts (NIPA) system, managed by the Bureau of Economic Analysis, provides data on federal outlays in various grant categories, both retrospectively through 1982 (Bureau of Economic Analysis 1986) and on an ongoing annual basis since then (Bureau of Economic Analysis 1986-1990). These three sources do not collect identical information; therefore it is necessary to employ all three. The three sources are not strictly compatible, however. Cases where data points overlap makes it clear that data from these sources are not identical.

In sum, the block grant concept has dominated the distribution of federal funds to states and local governments since the early 1980s. Its appeal is that it represents a middle ground funding mechanism, bridging the gap between the conflicting political forces that either favor total federal control over the money it allocates for aid or believe that the federal government should step aside and leave law enforcement to local governments where it properly belongs. However, the "block grant" concept is very broad; and block grants are not all the same. They vary in structure, administrative processes, programmatic approaches, program flexibility and accountability, and the nature and extent of federal control.[8]

In particular, the Byrne block grant has important similarities and differences with other block grant programs. To establish an appropriate context for thinking about the Byrne program and its place in the panoply of federal aid legislation, we turn now to an historical overview of federal criminal justice assistance from 1966 up to and including the first Anti-Drug Abuse Act of 1966.

---

[8]The literature on the block grant mechanism is considerable. The most widely cited of these is ACIR's 1977 *Block Grants: A Comparative Analysis*. Numerous other ACIR reports also discuss various aspects of the block grant (ACIR 1975, 1976a, 1976b, 1977c, 1977d, 1977e, 1978, 1979, 1980; Wright and Hebert 1980). The General Accounting Office produced a series of reports on the 1981 Budget Reconciliation block grants, which included both individual analyses and assessments of the grants in general (GAO 1981b, 1983, 1984d, 1985a, 1985b). ACIR, GAO, and other work is drawn on heavily in the secondary literature on particular programs, intergovernmental transfers, and fiscal federalism (Madden 1977; Barfield 1981; Bahl 1984; Bennett and Perez 1986; Hudzik 1984; Feeley and Sarat 1981). While the emphasis in this work is the politics of creating block grant programs, the literature also discusses the complicated set of competing political interests that is associated with block grant implementation (Nice 1987).

2 LEGISLATION PRIOR TO 1988

The administrative structure of the Byrne program cannot be understood without recognizing that the program is but one in a series of federal criminal justice aid initiatives that the Congress has created in the last thirty years. This section reviews these programs from their beginnings in the late 1960's through the passage of the Anti-Drug Abuse Act of 1986, the legislation which established the immediate predecessor of the Byrne grant program. A comprehensive history of this topic — involving billions of dollars in federal aid, thousands of funded projects, and numerous statutory amendments — would take several volumes. Accordingly, this document analyzes the subject from the point of view of key legislative and executive branch policy makers with responsibility for federal aid to state and local law enforcement agencies. The analysis identifies the key policy issues and problems that were confronted, the options that were considered, and the proposals that were endorsed to solve these problems. It then provides a thumbnail sketch of the major administrative provisions that governed each of the major criminal justice assistance initiatives of the period.

2.1 The First Federal Assistance

Although it is generally believed that Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (the Safe Streets Act") established the first program providing direct federal aid to state and local law enforcement agencies, the history of federal aid began several years earlier, with the passage of the Law Enforcement Assistance Act of 1965.[9] Under this legislation, the Congress appropriated $7 million each year for a period of three years. These funds were administered by a small office within the Department of Justice and were targeted mainly for criminal justice programs in Washington D.C.

---

[9]See generally, Justice Assistance Act of 1981, H. Rept. 97-293, 97th Cong., 1st Sess., pp. 2-3.

Given the limited funding and narrow purposes of this program, its impact on state and local criminal justice systems was minor.

The year 1965 is notable in the history of federal law enforcement assistance, not for passage of the Law Enforcement Assistance Act, but rather for President Johnson's appointment of the Presidential Commission on Law Enforcement and the Administration of Justice. In announcing the commission, President Johnson stated, "[s]o let the nation know today that we have taken a pledge not only to reduce crime but to banish it."[10] Some have argued that President Johnson's rhetorical excess in pledging to eliminate crime foreshadowed the subsequent failure of the Law Enforcement Assistance Administration.[11]

The President's Commission issued its final report in 1967. Included in the comprehensive package of anti-crime initiatives was a proposal to provide direct federal aid to state and local criminal justice programs. Following the assassinations of Robert F. Kennedy and Martin Luther King, Jr., the Congress passed the Omnibus Crime Control and Safe Streets Act of 1968. The grant programs established by this act, to be administered by the newly-created Law Enforcement Assistance Administration (LEAA) within the Department of Justice, remained the centerpiece of federal criminal justice assistance for more than a decade.

2.2 The Safe Streets Act of 1968

Goals and Objectives

The preamble to the Safe Streets Act of 1968 declared that its purpose was to reduce the amount of violent crime in America and to improve state and local criminal justice systems. This simple statement represented a dramatic shift in national crime

---

[10]Public Papers of the President, Lyndon Johnson 1965, U.S. Government Printing Office (1966).

[11]H.Rept. 97-293, p.3

policy, which until 1965 had held the view that criminal justice was strictly a state and local concern.[12]

The act also enumerates several specific objectives:

- Improve the effectiveness of state/local law enforcement agencies through grants;
- Develop innovative programs;
- Coordinate federal, state, and local activities;
- Upgrade law enforcement capabilities and technology;
- Encourage the adoption of comprehensive statewide criminal justice plans;
- Provide research and development for reducing crime and improving law enforcement;
- Control/eradicate organized crime;
- Prevent and control riots.

These relatively straightforward objectives provided wide flexibility for states and local governments. For the most part, these objectives are sufficiently broad that states could easily fit almost any program within one of them. Except for controlling riots and organized crime, no particular use of funding is specified.

Administrative Process

The initial text of the act provided little by way of administrative guidance to states. However, the LEAA was granted wide discretion on promulgating rules and regulations, with the important exception that the LEAA was not permitted to supervise local law enforcement agencies or police. Originally, the LEAA was administered by a "troika" of administrators, but this soon proved to be unworkable and was reduced to a single administrator.

Programmatic Structure

To accomplish these goals, the Safe Streets Act created a very simple system consisting of three primary components. First, states were required to establish State

---

[12]Malcolm Feely and Austin Sarat, *The Policy Dilemma: Federal Crime Policy and the Law Enforcement Assistance Administration* (Minneapolis: University of Minnesota Press, 1980).

Planning Agencies (SPAs) for the purpose of administering planning grants. States were required to "pass through" a minimum of 40 percent of the planning grants to local law enforcement/criminal justice agencies, but no state or local match of the funds was required.

Table 2
Authorized Program Areas
Safe Streets Act of 1968

1	Public protection
2	Recruit and train personnel
3	School education to prevent crime and encourage cooperation with law enforcement officials
4	Recruit and train community services personnel
5	Organized crime control
6	Riot control

Second, Title I of the act authorized the LEAA to distribute Law Enforcement Grants (that is, the basic block grant program) to the states. Grants could be used for any of the purposes shown in Table 2. A minimum of 75 percent of law enforcement grants was required to be allocated to local communities. The act specified no maximum duration for programs that received grant support.

Third, the act established a separate Training and Education Research and Development and Special Grants Program. This authorized, but did not require, states to develop research, demonstration, and special projects; conduct studies or behavioral research; and collect and disseminate statistics. States also were encouraged to create Statistical Analysis Centers (SACs) to provide statistical support to the SPAs.

Amendments and Criticisms of LEAA Programs, 1968-1978

The initial authorization level for the LEAA was $100 million in fiscal year 1968, with actual appropriations of $63 million. As crime became an increasingly potent issue in the American politics of the early seventies, the LEAA became a flagship of the federal anti-crime effort, and its budget increased dramatically.[13] The authorization level reached a peak of $1.75 billion in fiscal year 1973; actual appropriations reached a high of $895 million in fiscal year 1975. From 1968 through 1981, the LEAA distributed more than $8 billion in direct federal aid to state and local criminal justice programs.

---

[13]Victor Navasky and Darrell Paster, background paper to *Law Enforcement: The Federal Role* (New York: McGraw Hill Book Company, 1976).

The LEAA underwent numerous statutory changes throughout the 1970s. In 1970, the Congress extended the LEAA authorization in the Crime Control Act of 1970, which added a new Part E to the basic legislation, earmarking approximately 20 percent of the LEAA funds for block and discretionary grants for corrections programs. The Crime Control Act of 1973 extended the LEAA's authorization for another three years and added numerous administrative requirements to the grant programs. The following year, the Congress passed the Juvenile Justice and Delinquency Prevention Act. This act created new block and discretionary grant programs devoted exclusively to juvenile justice issues, which were to be administered by the LEAA. In 1976, the Congress extended the LEAA's authorization for another three years, again adding new administrative requirements at the federal, state, and local levels.

Despite steadily increasing appropriations for the LEAA from 1968 through 1975, the national violent crime rate continued to rise. Frustrated over the failure to control violent crime despite the allocation of billions of dollars in federal aid to state and local law enforcement, members of the Congress, the Administration, and state and local officials focused a great deal of attention on the LEAA. The Senate Subcommittee on Criminal Laws and Procedures, for example, held eight days of hearings in 1975 and 1976 to review the LEAA's operations and to consider proposals to overhaul the LEAA's administrative and grant-making functions.[14] The General Accounting Office (GAO), the Advisory Commission on Intergovernmental Relations (ACIR), and numerous other groups also conducted reviews and evaluations of the LEAA's operations and effectiveness.[15]

---

[14]Hearings: Amendments to Title I.

[15]See, *e.g., Safe Streets Reconsidered: The Block Grant Experience 1968-1975,* Advisory Commission on Intergovernmental Relations (1976); "Federal Crime Control Assistance: A Discussion of the Program and Possible Alternatives," General Accounting Office, Report GGD-78-28 (Jan. 27, 1978); "Overview of Activities Funded by the Law Enforcement Assistance Administration," General Accounting Office, Report GGD-75-75 (Aug. 19, 1975); *Law Enforcement: The Federal Role,* Twentieth Century Fund, S. White and S. Krislov, eds. (1976); John Hudzik, *Federal Aid to Criminal Justice: Rhetoric, Results, Lessons* (Washington, D.C.: National Criminal Justice Association, 1984).

These studies painted a mixed picture of the LEAA's record. There were numerous objective indications that the LEAA had significantly improved state and local criminal justice systems. An ACIR study, for example, concluded that more than 83 percent of the projects funded initially by the LEAA were subsequently "picked-up" and funded by state and local governments. Congressional witnesses also cited many other examples of the LEAA successes, including:

- Establishing the Commission on Accreditation of Law Enforcement Agencies (CALEA), which was credited with increasing the professionalism of state and local law enforcement agencies;
- Requiring — for the first time — that state and local governments treat criminal justice as a single system with linked components, and adopt a planning process that integrated investigation, apprehension, prosecution, adjudication, and corrections;
- Identifying and demonstrating innovative new approaches to fighting violent crime, including "sting" operations, "career" criminal apprehension programs, developing and integrating manpower-saving technology into police operations (such as use of the two-way radios); and
- Establishing the National Crime Information Center (NCIC), the first national information system design to assist federal, state and local law enforcement agencies in tracking fugitives and to provide accurate criminal history information

These successes, however, were largely overshadowed by repeated criticisms of the LEAA. These criticisms came from virtually every quarter: members of the Congress, frustrated that crime rates continued to increase even after the expenditure of more than $4 billion;[16] state and local officials, disturbed by the need to comply with costly and burdensome administrative mandates; LEAA officials, hampered in reform efforts by statutory restrictions; and members of the public, angered over news stories of

---

[16]Richard S. Allinson, "LEAA's Impact on Criminal Justice: A Review of the Literature." *Criminal Justice Abstracts.* December 1979, pp. 608-648.

federal law enforcement funds being used to buy armored personnel carriers and other questionable equipment.

The criticisms can be broken down into five major categories:

- Unnecessary "red-tape" and administrative requirements imposed on state and local agencies;
- The "earmarking" of federal funds for particular purposes and programs favored by the federal government;
- Excessive use of federal funds for state and local administrative and planning functions;
- Inadequate evaluation of projects funded by the LEAA;
- Unrealistic expectations as to the LEAA's ability to reduce violent crime in America.

Many critics complained that unnecessary "red-tape" and burdensome administrative requirements wasted scarce law enforcement funds and hindered the development of new and innovative criminal justice programs. For example, critics cited the fact that the LEAA issued 1,200 pages of guidelines to implement a 23-page law.[17] Federal statutes and regulations imposed detailed requirements on the format of the comprehensive state planning documents that states were required to file every year prior to receiving federal funds. Federal rules also mandated the formation of a state planning agency in every state and the creation of a supervisory board to assist the state planning agency. Even the composition of the supervisory board was dictated by federal law.

Others objected to the restriction in section 301(d) that no more than 30 percent of any federal grant could be spent on salaries and compensation of criminal justice personnel. Not only did the restriction hinder the ability of some state and local agencies to develop innovative programs, it also is an example of one of the inconsistent statutory mandates imposed by the LEAA. The 301(d) restriction reflected two congressional concerns: that law enforcement responsibility not be shifted from state and local governments to the federal government, and that federal funds be used to supplement,

---

[17]LEAA Amendment Hearings, p.404 (written testimony of Richard W. Velde, Administrator, Law Enforcement Assistance Administration).

rather than to supplant, state and local funding. However, the Congress had previously limited spending on construction and hardware acquisitions in the wake of news reports that federal funds were use to buy tanks and other unnecessary hardware. These restrictions combined to dramatically restrict the types of programs that the LEAA could fund. Significantly, many of the mandates and administrative requirements on state and local agencies were imposed by other federal statutes over which the LEAA had little or no control, such as the National Environmental Policy Act, the Clean Air Act, the National Historic Preservation Act, and various civil rights statues.[18]

The second area of concern centered around the Congressional practice of "earmarking" funds for particular programs. This practice was the Congress's response to its belief that the SPAs were neglecting certain areas of funding. At various times throughout the 1970's, amendments were enacted providing (for example) the courts, juvenile delinquency programs, and corrections either with a minimum share of SPA formula funds, with direct control over funds that bypassed the SPAs, or both. Such set-asides, which dramatically restricted the discretion of the LEAA and the SPAs, were widely derided as a "creeping categorization" of the block grant program.[19] And the failure to articulate specific priorities made it difficult for the LEAA to turn down projects that were only tangentially related to the criminal justice system. In effect, virtually any social program could find a receptive ear somewhere within the LEAA.

The third major area of criticism centered upon the amount of federal funds expended for state and local administrative functions. Responding to the detailed findings of the President's Commission on Law Enforcement and Administration of Justice that there was little coordination between the components of state and local criminal justice systems, the Safe Streets Act mandated that each state establish a state planning agency (SPA). The SPAs were required to develop a comprehensive, statewide annual plan that described how each state was to improve its criminal justice system and

---

[18] *Id.*

[19] ACIR, *Block Grants: A Comparative Analysis.* 1977.

how federal funds would be used to implement the plan. The Safe Streets Act also earmarked a significant portion of federal funds for the state planning process. In fact, approximately $60 million in federal funds were spent each year on state planning functions mandated by federal law[20] — approximately $400 million from 1968 through the late 1970's.[21]

The lack of effective evaluation procedures was the fourth area of concern. According to one report, the LEAA could programmatically account for only 39.9 percent of the block grant funds expended in 1974.[22] Moreover, the LEAA collected little objective data on the more than 80,000 projects that it funded from 1968-75. As a result, there was no way of determining whether the LEAA-funded projects were in fact working or what impact they had on state and local criminal justice systems.

The final area of criticism focused on the lack of consistent and realistic goals and priorities for the LEAA program. Many believed the goal of reducing violent crime in America through federal aid to states was unrealistic, particularly given the fact that at the zenith of the LEAA's appropriations, federal funding accounted for less than five percent of expenditures on state and local criminal justice activities.[23]

2.3 Major Reform: The Justice System Improvement Act of 1979

The Congress responded to these concerns, and to the fact that the Carter Administration wanted to eliminate the program altogether, with the passage of the Justice System Improvement Act (JSIA) of 1979. This act represented a complete

---

[20] *Justice Assistance Act of 1981*, Committee on the Judiciary, U.S. House of Representatives, 97th Cong., 1st Sess. p.3.

[21] *Justice Assistance Act of 1983*, S. Rept. 98-220, Committee on the Judiciary, United States Senate, 98th Cong., 1st Sess. p.5.

[22] LEAA Amendment Hearings, p. 5 (written statement of Sen. Kennedy, citing unidentified 1974 report).

[23] Robert F. Diegelman. "Federal Financial Assistance for Crime Control: Lessons of the LEAA Experience." *Journal of Criminal Law and Criminology.* 73:3, 1982, pp. 994-1011.

overhaul of the federal government's state and local law enforcement assistance program. The overhaul focused on major organizational changes; while the act greatly expanded the eligible program list, the core substantive focus of the Safe Streets Act remained relatively unchanged.

The JSIA made numerous other changes in the administration of state and local assistance funds. Many of these amendments were aimed at reducing red-tape and expediting the award of federal funds to state and local agencies. Unlike its predecessor, this act was extremely detailed. For example, the funds distribution formula for the block grant was quite complex and explicitly delineated in the statute. Similarly, the rules for submitting and reviewing applications were highly specific.

Goals and Objectives

In the Declaration and Purpose section of the legislation, the Congress noted the need for better coordination between law enforcement agencies at all governmental levels, the threat posed by juvenile delinquency, the need for research, and the need for an ongoing federal role in supporting state and local crime-fighting efforts. The Congress also set forth several explicit policy goals, including:

- Developing new programs to strengthen and enhance the effectiveness of state and local law enforcement agencies;
- Supporting state and local priorities and programs to combat crime;
- Reducing court congestion and delay;
- Improving and modernizing the correctional system;
- Undertaking innovative projects;
- Encouraging the development of basic and applied research and the collection and analysis of statistical information;
- Supporting manpower development and training efforts.

Most important, the JSIA abandoned the unrealistic LEAA goal of reducing crime in America and focused instead on improving specific programs within state and local criminal justice systems. Accordingly, the act limited funds:

> to programs of proven effectiveness, programs which have a record of proven success, or programs which offer a high probability of improving the functioning of the criminal justice system.

The act specified 23 programs that met these criteria (see Table 2 below).

Administrative Process

One of the most significant changes of the Justice Assistance Improvement Act of 1979 was its reorganization of the LEAA within the Department of Justice. The statute restructured the LEAA into four separate agencies: a new, streamlined the LEAA; an independent National Institute of Justice (NIJ); an independent Bureau of Justice Statistics (BJS); and a new Office of Justice Assistance, Research, and Statistics (OJARS), which was to play a coordinating role among the agencies and to provide direct staff and administrative support to these agencies. According to the conference report, "policy setting for the LEAA, the NIJ, and the BJS will be the responsibility of the appropriate Director or Administrator of the program in question. The coordination authority of the OJARS will include authority to resolve differences between the LEAA, the NIJ, and the BJS in carrying out their respective functions."[24]

The act also incorporated an amendment offered by Senator Biden that required the LEAA to prepare a comprehensive evaluation report within three years to determine whether the programs funded by the LEAA were in fact successful in improving state and local criminal justice system. The conference report explained:

> The intent of the conference is that the LEAA itself will be responsible for an independent, data-oriented analysis and evaluation of the effects [in 18 specific areas] of LEAA funded programs. . . . One, the federal funding has dropped to the point where it represents only about 2 percent of total State and local criminal justice expenditures. Two, eighty percent of these funds are formula grant funds, over which LEAA has little control in the selection of projects to be funded. . . . Three, improving the criminal justice system — which is the principle objective of this legislation — does not necessarily result in statistical improvements in crime control. Nonetheless, the conferees believe that a realistic assessment of what can be expected of the LEAA program, and detailed evaluation over a number of years in achieving those objectives, is long overdue.[25]

---

[24] *Justice System Improvement Act of 1979*, H.Conf. Rept. 96-655, 96th Cong., 1st Sess., p.77.

[25] *Id.* at 78.

Finally, the act tightened states' accountability by requiring annual performance reports to determine program impact and cost-effectiveness.

Programmatic Structure

The JSIA continued the fundamental block grant approach from the Safe Streets Act of 1968, although it greatly expanded the eligible program list from the 6 LEAA programs. Called "formula grants," these grants represented 80 percent of the federal funding, and provided enormous flexibility to state and local entities.

The Congress listed 23 specific programs, shown in Table 3, primarily aimed at using federal funds to deter serious and violent crime. These programs provided a broad range of opportunities for state programs, including: court and prison reforms; coordinating criminal justice system components; developing research, statistical, and evaluation capabilities; developing community and neighborhood programs; and training criminal justice personnel.

For the first fiscal year following enactment, no state match was required. A 10 percent state match was required for each subsequent fiscal year. States were expected to assume full funding "after a reasonable period of Federal assistance." These rules were intended to ensure that states had a strong financial stake in the success of the programs funded with federal dollars. Significantly, the JAIA retained an authorization for the states to use up to $250,000, plus 7.5 percent of their federal block grants, for administrative and planning purposes. Grant funds could not be used for the purchase of equipment or hardware, salaries for employees, construction projects, or programs that have been evaluated as having a low probability of success.

Instead of SPAs, states were required to establish a state criminal justice council(CJC) to determine criminal justice priorities, coordinate statewide activities, and prepare grant applications. Although not structurally different from the SPAs, the CJCs appear to have been granted wider functional responsibilities to direct statewide criminal justice activities.

Table 3
Authorized Program Areas
Justice System Improvement Act of 1979

1	Community and neighborhood programs
2	Strengthening law enforcement agencies
3	Improving police utilization of community resources through support of joint police-community activities
4	Disrupting illicit commerce in stolen goods and property
5	Combating arson
6	Combating white collar/organized crime
7	Reducing time between arrest, indictment, and time of trial
8	Implementing court reforms
9	Develop and use alternatives to prosecuting selected offenders
10	Develop and use alternatives to pretrial detention (when no danger)
11	Increase conviction rates against habitual, nonstatus offenders
12	Develop programs to assist witnesses/victims/jurors
13	Provide competent defense counsel for indigent criminal defendants
14	Programs to identify and meet the needs of drug dependent offenders
15	Develop and use alternatives to maximum-security confinement for convicts posing no threat to public safety
16	Reduce inmate violence rates
17	Improve detention and confinement conditions in juvenile and adult corrections institutions
18	Train criminal justice personnel in specified programs
19	Revise and recodify criminal statutes, rules, and procedures; revise same for state and local criminal justice agencies
20	Coordinate criminal justice system components/establish information systems/train criminal justice personnel
21	Develop statistical and evaluative systems to measure above programs
22	Encourage demonstration projects for prison industry programs
23	Any other innovative program of proven effectiveness, record of success, or high probability of improving criminal justice system

In addition to the formula grants, a second program — National Priority Grants — was established with 10 percent of total federal criminal justice funding. Programs were not to exceed three years, and were intended as national demonstrations of programs of proven effectiveness. A 50 percent state match was required. A third program, the Discretionary Grants, were allotted 10 percent of total funds. This appears to have been a catch-all for any program the LEAA Administrator wanted to fund.

The Termination of the Law Enforcement Assistance Administration

Although many observers believed that the new focus and more efficient structure in the LEAA would deliver on the goal of improving state and local criminal justice systems, the JSIA reforms were a classic case of too little, too late. The streamlined LEAA simply could not withstand bipartisan efforts to cut federal domestic spending. Three months after the JSIA was signed into law, President Carter proposed to phase out the LEAA by requesting no fiscal year 1981 appropriations for state and local law enforcement assistance. The LEAA was officially terminated on April 25, 1982.[26]

[26] S. Rept. 98-220, p. 3.

2.4 State and Local Assistance Reconsidered: 1981-1982

By the beginning of the 97th Congress in 1981, key members of the Congress "recognized that the precipitous move to end federal funding for state and local criminal justice program was penny-wise and pound-foolish."[27] In the Senate, a Democratic Task Force on Violent Crime, headed by Senator Joseph R. Biden, Jr. (Del.), introduced S.1455, the National Security and Violent Crime Control Act in the spring of 1981. This package — in addition to sweeping reforms of the federal criminal justice system — would have established a new, highly-targeted state and local assistance program in the U.S. Department of Justice. According to the bill's sponsors, the new assistance program "builds on the lessons learned from the LEAA experience" by focusing federal assistance on 12 specific programs that had a high probability of success at the state and local level.[28] Many of these provisions were later incorporated into a bipartisan bill, S.2411, the Justice Assistance Act of 1982, introduced by Senators Specter, Biden and other members of the Senate Judiciary Committee.

In the House, Representative William J. Hughes (D-NJ) introduced similar legislation, H.R.3359 (later H.R.4481), the Justice Assistance Act of 1981. This bill also would have limited federal funds to programs specifically identified in the act. Eighty percent of the funds were earmarked for allocation to the states based upon a population formula. The remaining 20 percent were reserved for federal discretionary grants, with a strong emphasis on "demonstration" projects that might be replicated by state or local agencies. Significantly, the bill contained a substantial state matching requirement: states generally were required to match federal funds on a 50-50 basis; the state match was only 25 percent for certified "innovative" programs (the act, however, limited state spending on "innovative" programs to 10 percent of the federal grants).

---

[27]H. Rept. 97-293, p. 3.

[28]Press release, Office of Senator Joseph R. Biden, Jr., June, 18, 1981.

Action to resurrect federal law enforcement assistance to the states was not limited to Congress. In early 1981, the Attorney General appointed a Task Force on Violent Crime. The task force released its report August 1981. Among its major recommendations were proposals to create a federal block grant program for aid to state and local law enforcement agencies.[29] The task force endorsed many of the same provisions contained in the legislation introduced in the House and Senate, including restricting federal aid to specific, proven programs and requiring substantial state matching funds. In addition, the Task Force recommended limiting federal funds for any specific project to four years, a proposal later endorsed in both the House and Senate law enforcement assistance bills.

At the end of the 97th Congress, the House and Senate passed H.R.3963, a comprehensive package of anti-crime initiatives that included a title devoted to state and local law enforcement assistance modeled after S.2411 and H.R.4481. However, President Reagan exercised a "pocket" veto on the crime bill over objections unrelated to the state and local law enforcement program.[30] In 1982, the Congress did create the State Justice Institute, which provided federal funds directly to court systems.

2.5 Lessons Learned: The Comprehensive Crime Control Act of 1984

Despite bipartisan support in both houses of the Congress for a renewed federal commitment to state and local law enforcement — and the endorsement of such a program by the Attorney General's Task Force on Violent Crime — the Reagan Administration initially opposed direct federal grants to state and local law enforcement. The administration's opposition was based not only on the need to cut federal domestic spending, but also on the administration's notion of "federalism." According to this philosophy, violent crime was the responsibility of state and local governments and the

---

[29] *Attorney General's Task Force on Violent Crime*, Final Report, chapter 3 (1981).

[30] President's Memorandum of Disapproval of H.R3963, 19 Weekly Comp. Pres. Doc.47 (Jan. 14, 1983); 129 Cong. Rec. H1245 (daily ed. Jan. 25, 1983).

national government should be limited to providing research, statistics, and other indirect support. However, there was strong sentiment in the Congress in favor of providing some type of federal assistance to the states. Protracted negotiations between the Administration and the Congress led to the passage of the Comprehensive Crime Control Act (CCCA) of 1984.

Goals and Objectives

The CCCA reflected an agreement between the Congress and the Administration that any new program of criminal justice assistance should reflect the lessons of the LEAA. The conference report for Senate bill S.53, a predecessor bill for the act, reflects a consensus view of these lessons:

> The history of LEAA provides important lessons for use in the design of a new effort to attack the problem of crime. It demonstrates that a program whose priorities were unclear and constantly shifting resulted in confusion and waste. It also indicates that overly detailed statutory and regulatory specification produces bureaucratic red tape, which inhibits progress toward the goals of the program.
>
> The LEAA experience also demonstrates that the concept of federal seed money for carefully designed projects can have a significant impact on criminal justice. Unlike the former LEAA program, which attempted to "improve the criminal justice systems" at the State and local levels, S.53 focuses on those specific areas where modest resources can have a significant impact.[31]

In line with this view, the CCCA limits eligibility to a specific list of anti-crime programs that had a history or high probability of success or that were particularly innovative. Funding was to be focused on "programs which offer a high probability of improving...the criminal justice system, with special emphasis on violent crime and serious offenders."

Other objectives of the act included:

- Reorganize the justice assistance program
- Reduce statutory and regulatory specifications to eliminate red tape
- Eliminate burdensome comprehensive planning requirements, and substitute a simplified application process

---

[31]Committee report on S. 51, at 31.

Administrative Process

The CCCA again reorganized the criminal justice assistance structure within the Justice Department. The act rejects the Administration's proposal to create a single agency within the Justice Department, headed by a new Assistant Attorney General, to manage research, statistical, and grant-making activities. Instead, the act created a roster of agencies involved in this area included the Bureau of Justice Assistance (BJA), the National Institute of Justice (NIJ), the Bureau of Justice Statistics (BJS), the Office of Juvenile Justice and Delinquency Prevention (OJJDP), and the Office for Victims of Crime (OVC). Moreover, despite strong opposition from the administration, the directors of the BJA, the NIJ, and the BJS were given final grant making authority. At the same time, the Congress did accept the administration's proposal to create a new position of Assistant Attorney General, Office of Justice Programs, to coordinate the activities of the various agencies.

This political compromise between the Administration's desire for independence and the Congressional desire for control echoed the arrangement established by the Justice Assistance Act of 1979, which, in its reorganization of the LEAA, set up the Office of Justice Assistance, Research and Statistics (OJARS) with responsibilities and powers very similar to the ones that the Office of Justice Programs (OJP) was given in 1984 (and still has to this day).

Programmatic Structure

The list of authorized program areas for which CCCA funds could be used reflect the view that federal funds should be limited to programs of proven effectiveness and to innovative strategies. The precise list of program areas, shown in Table 4, reflects a compromise between the Administration and the Congress.

In negotiations over bill S.53, the Reagan Justice Department had argued for a narrower program focus than that proposed by the Congress, and against including grants for "speedy trials, sentencing reform, coordination of justice system activities, and white collar crime" in the types of programs eligible for federal funds. Instead, the administration sought to limit federal aid to programs for "for violent crime, repeat

offenders, victim/witness assistance, and crime prevention."[32] The final compromise listed 18 specific program areas for which state and local agencies could use federal funds — more than the four contained in the administration's proposal — but retained a focus on specific, proven programs.

[32] *Id.* at 31.

Table 4
Authorized Program Areas
Comprehensive Crime Control Act of 1984

1	Community/neighborhood programs
2	Disrupt illicit commerce in stolen goods
3	Combat arson
4	White collar/organized crime control
5	[a]-Serious repeat offenders; [b]-Improve court system management
6	Assistance to jurors/witnesses/victims
7	Alternatives to pretrial detention
8	Assist drug dependent offenders
9	Alleviate jail/prison overcrowding
10	Provide training/technical assistance to criminal justice personnel
11	Improve inmate skills
12	Develop operations and information management skills
13	Develop innovative and discretionary programs
14	Identify critical crime problems (such as drug trafficking)
15	Juvenile crime problems
16	Crime against the elderly
17	Provide training/technical assistance to rural law enforcement
18	Improve state and local operations through crime analysis techniques

The 1984 act also consolidated the 2 smaller 1979 grant programs into a Discretionary Grant Program for 20 percent of total funding. Programs could be funded for three years with no state match, and an additional two year extension at a 50 percent state match. States could allocate the money for education/training for criminal justice personnel, technical assistance to state/local governments, national/multi-state projects included under the block grant list, and demonstration programs likely to be successful in more than one jurisdiction. Priorities were to be set by the BJA Director.

Many of the provisions in the 1984 CCCA can be traced to the earlier reforms adopted in the 1979 JSIA. The 1984 act endorsed the concept of limited federal aid to programs that were proven successful or had a high probability of success. States were required to match federal funds (although the 50-50 match was significantly higher than the 90-10 federal-state match in the 1979 legislation). However, the 1984 act went beyond its 1979 counterpart in several important respects.

For example, the 1984 act's provisions prohibited the expenditure of federal funds for state and local administrative expenses. Moreover, the act did not require the establishment of an SPA or CJC; instead, the governor of each state was authorized to appoint an existing state official as the person responsible for administering and distributing federal law enforcement assistance funds. Significantly, the act included the previous prohibition on the use of federal funds for construction purposes.

Other requirements included the rule that applications were to cover a two year period, with a four year limit on specific programs. Funds were to be distributed to local entities based upon a ratio of the amount expended for criminal justice, with priority given to jurisdictions with the greatest need. Grantees were required to meet improved record keeping standards, make yearly performance reports, provide impact assessments, assure the government that federal funds would not supplant state funds, and submit an application to the state legislature for prior review. (Some additional monitoring requirements proposed by the Congress were opposed by the Administration as burdensome and unnecessary and were dropped.)

Appropriations

The new grant program received a four-year authorization at a "such sums" level for each of the four years. In 1985, the Congress appropriated $25 million for the block grant program - an astonishingly small amount for a program that had generated such political heat.

2.6 Expanded Responsibility: The Anti-Drug Abuse Act of 1986

The summer of 1986 marked a dramatic change in the federal response to violent crime and drug trafficking. Two significant events triggered this response: the death of Maryland basketball star Len Bias from a cocaine overdose and the widespread appearance of a new and highly addictive drug — "crack" cocaine. The drug crisis was consistently ranked as the number one problem confronting the nation in public opinion polls.

Members in both Houses of Congress responded. In the Senate, Democratic Majority Leader Robert Byrd (D-WV) appointed an Anti-Drug Task Force co-chaired by Senators Joseph Biden (D-DE) and Lawton Chiles (D-FL), which drafted a comprehensive package of anti-drug legislation, S.1715. In the House, Speaker Jim Wright (D-TX) directed each of the committee chairman to report anti-drug legislation on an expedited schedule. Soon thereafter, the administration submitted its own anti-drug proposal, the "Drug-Free America Act of 1986." On October 17, the House and Senate

passed H.R.5484, the Anti-Drug Abuse Act of 1986; President Reagan signed the legislation into law on October 27, 1986. Title I of the drug bill contained a new $230 million block grant program to assist state and local law enforcement agencies in anti-drug efforts.

There is no formally recorded legislative history accompanying the Anti-Drug Abuse Act of 1986. Instead, the bill was drafted in the last days of the 99th Congress by informal working groups in both the House and Senate. However, in examining the state and local assistance provisions of the 1986 act, it is clear that the provisions of the 1984 act served as a model for the 1986 act, consistent with the shift in focus to drug-related problems.

Goals and Objectives

The primary Congressional goal was to focus on grants to law enforcement agencies to prevent offenses under federal and state Controlled Substances Acts. The act required the BJA to concentrate on drug law enforcement programs. The more general crime control block grants established by the CCCA remained on the books, but no new appropriations were made after 1985.

Administrative Process

Many of the administrative changes and accountability measures introduced in 1984 were specifically retained in the 1986 act, such as yearly performance reports and periodic impact assessments. Similarly, the 1986 act allocated 80 percent of appropriated funds for block grants to the states on a population basis; the remaining 20 percent was reserved for national discretionary grants. The act did contain a relaxed 75-25 federal-state matching requirement and authorized the states to use up to 10 percent of their block grants for administrative purposes.

Programmatic Structure

The 1986 act retained the structure of block and discretionary grant programs established in 1979 and 1984 without any major changes. It did, however, revive the requirement that states produce a strategic plan — in this case for drug control — in order

to be eligible for funding. This strategy was to be approved by the BJA.[33] This marks a departure from the lack of a statewide plan requirement in the CCCA of 1984, and a return to statewide planning found in the 1968 Safe Streets Act and the 1979 JSIA.

Table 5
Authorized Program Areas
Anti-Drug Abuse Act of 1986

1	Personnel, equipment, etc., to enhance apprehension of drug offenders
2	Personnel, equipment, etc., to enhance prosecution of drug offenders
3	Personnel, equipment, etc., to enhance adjudication of drug offenders
4	Corrections/treatment/rehabilitation of drug dependent offenders
5	Drug eradication programs
6	Programs to meet the needs of drug offenders
7	Demonstration programs to expedite the prosecution of major drug offenders

The most important programmatic difference between the 1984 and 1986 acts was that in the latter, program grants were to be used to deal directly with controlled substances, as seen in Table 5. Although grants were limited to seven specific categories of funding, the wording was sufficiently broad to authorize funding for virtually any program related to the apprehension, prosecution, trial and incarceration of drug offenders, including eradication programs and treatment for drug-dependent offenders. However, drug prevention programs were excluded from the scope of the act, reflecting the view that this area fell under the purview of agencies outside the criminal justice system..

Appropriations

$178 million were appropriated in FY87 by the Congress for the newly created anti-drug formula grants. An additional $46 million was appropriated for discretionary grants. The late disbursal of these funds led to an abbreviated funding cycle in FY 88. The grant appropriations were reduced correspondingly, to $56 million for formula grants and $14 million for discretionary awards.

[33]The act incorporates language that permits federal funds to go directly to local entities if the state plan is not submitted or is not approved by BJA.

3 THE EDWARD BYRNE MEMORIAL STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE PROGRAM

Almost as soon as the 1986 act was implemented, political pressure for further action began to build. Drug trafficking and abuse continued to be top priority concerns of the public and, therefore, of national policy-makers in 1987 and 1988. In addition, the state and local assistance provisions in the 1984 crime bill (including the authorizations of OJJDP, the NIJ, the BJS and the anti-crime grants administered by the BJA) were scheduled to expire at the end of fiscal year 1988. This gave congressional leaders an opportunity to reassess the federal government's commitment to state and local criminal justice and drug control assistance. Senator Biden, for example, introduced S.1250, the Criminal and Juvenile Justice Partnership Act of 1987, in the spring of 1987. This legislation proposed a four-year reauthorization of virtually every state and local assistance program in the Justice Department.[34]

Expressions of public concern soon convinced members of the Congress that the sweeping reforms enacted in the 1986 act were not enough. As a result, the Congress passed another major anti-drug bill — the Anti-Drug Abuse Act of 1988. Like its predecessor, this act did not follow the normal legislative route. Although many of its provisions were modeled on legislation that had either been passed or introduced at an earlier time, and on which hearings had been held,[35] the 1988 law was created under high pressure circumstances in the final days of the 101st Congress by informal "working groups", composed of members representing the relevant authorization and oversight committees in both Houses.

---

[34]See The Criminal and Juvenile Justice Partnership Act of 1987: Hearings Before the Committee on the Judiciary and its Subcommittee on Courts and Administrative Practice, Committee on the Judiciary, United States Senate, 100th Cong., 2nd Sess. (Mar. 10 , Apr. 25, and May 13, 1988).

[35]For example, the state and local assistance provisions in the Anti-Drug Abuse Act of 1988 reflected the consideration of, and hearings on, S.1250.

3.1 Goals and Objectives

The 1988 Act obviously retains the focus of the Anti-Drug Abuse Act of 1986 on drug-related crime. At the same time, it incorporates a strong emphasis on violent crime, presaging a shift in focus towards violence that matured during the early 1990's. It also incorporated language stressing the goals of improving the criminal justice system and enhancing coordination and cooperation between its various elements. Finally, the title also addresses the importance of coordination between federal and state authorities, between state and local criminal justice systems, and between state and local officials responsible for criminal justice, substance abuse treatment, and substance abuse prevention.

Other goals of the legislation include:

- Developing multijurisdictional drug control strategies;
- Using strategic plans to target resources in the areas of greatest need;
- Securing state support for national drug control priorities;
- Developing state input into the national recommendations to be produced by a newly created "Drug Czar" in the Executive Office of the President.

The Anti-Drug Abuse Act of 1988 was a large and complex piece of legislation, and dealt with a large number of drug-related issues in addition to creating the Byrne criminal justice assistance program. In particular, it also reauthorized two other block grants — the Alcohol, Mental Health, and Drug Services block grant (since renamed) for treatment services, and the Drug-Free Schools block grant for school-based prevention — and created the Public Housing Drug Elimination Program, which awards categorical grants to public housing authorities attempting to control drug-related problems.[36] The inclusion of all of these programs in a single legislative package marked the extent to which criminal justice had begun to be viewed as but one component of the drug control system.

---

[36]These programs are described in Section 4.

3.2 Programmatic Structure

The Byrne program has a dual focus: on general improvements to the criminal justice system and on illicit drug control. In this sense, it reflects the concern that federal aid is too small in amount to have much direct material impact on crime. The programmatic focus of the Byrne grants was determined by the decision to consolidate the BJA's separate anti-crime block grant, created by the CCCA of 1984 and unfunded after 1985, with the anti-drug block grant program established by the Anti-Drug Abuse Act of 1986.

The Anti-Drug Abuse Act of 1988 also considerably toughened the state strategic planning requirements introduced by the 1986 act. State Administrative Agencies (SAAs), similar to the SPAs mandated by the Safe Streets Act, were to develop an annual statewide strategy, that was to address not only drug control but violent crime as well. The strategy was subject to the BJA approval. Specific language in the act requires the state strategies to assess its drug and crime control needs, catalog its current drug and crime control activities and resources, identify geographic areas of greatest need, discuss coordination among agencies, and identify a strategy to address these issues. The Congress also mandated that local governments, state legislatures, and the general public must also be given an opportunity to comment on and provide input into the plan.[37]

Moreover, the states were required to coordinate their criminal justice plans with other federally funded drug control activities in the areas of substance abuse treatment and prevention, and to incorporate the results of such coordination into the strategy document.[38] However, this emphasis on coordination was limited to the state level. Consequently, although the Anti-Drug Abuse Act of 1988 authorizes treatment, school-

---

[37]The 1988 Act does not, as did the Safe Streets Act of 1968, make explicit provision for strategic planning at the regional level for regions within states.

[38]No reciprocal coordinating requirement appears in the language for the Alcohol, Drug Abuse, and Mental Health (ADMS) block grant for drug treatment or the Drug-Free Schools and Community block grant for school-based drug prevention, both of which are also discussed by the Anti-Drug Abuse Act of 1988. [ADMS has since been renamed as the Substance Abuse Services block grant].

based prevention, and public housing grant programs in addition to the Byrne program, each program is completely autonomous at the federal level. The act creates no administrative or other links between the programs, nor does it require any coordination among the federal agencies that administer them.

While the strategy requirement imposed significant constraints on the *process* by which states determined how their formula grants would be used, the Congress imposed relatively few restrictions on the content of those decisions. The list of authorized purposes for which grant funds could be used (shown in Table 1) is consistent with the consolidation of the crime control and drug control block grants. An open-ended list of 20 purpose areas, it includes the use of federal funds for personnel/training/technical assistance, information systems for prosecutors, and community programs to prevent crime. This list provides states with considerable flexibility in the range of programs they can undertake. But consistent with the legislative goals, the list clearly emphasizes drug-related programs. For example, authorized drug-related programs include: establishing multijurisdictional task forces that integrate federal/state/local anti-drug efforts; developing drug control technologies; and targeting money laundering from drug trafficking activities.

The act also pushes states towards funding programs of proven effectiveness through the use of federally-prepared "program briefs," that describe the key elements, organization, and outcome measures of proven interventions.[39] Approval for grants that fund programs covered by a "program brief" is almost automatic. States may fund projects that have no such brief, however, only if they develop a statement of their own describing key elements, outcome measures, and the like. In this sense, the 1988 act intends to transfer programs that are known to have worked — that is, programs that have been evaluated and shown to be effective — from jurisdictions that have used them to those that have not yet tried them.

---

[39]The current regulations, in effect since the CCCA of 1984 and not updated, set forth certain certified programs ("program briefs") that are eligible for block grant funding. For additional information, see the annual BJA Guidance to States on program applications, and the program regulations at 28 CFR Part 33.

The 1988 Act continued the Discretionary Grant Program authorized previously, but gives it a different focus. Under the 1988 act, discretionary grants are to be used to provide additional assistance to public, private, or nonprofit entities for education/training for criminal justice personnel, technical assistance to states/local agencies, national/multijurisdictional activities for the above block grant purposes, and demonstration projects. This program is designed to be more innovative than the block grant program. The director has final authority and considerable flexibility in deciding how to allocate these funds. The applicant must include a statement of program goals, program implementation, and methods to evaluate program impact. Grants are for a maximum of four years plus a two year extension based upon an evaluation showing a positive program impact, or on the condition that the recipient pays 50 percent of the program's cost.

3.3 Administrative Structure

The 1988 law retained several administrative provisions of the Anti-Drug Abuse Act of 1986, including the 80-20 split between block and discretionary grant funding and the 75-25 federal-state matching requirement[40]. At the same time, the 1988 act also included important administrative changes to the block grant programs. First, an amendment offered by Senator Biden required the NIJ — an agency independent of the BJA — to conduct evaluations of projects funded through the BJA grants. The purpose of this amendment was to create an evaluation process that takes a "hard look" at federally funded programs to ensure that successful programs are identified and duplicated while unsuccessful programs are not repeated.

In addition to the evaluations required of the NIJ, the 1988 act continued the evolving emphasis on greater recipient accountability. Each funded program was required to include an evaluation component, and states were required to evaluate, audit,

---

[40] As noted, appropriations have actually split the money 90/10 between the formula and discretionary programs.

assess, and account for its programs on a yearly basis, maintaining and submitting reports as required. Programs were also limited in duration to four years.[41] Some programs, such as the Discretionary Grant, may be extended for an additional two years upon an evaluation of program effectiveness (meeting program goals) and upon the state's assuming 50 percent of the funding. The four-year rule was also waived for multijurisdictional task force programs.

The 1988 law also imposed tight time limits on both the federal and state governments in the review and approval of applications and the award of state funds. A local application for funding was to be considered approved after 45 days if not specifically disapproved by the state. These amendments were in response to repeated criticisms, particularly from the U.S. Conference of Mayors, that the federal and state governments were slow in distributing federal funds to the streets.

Significantly, the Congress rejected the efforts of the Mayors' Conference and others to abolish the state-administered block grant structure in favor of direct federal aid to local units of government. Many members of the Congress believed that the federal government could not efficiently administer thousands of direct grants to local units of government and that allocating funds directly to local governments would lead to uncoordinated and fragmented local efforts. Instead, the Congress retained the structure in which states play a central role in developing statewide anti-drug strategies. At the same time, the Congress was concerned that local governments — particularly smaller cities — were not adequately included in the statewide strategy planning process. Accordingly, the Congress mandated a larger role for local governments in the development of the statewide strategies.[42]

---

[41] In 1992, an exception to this provision was created for multijurisdictional task forces.

[42] Another reflection of the political struggle between state and local governments that, in 1994, led to the adoption of the direct federal-local aid program for community policing that bypasses states altogether.

From a regulatory perspective, state activities under the program continue to be governed by regulations issued pursuant to the Justice Assistance Act of 1984,[43] which have not been updated to reflect statutory changes in 1986 and 1988. The principal effect of these regulations, as we have noted, is to encourage the transfer of programs of proven effectiveness through the use of federally-prepared "program briefs." The regulations also provide a mechanism through which states wishing to fund subgrants that depart from the program briefs must document the goals, key elements, and relevant outcome measures of the proposed initiatives. The BJA reviews such proposals.

Both the regulatory and legislative provisions governing the formula program are described and supplemented in annual program guidance published by the BJA. This guidance tracks the Act and the regulations, but it also imposes several supplementary requirements.

First of all, the BJA program guidance articulates national priorities that it urges states to consider as they prepare their strategies. In the 1993 Formula Grant Program Guidance and Application Kit, for example, the BJA stresses initiatives such as operation "weed and seed" and the Attorney General's Violent Crime Initiative. State adherence to these priorities is encouraged rather than specifically mandated.

Secondly, the BJA program guidance spells-out the state strategy requirements and the criteria that will govern the BJA's review of the strategic plans. For example, the BJA mandates that states gather and report in the strategy a variety of quantitative data on crime, drugs, and the criminal justice system. It also provides specific guidance regarding the format of the strategies and of proposals to depart from the federally provided program briefs.

States are entitled to apply for funding under the much smaller discretionary grant program as well as the block grant. However, the applicant pool also includes regional and local agencies, private groups, and, importantly, other federal programs.

---

[43] 28 CFR Part 33, issued 30 May 1985.

As part of the application process, applicants must provide evidence that the program is likely to be successful, though what type of evidence would suffice is not specified in the regulations. The specific application requirements are determine by the BJA.

Table 6
Authorized Program Areas
Anti-Drug Abuse Act of 1988

1	Drug demand reduction education (law enforcement officials included)
2	Multijurisdictional drug task forces to enhance coordination
3	Target domestic controlled substances sources (i.e., labs)
4	Community/neighborhood programs
5	Disrupt illicit commerce in stolen goods
6	Control white collar/organized crime
7	[a] Crime analysis techniques; [b] Anti-terrorism
8	Career criminal programs; model drug control legislation
9	Target money laundering from drug trafficking
10	Improve court processes
11	Improve corrections (i.e., Intensive Supervised Probation)
12	Prison industry projects for inmates
13	Treatment needs of juvenile and adult drug/alcohol offenders
14	Assistance to jurors/witnesses/victims
15	[a] Develop drug control technologies (i.e., testing); [b]-Develop information
16	Develop innovative approaches to drug and serious offenders
17	Address problems of illegal drug dealing and manufacture in public
18	Programs for domestic and family violence
19	Drug control evaluation
20	Alternatives to detention where the inmate is not dangerous
21	State drug enforcement programs

3.4 Appropriations and Extensions of Funding

The Anti-Drug Abuse Act of 1988 increased the authorization level for the new, consolidated state and local assistance program. The four-year authorization for the state and local assistance provision of the 1988 Anti-Drug Abuse Act of 1988 — including the block grant program administered by the BJA, and the activities of the NIJ and the BJA — were scheduled to expire at the end of fiscal year 1992. Although numerous bills were introduced during the 102nd Congress to amend these programs, partisan gridlock between the White House and the Congress on a comprehensive violent crime control package blocked passage of any significant changes to the state and local assistance programs. Instead, the Congress passed — and the President signed into law — a "clean" two-year reauthorization bill. The legislation, H.R.5716, simply extended the authorizations for each of these programs through the end of fiscal year 1994 without any substantive changes. Actual program appropriations are shown in Table 7.

Table 7
Appropriations Based on the 1988 Act (Millions of Dollars)

FY	FORMULA	DISCRETIONARY
89	119	31
90	395	50
91	423	50
92	423	50
93	423	50
94	358	50
95	450	50

Several relatively minor amendments to the program have been made since 1988, but the broad structure of the program has remained intact. Several set-asides have been created for the formula program, requiring states to, for example, use 5 percent of their formula allocation for the development of criminal history databases. A much greater percentage of the discretionary grant fund has been earmarked, including several set-asides that require discretionary grants to be awarded to federal operational agencies. Finally, the scheduled increase of the match requirement in the formula grant program from a 25 percent state share to a 50 percent share has been postponed, and the rule limiting programs to 48 months has been waived for multijurisdictional task forces.

4 DRUG-RELATED GRANTS-IN-AID OUTSIDE THE BYRNE PROGRAM

The Congress unquestionably structured the Byrne programs with the experience of previous federal criminal justice assistance initiatives in mind. The LEAA grants and their successors provided the general model for the Byrne grants, and it seems clear that several of the differences between the Byrne grants and earlier efforts were introduced in hopes of avoiding some of the difficulties that Safe Streets and subsequent programs had experienced.

However, the history of federal criminal justice assistance is not the only organizational context in which the Byrne program was developed. The 1988 Anti-Drug Abuse Act embodies the view that law enforcement alone is incapable of addressing the problems associated with illicit drugs. Instead, the response must be a coordinated effort that includes not only the criminal justice system but also efforts in the areas of health, education, public housing, and social services. The Byrne program is but one component in the multi-pronged package of anti drug initiatives created or modified by the 1988 Act. The other programs created by the legislation — in particular, the other *grant* programs — thus provide critical background for any assessment of the Byrne grants' structure and performance.

This section summarizes the structure of the other major anti-drug assistance programs legislated by the 1988 Anti-Drug Abuse Act. It begins with a description of the Office of National Drug Control Policy (ONDCP), the agency that was to coordinate all aspects of the anti-drug effort. It then provides considerable detail on the organization and structure of the major sister initiatives to the Byrne program: the drug treatment block grant, the school-based prevention block grant, and grants intended to combat illicit drugs in public housing.

4.1 The Office of National Drug Control Policy

At least two forces work against successful coordination of any anti-drug effort that, like the Anti-Drug Abuse act, spans multiple functional areas. First, inter-agency efforts are difficult to control: leadership is often attenuated, lines of authority unclear, and conflict likely. Second, in any given functional area, drug-related problems are but one aspect of a greater social problem: i.e., drugs are only one among many issues affecting school performance, health, and safety. This may lead to fragmentation within programs, where drugs are treated independently of other program issues, and fragmentation across programs because of limited coordination between functional areas.

The Congress implicitly recognized the problem of fragmentation and attempted to deal with it in the Anti-Drug Abuse Act of 1988 by creating the Office of National Drug Control Policy to coordinate all drug-related activities. The Office, established within the Executive Office of the President, is an independent office with the authority and responsibility for coordinating a national drug control strategy. That strategy, essentially a top-down approach, is to include:

- Comprehensive long-range goals for reducing drug abuse
- Short-term measurable objectives
- The balance of resources to be devoted to supply and demand reduction
- Reviewing state and local drug control initiatives (including private sector activities) to ensure a well-coordinated and effective drug control strategy at all governmental levels.

The ONDCP director, known colloquially as the "drug czar," thus was given broad authority to act both as a moral force in curbing drug abuse and as a coordinator of the vast anti-drug activities underway throughout the nation. At the federal level, for instance, the drug czar was directed to review all agency drug budgets for sufficiency and consistency with the national drug control strategy. In theory, then, the programs established in the 1986 and 1988 Anti-Drug Abuse Acts should be coordinated through the drug czar as part of a coherent national drug control strategy.

A number of arguments have been offered opposing the creation of ONDCP and the position of drug czar. The ONDCP director plays an exclusively advisory role, and has no direct authority over any of the programs in the 1988 Act. Moreover, ONDCP efforts to coordinate anti-drug activity must contend with the fact that each of the programs in the 1988 Act has its own independent structure, goals, administrative apparatus, and decision-making process, and, perhaps most important, is led by a political appointee who has a stronger political base than the ONDCP director. The consequence has been that ONDCP has had little visible influence or effect on the federal aid programs. Even the elevation of the ONDCP leadership to cabinet status did not bring about much improvement, perhaps because it was accompanied by a simultaneous reduction in staff levels from roughly 200 to 25.

4.2 The Drug Treatment Block Grant: Alcohol, Drug Abuse, and Mental Health Services

The Alcohol, Drug Abuse, and Mental Health block grant program (ADMS) was created as part of the block grant consolidation of the Omnibus Budget Reconciliation Act (OBRA) of 1981. ADMS consolidated 10 categorical grant programs that provided treatment and prevention services for alcohol and drug abusers and the mentally ill.[44] Over time, the Congress amended the Act to add numerous categorical (set-aside) requirements, much as it did to the criminal justice grants under the LEAA. The inclusion of ADMS in the 1988 Anti-Drug Abuse Act also represents a phenomenon similar to the one observed in the case of criminal justice: an already existing grant program was reenacted, but its focus was shifted from its original goals (in this case, mental health services) to substance abuse.

In 1992, the Congress reconfigured the ADMS program, splitting the mental health and substance abuse components into separable block grants programs. In the process, the Congress confirmed its recent emphasis on substance abuse.

---

[44]The other block grants created by OBRA 1981 are listed in Table 3.

The program is administered by the U.S. Department of Health and Human Services (HHS). For ease of representation, we will use the ADMS acronym throughout this chapter in referring to the mental health and substance abuse block grant programs.

Goals

As set forth in the 1981 Act (and retained through subsequent amendments, except as noted below), the goals of the ADMS program are to:

- Develop effective prevention, treatment, and rehabilitation programs and activities to deal with alcohol and drug abuse
- Provide a range of mental health services through community mental health centers (CMHCs)
- Coordinate mental health and health care services provided within health care centers
- Shift program control from the federal to the state level

Structure

Under ADMS, all federal funds are allocated through a block grant to the states for community mental health centers (CMHCs) and drug and alcohol programs. States fund local entities, which then deliver services directly or fund various local service providers. This model for the distribution of funds is similar to the Byrne formula in that it relies on the state to plan for and distribute funds to local recipients, while relying on localities to provide services. In the ADMS program, however, the state must subgrant all funds; no services are provided directly by the state. ADMS allocations are also based upon a complex statutory formula, somewhat limiting both federal and state administrative discretion. Federal funds may not be substituted for non-federal money, although no matching funds are required.

ADMS includes certain restrictions on the use of block grant funds. For example, the Act originally contained what amounted to a hold harmless provision for existing CMHCs. The Congress mandated that states fund all CMCHs that had received FY 1981 dollars and met the applicable statutory requirements, such as providing outpatient services, treating patients regardless of ability to pay and being easily accessible. States were also required to allocate at least 95 percent of total FY 1983 funds between mental

health and substance abuse programs in the same ratio as in the base year (FY 1982). That is, state spending ratios established prior to the block grant between mental health and substance abuse services needed to be maintained through the block grant allocation. If, for example, a state had allocated 60 percent of its funds to mental health before the block grant program, it needed to allocate 60 percent of the block grant funds to mental health services. These restrictions were removed by subsequent legislation.

ADMS also differs from the Byrne formula grant because it provides no eligible program list from which states can select in building their programs. Instead, ADMS is specific regarding how federal funds are to be used. In 1981, the emphasis was on mental health programs, and within mental health programs, on the chronically mentally ill. Thus, paradoxically, the ADMS block grant appears to be both more and less restrictive than criminal justice grant programs.

Up to 7 percent of ADMS funds can be transferred by states to other health block grants. The act also initially set a 10 percent administrative cost ceiling, which was lowered to 2 percent in 1986. States are expressly prohibited from using ADMS funds for: cash payments to intended recipients of health services; inpatient services; purchase or improvement of land; construction or major improvement of facilities; purchase of major medical equipment; or financial assistance to any entity other than public or private non-profit.

Administrative Process

In general, ADMS provides states with considerable planning and management authority, even though most states have simply integrated ADMS plans into existing comprehensive state program or health and human services plans and have made very few organizational changes. ADMS requires states to submit an annual application for funds, and since FY83, has required the state legislature to hold public hearings on the proposed use and distribution of funds. In the application, the state must certify that it will, among other things, establish reasonable criteria to evaluate performance effectiveness of entities

it funds, identify populations with a need for services, describe programs, activities, and services to be provided, and make an equitable geographic distribution of funds.[45]

The law also requires submission of an annual report, containing information necessary to determine how funds were spent, what activities were supported, who got the money, a statement of purposes for which the money was spent, a statement of whether these purposes were consistent with needs identified in the application, and if progress has been made toward them. The state is also required to conduct an annual independent audit of expenditures and give the results to the HHS Secretary within 30 days. Each fiscal year, the Secretary is required to investigate the use of funds by several states.

Amendments to ADMS

ADMS 1984. In 1984, ADMS was amended to give states more flexibility to shift funds between substance abuse and mental health activities. In addition, new set-asides were mandated which were intended to target services toward the most needy sub-populations. At least 5 percent of total funds must be used to initiate new or expanded alcohol and drug abuse services for women, and at least 10 percent of mental health funds must be used for new or expanded services targeted to severely disturbed children and adolescents, and for new or expanded comprehensive community mental health programs for underserved areas or populations.[46]

ADMS 1986. Two subtle but potentially important shifts occurred in the Alcohol and Drug Abuse Amendments of 1986. First, instead of focusing on developing appropriate services, the Amendments expected states to expand services "...to reach the greatest number of people." That is, the Amendments stressed activities that would

---

[45]No particular application form is required, and no limitations on program duration are imposed (45 CFR Section 96.10).

[46]The applicable regulations define a new or expanded service as one that exceeds funds expended by a state in FY 1984 (45 CFR Section 96.121).

increase the user population. Second, the programmatic focus shifted to drug and alcohol abuse treatment, paralleling the criminal justice program shift in the 1986 and 1988 Acts.

ADMS 1988. In the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988, Title II of the Anti-Drug Abuse Act of 1988, the Congress made explicit several of the changes noted above. The goals of the 1988 Amendments focused on substance abuse, expanding treatment to underserved populations, and increasing the availability of treatment services.

Reversing the earlier hold harmless approach, the Congress also specified that a certain percentage of funds must be spent on programs that did not exist before 1988. For example, beginning in FY 1989, 50 percent of total mental health funds must be spent on programs or services that were unavailable before FY 1989.[47]

The 1988 ADMS legislation also included more categorical set-asides and improved the oversight process. At least 10 percent of total substance abuse funds are required to go to programs and services designed for women (especially pregnant women and women with dependent children), and to demonstration projects for the provision of residential treatment services to pregnant women. Beginning in FY90, states were required to devote 50 percent of drug abuse funds to services for intravenous drug abusers, and to allocate substance abuse funds to communities with the highest prevalence of substance abuse or treatment needs. The 1988 amendments also instituted a requirement for "periodic independent peer review to assess the quality and appropriateness of treatment services provided."

ADMS 1992. In the ADAMHA Reorganization Act of 1992, the Congress codified the shift in emphasis toward substance abuse and toward the goal of capacity expansion. The 1992 Act makes major bureaucratic changes; notably, it splits the mental health and substance abuse programs into separate block grants with separate administrative structures. Within this new bureaucratic framework, however, the

---

[47]In FY 1991, this percentage was increased to 55%, but could be reduced to 35% with a waiver from the Secretary.

legislation makes few changes to the basic framework described above. One substantive change is an increased emphasis on alcohol abuse as a component of substance abuse programs.

The new substance abuse block grant is three times as large as the mental health services block grant. States' allocation of this grant to different treatment activities, however, is substantially restricted by the legislation. For instance, 35 percent must be allocated for alcohol abuse programs, and 35 percent for illicit substances. Of these amounts, a minimum of 20 percent must be spent on primary prevention activities. Other set-asides include 5 percent for maternal substance abuse and programs for intravenous drug users, tuberculosis patients, and projects for HIV carriers.

Moreover, the program regulations in some cases mandate how the money must be spent as well as the functional area in which it is to be applied. For example, the state is required to improve the process of referrals to the most appropriate treatment. Specific methods by which this may be accomplished are then provided.[48]

The most important legislative change of 1992 is the enhancement of the grant's accountability and planning requirements. State plans must be more detailed than in previous applications, including a description of the state's efforts to conduct extensive needs assessments and to encourage the development of Employee Assistance Plans (EAPs). To assure greater accountability, states are required to develop a Statewide Prevention and Treatment Plan initiative.[49]

---

[48]45 CFR Art. 96.132(a).

[49]U.S. Code Cong. & Admin. News, Legislative History, Vol. 4, 1992, p. 289. It is interesting to note that these terms and concepts do not appear in the applicable program regulations issued in March 1993 at 45 CFR Part 96.

4.3 The Drug Education Grants: The Drug Free Schools and Communities Act

For some time, school-based interventions have been designed and used to change adolescent behavior. It is thus not surprising that the Congress turned to school-based education and prevention to reduce adolescent drug use. Indeed, prior to the Drug Free Schools and Communities Act of 1986 (DFSCA), many schools had already designed drug prevention programs. This Act is intended to stimulate additional program development, and to provide funds for alcohol and drug education and prevention.

The DFSCA's program, like ADMS and the Byrne program, was folded into the umbrella of the Anti-Drug Abuse Act of 1988. The 1988 legislation also several amendments that affected program goals and operations.

Goals

The expressed goal of the DFSCA is to expand and strengthen drug/alcohol education and prevention activities in schools and communities. Another goal is to encourage and support cooperation among schools, communities, parents and governments to reduce drug and alcohol consumption. In the report accompanying the 1988 amendments, the Senate Committee stated that the program goals

> ...should be consistent with the traditional federal role in education: that of protecting underserved populations and addressing national priorities, including reform and improvement.[50]

The U.S. Department of Education has regulatory responsibility for the program.

Structure

Each state receives its annual drug-free school allocation based upon its total school-age population. The total grant is then segmented into a number of components. The components vary by program focus, by the level of government at which funds are to be spent, and in the amount of flexibility given to grant recipients. The distribution of the FY93 appropriation ($350 million) for each are listed in Table 8.

---

[50]Senate Report No. 100-222, 1988 U.S. Code Cong. and Adm. News, at p. 126.

Table 8
Allocation within States of the Drug-Free Schools and Communities Grant Program

Funding Component	Percentage of Grant
Governor's set-aside (prevention and high-risk youth)	25%
State education agency (SEA)	6%
Local education agency (LEA)	51%
Set-asides for Indian youth, Hawaiian youth, and higher education	18%
Total	**100%**

25 percent of funds are awarded to the governor. Of that amount, one half must be used for grants to local or other entities for local drug abuse prevention, training, education, or coordination activities, and the balance must be used to fund innovative programs that target high-risk youth.[51] The Governor's funds are distributed competitively, not based upon a formula.

State education agencies (SEAs) are allotted 6 percent of total federal funds for similar activities, the development of curricula, and demonstration projects.[52]

The bulk of the funds — 51 percent — are allotted to local education agencies (LEAs), including intermediary school districts. Funds are distributed among the LEAs based upon their school-age populations. The LEA funds can be allocated to a broad array of drug abuse prevention and education activities. As long as the programs are related to drug abuse, an LEA appears to have considerable discretion in program development and implementation, except that DFSCA funds may not be used for treatment. Eligible programs include: curriculum development, school-based and family prevention and intervention programs, counseling, referral, in-service training, community and family education programs, and special programs for athletes. It is interesting to note that while the Senate Report cited above focuses on programs for high risk youth, this emphasis was not incorporated in statutory program requirements until legislative amendments were made in 1989,[53] and even then is not made a specific requirement in the LEA eligible program list.

---

[51]Note, however, that the applicable program regulations make little mention of high-risk youth.

[52]An SEA is also required annually to review a representative sample of LEA drug prevention programs (34 CFR Section 86.202).

[53]Drug-Free School and Communities Act Amendments of 1989, P.L. 101-226.

Eighteen percent of funds are set aside for programs to assist Indian youth, Hawaiian youth, and higher education.

In addition to the state and local programs, 8 percent of the funds are for grants to higher education institutions to develop training and model demonstration programs. Half of this amount is to develop drug abuse prevention programs for higher education students. Another 4 percent is for federal education and prevention activities conducted in conjunction with the HHS. And five percent is to maintain five regional policy and research centers funded by the Department of Education.

The program regulations (34 CFR Parts 231-236) segment the broader program into a series of specific programs. First, an Emergency Grants Program provides assistance to LEAs that exhibit a significant need for additional help in combating drug abuse. Second, a School Personnel Training Grants Program provides assistance for training teachers, administrators, and other school personnel in drug abuse education and prevention. Third, a Demonstration Grants Program allows Institutions of Higher Education to develop drug abuse education and prevention demonstration programs. Fourth, the Federal Activities Grants Program is the basic block grant program described above. Fifth, is the Regional Centers Program, also described above. Taken together, these programs offer LEAs an extraordinarily wide range of program possibilities. As long as the programs demonstrate administrative and programmatic feasibility, are related to school and community drug abuse and prevention problems, and have adequate monitoring and evaluation components, they are likely to be eligible for funding. Very few program requirements are specified.

The legislation mandates the use of federal funds to implement new programs, and is not meant to supplant local funding. According to a recent program evaluation (RTI 1991), 23 percent of the money is allocated to staff training, 28 percent to instructional materials, 15 percent to student instruction, and 13 percent on support services.

In contrast to the criminal justice block grant program, the DFSCA is primarily a local program to provide services at the local level (for those funds not explicitly allocated to the Governor). The federal and state role is to identify program needs, provide information on promising programs or programs of proven effectiveness, and coordinate various LEA efforts. No state match is required. LEA-based programs may be funded for no more than three years.

Administrative Process

Unlike the Byrne block grant, DFSCA requires the submission of a specific plan only for the 25 percent of total funds allocated to the Governor. In addition, the LEA must describe how it will coordinate its efforts with other drug-related programs (including law enforcement and ADMS block grant agencies). The state's application must also provide for an evaluation of the programs' effectiveness.

Approval of a local application, however, requires a school-specific plan that includes a description of the current drug problem in a school and describes how the applicant will monitor program effectiveness and coordinate its efforts with other community-based drug abuse prevention and education programs. The applicant must also provide an assurance that it will coordinate its programs with the appropriate state and local drug abuse, health, and law enforcement agencies. Given that the application meets these criteria, the state must then approve it. The 1989 Amendments require an annual progress report to the SEA to include evaluation results, significant accomplishments, and how well the original objectives are being met.[54]

According to the RTI evaluation, the DFSCA program has been well coordinated at the state level with the state ADMS agency.[55] The state ADMS agency relies upon the

---

[54]The 1989 Amendments also added an application requirement to describe how schools will be part of community-wide efforts to achieve a drug-free society. An applicant must also explain its practices and procedures to eliminate the sale or use of drugs on school property and convey to students the unacceptability of drug use. The applicant's evaluation plan counts for 20 percent of the Secretary's selection criteria (34 CFR Section 231.22(e)).

[55]For this evaluation, RTI conducted a series of case studies. Not every state was visited, but the results were consistent across states evaluated.

strategy developed by the federal Office of Substance Abuse Prevention (OSAP) to identify programs of proven effectiveness (similar to the 1988 Amendments). These programs are then implemented by LEAs.

4.4 Grant Programs to Address Illicit Drug Problems in Public Housing

Concern over violence and drug use in public housing led the Congress to include a specific program for public housing anti-drug initiatives in the 1988 Anti-Drug Abuse Act. The Public Housing Drug Elimination Act of 1988 (PHDEA) creates a modified categorical program, rather than a block grant program. Initially, HUD distributed funding on the basis of a nation-wide competition. General discontent with that approach subsequently led to each of the regions of the U.S. Department of Housing and Urban Development (HUD) receiving a fixed amount of funds based upon their public housing population. Within each region, funds are awarded to public housing authorities on the basis of a grant competition HUD reviews the applications and determines the awards.

Goals

Since much of public housing is provided by the federal government, the Congress recognized that the federal government has a responsibility to provide public housing that is free of illegal drugs and the consequences of drug-related crime. the Congress also recognized that local law enforcement agencies often lack the resources to attack the public housing drug problems. Therefore, the primary goal of the PHDEP is to coordinate activities and train personnel to prevent drug use and eliminate drug-related crime in public housing.

Structure

To accomplish this goal, the Congress established a federal grant program, with regulatory responsibility given to HUD. To win funds under the program, public housing agencies (PHAs) develop a plan to address drug-related crime on public housing premises. PHAs apply for and receive funds directly from HUD; except for the formula

based approach to regional distribution of money, there is no fiscal or programmatic intermediary. Grants may be used to:

- employ security personnel;
- reimburse local law enforcement agencies for security;
- make physical improvements to enhance security;
- employ personnel to investigate drug-related crime;
- supply training, communications, and equipment for voluntary tenant patrols;
- develop innovative programs to reduce drug use and drug crime; and
- establish tenant councils to develop drug abuse prevention and security programs.[56]

A recent program analysis (Dunworth and Saiger, 1993) indicated that programs actually funded under the PHDEP include targeting drug-involved tenants for evictions, gathering narcotics intelligence in housing projects, controlling access to projects, increasing the deployment of uniformed officers and walking patrols, and controlling access to housing projects.

Through the regulations,[57] HUD has allocated 10 percent of total program funds for smaller Mini-Grants to eliminate drug-related crime at public housing projects. These grants are designed to provide seed money for the activities listed in the larger grant program. According to the regulations, Mini-Grants are also intended to encourage the use of existing resources by PHAs as a program match. As an inducement, HUD will add selection points to a Mini-Grant application with a dollar-for-dollar match. The Mini-Grant application requirements are similar to those for the larger grant program.

---

[56]In the applicable program regulations, 24 CFR Part 961, HUD places great importance on tenant councils and resident participation in fighting drug-related crime. For example, in determining the strategy for addressing drug-related crime, the applicant must specify the role of the tenant council in developing and implementing the plan (24 CFR Section 961.15(b)(3)(vi)).

[57]24 CFR Sections 961.26 and 961.28

Administrative Process

As noted, the applicant housing agency requests funds directly from HUD. The application must include a plan to address drug-related crime problems on public housing premises.[58] Approval of the application is based upon the plan, support of the local law enforcement community, the extent of the crime problem, and the ability to carry-out the plan. The regulations specify detailed application requirements, such as data on the extent of drug-related crime within particular housing projects and evaluation measures to determine program success. In addition, the regulations require semi-annual progress reports which evaluate the program's progress relative to its stated plan (i.e., change in crime statistics, implementation problems, or success in meeting program goals).

The Drug-Free Public Housing Act of 1988

The Anti-Drug Abuse Act of 1988 also includes a chapter called the Drug-Free Public Housing Act of 1988. This act established an information clearinghouse at HUD to provide enhanced coordination and training for public housing agencies. Aside from serving as an information repository, the clearinghouse is authorized to respond to and work on drug control problems at public housing facilities. However, the nature and extent of this response is not explained in the legislation.

Another provision requires the HUD Secretary to establish regional training programs for public officials to fight drugs. Again, the extent of this activity is not specified in the Act. A subsequent amendment adds a categorical program (requiring a 50 percent program match) to induce youth to participate in sports activities.

---

[58]A previous section of the Anti-Drug Abuse Act of 1988 amended the United States Housing Act of 1937 to permit a public housing agency to terminate a tenancy for drug-related criminal activity.

5 CONCLUSIONS

5.1 Introduction

In this concluding section, we briefly examine some of the more salient aspects of the legislative structure of federal criminal justice aid, and consider how the legislation deals with them. What the discussion will suggest is that although the statutes may seem to adopt clear cut goals, objectives, and procedures, they often contain anomalies and contradictions that undercut the possibility that those goals and objectives will be attained. There are, of course, many aspects of federal aid that could be discussed in this context. We select four areas that seem to us to be most important:

- Goals;
- Programmatic Substance;
- Coordination;
- Feedback.

It is our view, that, in a significant way, federal aid is subject to a series of Catch-22 circumstances in each of these areas. By this we mean that, in some respects, the legislation is self-defeating.

Our review of the history of federal legislation for assistance to state and local programs in criminal justice has illustrated a number of the difficulties that the federal government faces in trying to establish stable and effective grants-in-aid programs. Across the three decades since federal aid was first provided to the criminal justice community, there has been an enduring debate between those who are convinced that aid must be provided and those who think that it is either of no value or is an inappropriate activity for the federal government to undertake. Virtually every form of assistance has been attempted. We have had categorical funding, revenue sharing, block grants to states with varying levels of constraints, and now, in 1994, we have direct federal-to-local

assistance. Interspersed between the LEAA and the anti-drug abuse legislation was a five year period of neglect, when virtually no assistance at all was provided.

At least part of the reason for this fluctuation is political; that is, it stems from philosophical differences between participants. The federal orientation to state and local assistance cannot be divorced from political considerations that are centered primarily upon differences about the proper role that the federal government should play in the country's business generally and in the operation of state and local criminal justice systems particularly. These are basic issues of federalism. The fundamental question is whether or not the federal government should even be involved in activities that, until 30 years ago, were considered to be almost entirely within the purview of local governments. When the answer to this question is pushed to the affirmative end of the scale, usually by the pressure of public concern about the levels of violence, drugs and crime, the likelihood is increased that a package of assistance will be enacted, adopting one or the other of the various mechanisms for the distribution that we have discussed earlier.

The fact that aid has been authorized by the Congress for criminal justice programs does not mean that all opposition to the concept of that aid has disappeared. When the aid subsequently turns out to have little detectable effect on the problems to which the public is clamoring for answers, a reluctance to continue funding sets in, and either assistance is curtailed or dropped, as it was after the LEAA experience, or alternate forms of assistance are introduced, as in the direct federal-local funding that is becoming an increasingly predominant mode of federal aid in the mid-1990s. Even as aid is being enacted, political compromises pertaining to its structure are made and these have an effect on the way the aid system works. Some of these compromises are clearly present in the areas to which we now turn.

5.2 Goals.

Each act authorizing federal assistance to criminal justice since 1968 has contained two expressly stated goals. One is to influence and affect the level and type of crime that is taking place; the other is to improve the operation of the criminal justice

system. Clearly the former is the political dynamo that runs the federal assistance engine. The political pressure that impels the Congress to take action is not grounded in a public desire to make the criminal justice system better. It is grounded in a desire to reduce crime. Were it not for this force, there would in all likelihood be no federal aid.

Yet, the greater the visibility of the political promises to have an impact on crime, and the more the success of the program is gauged by achievements in this arena, the greater the probability that the program will, sooner or later, be considered a failure. When President Johnson announced that the objective of the Safe Streets Act was to "abolish" crime, not just to reduce it, he set a goal for the LEAA that it could only fail to achieve. No federal program can abolish crime. In fact, it is doubtful if a federal program, at the levels of funding that have been historically been authorized (1/2 to about 2 percent of state and local expenditures on criminal justice), will even have a discernible impact on crime at all.

Thus, the more rational goal for programs of federal aid is to aim to improve the workings of the criminal justice system. At times, this has been explicitly recognized in congressional thinking. But, even when achieved, system improvement is very difficult to document, measure, and report, and seems unlikely to have the political power to sustain an aid program for long. Most post-mortems of the LEAA, for instance, concluded that improvements in the criminal justice system had taken place between 1968 and 1980 and that at least some of these were due to the LEAA. But, the voices that made these assertions at the time the LEAA was in trouble were drowned in the cacophony of complaints that the LEAA had not affected crime levels. In the Byrne program, similar problems currently exist. Federal procedures for assimilating, analyzing, and disseminating information about the thousands of projects that Byrne funds have supported have, to date, been inadequate to make much of a case for the program. Whether this will change in the near future remains to be seen. If it does not, it is easy to see how the Byrne program could suffer the same fate as the LEAA.

5.3 Substance.

Federal aid is caught between two other opposing forces in the area of programmatic substance. On the one hand, there is a conviction that the federal government is too far removed from the local scene to be able to determine what type of programs local governments should adopt; on the other, if local governments are left to their own devices, it is believed that a hodgepodge of programs is likely to result and that there will be little if any general utility to whatever it is that federal aid is used for.

The rationale for the first view is straightforward. Different localities have different problems and must develop approaches to them that suit local requirements. No lock-step program can be imposed - by either the federal or state governments - with any degree of success. According to the most emphatic form of this way of thinking, the federal government should provide the money to cities and then step aside. Under this formulation, federal aid essentially becomes an operational supplement to local budgets.

The alternate view is also straightforward. Federal funds are too few to have much of an effect on the scope of criminal justice activities, and so must be carefully crafted so as to stimulate innovative ways of dealing with crime and to promulgate programs of proven effectiveness. This will not happen if federal aid is given to local governments without strings, and so assistance programs must be set up so as to maximize the potential impact in this regard. At its most extreme, this view leads to categorical programmatic determination.

The historical legislative compromise between these two largely opposing views has been to give federal aid to states, and to require strategic planning at the state level. The planning must take place within a general purpose area framework set up by the Congress. This moves programmatic decision making away from the federal government, but is simultaneously meant to require local recipients of aid to conform to a rationally thought out plan. This is the tack taken both under the LEAA and under the Byrne program. The federal government retains varying degrees of responsibility for oversight of this function but the primary responsibility for programmatic scope rests

with state planners. Local governments can then select from among the set of activities approved by the state.

There are a number of problems attendant upon this approach. First, although the Congress establishes purpose areas to which state planning must conform, these are so generally framed that they exclude almost nothing from consideration. Consequently, they do not constitute a guide for state planning, but rather become a classification device that has no useful programmatic effect, and provides very little in the way of guidance either to state or local governments.

A consequence of this is that little is available to assure the Congress that the state and local decision making that is being made is productive, valuable, and follows federal guidelines. This makes them unsatisfactory for Congressional purposes also, and as aid programs mature, the Congress begins to create categorical areas to which federal funding *must* be devoted. One of the most common complaints about the LEAA was the "creeping categorization" that took place as the Congress became more and more dissatisfied with state decision making and attempted to impose a framework on the aid program that would satisfy the Congressional political objectives. Under the Byrne program, a not dissimilar trend has developed through "earmarking", which has increased in the past few years, and, in the future, seems likely to increase more.

The effect of categorization and earmarking, of course, is to gradually cause a reversion of the aid program to the structure that was opposed in the first place - namely, a federally designated program that reflects federal decisions that are imposed on state and local recipients of aid. In turn, this creates opposition and discontent among recipients, and converts the program into a competition between the federal government on one hand and state and local governments on the other.

In some ways, Title I of the 1994 Crime Act is the largest single "earmark" in the history of federal aid[59], since it provides funds only for community policing. It

---

[59] The Act supplies $1.3 billion in its first year, and is authorized to provide $1.8 billion in its second. All of these funds go directly to local jurisdictions and are to be dedicated to community policing. At the

completely bypasses the states, dispensing with the planning function that is the prime justification for including states in the aid process. In other words, the federal government has already decided how federal aid should be spent. Republican proposals to replace Title I would also bypass the states, but, in addition, would dispense with the community policing requirement.

5.4 Coordination.

As noted earlier, the desirability of coordination between different components of the criminal justice system, and between criminal justice and other areas such as health and education, was clearly recognized during the development of the Byrne legislation. The concern was built into the legislation in two main ways. The ONDCP was established, ostensibly to serve both as a formulator of federal policy and as a coordinator of federal agencies involved in efforts to deal with drug abuse and drug-related crime; and State Administrative Agencies with responsibilities for managing criminal justice formula grant funds were given the responsibility of coordinating their state's criminal justice, health, and education activities. At first glance, this creates the potential for coordination at the federal and state levels.

The legislation fell short of achieving its objectives in both arenas however, primarily because the agencies given coordinating responsibility were not provided the necessary authority to execute their assignments.

The ONDCP, for instance, though designated as the flagship agency for federal drug policy, had limited funds and no authority over other agencies that were actually executing federal policy. The consequence was that ONDCP was always perceived within the executive branch as a sideline player in the administration. The Director

---

same time that Congress appropriated the $1.3 billion, it also funded the Byrne program at its highest ever level - $450 million for the Byrne program, and $50 million for the discretionary program. At the time of writing, budget debates for FY96 are under way in Congress, and it is not clear where the chips will fall. Republican proposals are to abandon the community policing earmark in order to give federal aid (perhaps at $2 billion per year levels) to local governments without programmatic restrictions except to require expenditure for legitimate law enforcement purposes.

lacked the organizational and political strength of the heads of the federal agencies that were supposed to be coordinated, even after the position of Director was elevated to cabinet status. To the present time, this situation continues.

Further barriers to federal coordination, and even cooperation, are produced by the fact that the legislation is silent on the issue of how federal coordination should be accomplished. No mandates for federal agencies exist that are comparable, for instance, to the coordinating mandate given state administrative agencies.

A similar handicap is built into the Act's designation of the criminal justice formula grant recipient as the coordinating entity at the state level. In nearly every state, that agency has no authority whatsoever over health and education, and could not begin to coordinate the activities of these other agencies. In many states, the manager of the federal anti-drug abuse funds is a mid-level SPA official who may only occasionally get the governor's ear. Therefore, he or she cannot *impose* coordination on these other agencies, even if there was a reasonable way to do it. Where the legislation falls down in this area is that in the health and education titles of the act it is silent on the coordination issue. It is only in the criminal justice title that the function is spelled out. This may reflect the fact that the legislation is a collection of statutes prepared by different Congressional staff members who, for the most part, drafted separate components of the 1988 Act with different substantive and procedural interests in mind.

In short, coordination across agencies could not be presumed to take place because coordination across the different components of the legislation did not take place.

5.5 Feedback

To avoid the potential for pouring money into a black hole, all federal assistance acts have called for some form of evaluative feedback from recipients. Are programs working? Which programs work best, and under what circumstances? How are successful programs in one jurisdiction to be identified and transferred to other

jurisdictions? The extent to which a structure has been set up to accomplish this varies from act to act, but the mandate is always there.

Since 1984, general responsibility for this function has rested with the NIJ though, in the 1988 legislation, *all* programs supported with federal formula grant funds were supposed to be evaluated. However, this has not been accomplished. It is our view that the legislation itself fails to maximize the possibility of successful evaluation. Two factors seem particularly relevant.

First, though the legislation mandates evaluation of all programs, it does not address the problem of local funding of such activities. It *authorizes* rather than *requires* the use of subgrant funds for evaluation purposes. This gives states and local governments the opportunity to ignore or at least short-change the evaluation function. Though some do not take it, enough do that overall evaluation activities at the state and local level are very limited. Another difficulty that is encountered even when state and local agencies want to perform evaluations is that many state legislatures will not approve the expenditure of funds for such purposes.

A possible remedy for this problem would have been for the legislation to designate that a certain percentage of funds *must be used* for evaluation. What this amount should be is a policy choice, but even if it were only 5 percent of Byrne funds, this would ensure the generation of vastly more feedback that has been available under the actual arrangements. Of course, this would then be another mandate, earmarking funds for a specific congressional purpose. Arguably, the total appropriations for criminal justice aid may not be large enough to justify both programmatic and evaluation commitments.

A second fundamental problem is that the legislation provides no funding for the NIJ and the BJA that is specifically designated for Byrne program evaluation. Nevertheless, the Act gives these two agencies (primarily the NIJ) the responsibility for performing evaluation and providing the Congress with feedback on whether or not the Byrne program is working. As a consequence, the NIJ must provide Byrne evaluation

funds from its regular research budget, and the BJA must take them from its discretionary program resources. Though NIJ/BJA cooperation in this regard was high during 1989-1990, it subsequently became minimal, and until 1994/1995, for a variety of reasons, the BJA has made little or no financial contribution to the NIJ evaluation program. These approaches have resulted in an average annual evaluation budget from 1989-1994 of less than 1 percent of formula grant funding. Less than 150 evaluations have been funded by the NIJ and an additional handful have been separately funded by the BJA. Even if what may be a few hundred state and local evaluations could be included, these are not sufficient in number to provide a satisfactory assessment of a program that has generated more than 8,000 individual projects around the nation.

The consequence of this situation is that the Congress lacks convincing feedback about the operation and effects of the Byrne program, and this lack stems, in no small measure, from the shortcomings of the legislation itself.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1997 – 417 - 741 / 60014

U.S. Department of Justice
Office of Justice Programs
National Institute of Justice

Washington, D.C. 20531

Official Business
Penalty for Private Use $300

BULK RATE
POSTAGE & FEES PAID
DOJ/NIJ
Permit No. G–91