

Arizona Criminal Justice Commission

Our mission is to sustain and enhance the coordination, cohesiveness, productivity and effectiveness of the criminal justice system in Arizona.



Policy Brief

The Impact of SORNA and PREA Penalties to Byrne JAG Funding on Law Enforcement Effectiveness in Arizona

Summary

The Edward Byrne Memorial Justice Assistance Grant (Byrne JAG) Program is the cornerstone federal crime-fighting program, supporting the federal government's crucial role in spurring innovation, as well as testing and replicating evidence-based practices on the state and local levels.

Funding allocated to Arizona for the Byrne JAG formula grant program has been cut by 39 percent since FY 2010. Arizona's allocation was \$6,130,849 in FY 2010. In FY 2014 Arizona's allocation was \$3,736,439, a reduction of \$2,394,410 from FY 2010.

In addition to the formula reductions, in 2014 Arizona was assessed a 10 percent penalty of \$140,000 to the Byrne JAG allocation for failing to substantially implement the Sex Offender Registration and Notification Act (SORNA) and a five percent penalty of \$70,000 for non-compliance with the requirements of the Prison Rape Elimination Act (PREA).

These formula reductions in funding and over \$210,000 in penalties in 2014 have greatly reduced the amount of resources available to local law enforcement and have negatively impacted Arizona's ability to continue to provide adequate funding to proven programs and to test innovative new ideas that protect victims, hold offenders accountable, prevent crime, and reduce recidivism.

SORNA

The Sex Offender Registration and Notification Act (SORNA), passed as part of the Adam Walsh Child Protection and Safety Act of 2006, created standards for sex offender registration and notification programs across states, tribes, and territories. SORNA requires sex offenders to regularly register in-person, typically at their local law enforcement agency, and to notify the authorities if they travel or move. Also, juvenile offenders convicted of certain violent sex offenses must be registered and permanently placed on a law enforcement registry (or for a court-reduced period of 25 years).

States and territories which have not "substantially implemented" SORNA by July 27, 2011 are required to forfeit 10 percent of their Byrne Justice Assistance Grant (Byrne JAG) award annually, beginning in FY12.¹

Despite strong state laws regarding sex offender registration, in 2009 Arizona rejected implementing SORNA when the state legislature determined that it would cost approximately \$2 million to fulfill all requirements - far exceeding the estimated \$146,000 in grants that would be withheld due to the SORNA penalty each year.

Only 17 states, three territories, and 70 tribes have substantially implemented SORNA's requirements.²

PREA

The Prison Rape Elimination Act of 2003 (PREA) was signed into law by President George W. Bush on September 4, 2003. The law seeks to eliminate sexual abuse in correctional facilities by setting standards for the physical space and for the training, assignment, and conduct of personnel in these facilities. All public and private prisons,

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Arizona Byrne JAG Penalties

FY 2012 - 2014

	<u>10% SORNA Penalty</u>	<u>5% PREA Penalty</u>
FY 2014	\$141,887	\$70,944
FY 2013	\$146,713	
FY 2012	\$146,770	

jails, lock-ups, community corrections, and juvenile detention facilities must meet the PREA standards. A state is in compliance when prison facilities under its operational control meet the PREA standards.

Governors certify compliance, based in large part on audits done by Department of Justice (DOJ)-certified auditors. The first auditors are continuing to be trained and the first audits are underway in the Federal Bureau of Prisons' facilities. State facility audits are expected to begin in late 2014. The statute outlines a three-year audit cycle, whereby audits are conducted on one-third of each state's facilities each year. Therefore, a state may be expected to complete the first audits by 2017.

Congress mandated that the penalty for noncompliance is 5 percent of any DOJ grant funds "that it would otherwise receive for prison purposes," a term left undefined in statute. DOJ is interpreting this term to mean any grant program eligible to be used for prison construction, administration, or programming, which in FY14 will include the Byrne JAG program, the Juvenile Justice and Delinquency Prevention Act's Title II formula grants, and the Office on Violence Against Women's STOP grants.³

Impact of Formula Reductions and Penalties to Byrne JAG Funding in Arizona

Arizona continues to utilize Byrne JAG funding to implement multi-jurisdictional task forces (MJTFs), which include a tandem prosecutor component and forensic drug analysis support in order to impact and enhance downstream enforcement and monitoring activities. This downstream impact has led to funding probation-based drug monitoring programs and other probation-related services, drug courts, and indigent defense services for drug offenders.

Although required by federal guidelines to pass through 67 percent of the Byrne JAG grant funds to local law enforcement agencies, Arizona exceeds these guidelines and passes through approximately 80 percent to ensure that as many dollars are being used by local law enforcement as possible. This decision is significant because the PREA and SORNA penalties back out the pass through amount when calculating the penalty. This is intended to hold the locals harmless and only penalize the state. However, because Arizona passes through more than the required amount to the locals, the penalty impacts these agencies counter to the intent of the penalty.

"In Arizona the \$210,000 in SORNA and PREA penalties for FY 2014 translates to an estimated 102 drug offenders not being arrested, 4 handguns not taken off the streets, 2,480 lbs. of marijuana, 24 lbs. of cocaine, 34 lbs. of meth, and 5 lbs. of heroin left on the streets; 625 drug offenders not being prosecuted, and 352 drug offenders escaping conviction."

Arizona uses state funding, along with the Byrne JAG grant, to support law enforcement, prosecution, adjudication, and forensic projects. Even with the addition of state resources, the funding available for these projects has declined 26 percent since FY 2011. The addition of over \$210,000 in SORNA and PREA penalties to the reduction of Byrne JAG funding places an even greater strain on an already thinly-stretched system.

As a result of these cuts and penalties, there has been a corresponding decrease in the number of grant-funded law enforcement and prosecutor positions responding to the drug problem, a drop of 41 percent from 205 FTE's in 2011 to 121 in 2014.

This decrease has impacted funded MJTFs and prosecution projects in the following manner⁴:

- Dismantled Drug Trafficking Organizations are down 42 percent
- Disrupted Drug Trafficking Organizations are down 41 percent
- Closed investigations are down 36 percent
- New investigations opened are down 33 percent
- Arrests are down 24 percent
- Warrants served are down 17 percent
- Referred prosecution cases are down 11 percent
- Concluded prosecution cases are down 13 percent
- Weapons seized are down two percent.

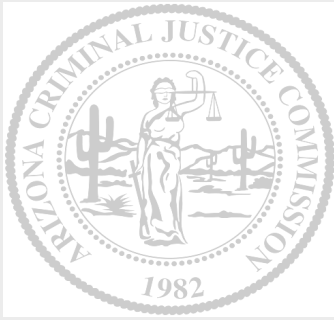
In Arizona the \$210,000 in SORNA and PREA penalties for FY 2014 translates to an estimated 102 drug offenders not being arrested, 4 handguns not taken off the streets, 2,480 lbs. of marijuana, 24 lbs. of cocaine, 34 lbs. of meth, and 5 lbs. of heroin left on the streets; 625 drug offenders not being prosecuted, and 352 drug offenders escaping conviction.⁵

Unfortunately, this decrease in federal justice assistance resources comes during a period of increasing drug-related hospital emergency department visits, substance abuse treatments, and deaths.

According to the Arizona Department of Health Services, substance abuse treatment for illicit drugs increased from 40,049 patients in 2008 to 48,824 in 2012, a 22 percent increase⁶. Specifically:

- Treatment for narcotics increased 61 percent
- Treatment for marijuana increased 33 percent.

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Of the more dangerous drug types, there were 20,715 emergency department (ED) visits in 2008 and 30,695 in 2011, a 48 percent increase. Specifically:

- ED visits involving opioids and narcotics increased 86 percent
- ED visits involving cannabis increased 72 percent
- ED visits involving hallucinogens increased 59 percent
- ED visits involving sedatives increased 59 percent
- ED visits involving amphetamine have increased 54 percent.

Between 2007 and 2011, drug-related mortality increased 13 percent. Specifically:

- Heroin deaths increased 105 percent, from 48 to 120
- Other opioids (e.g. codeine, morphine, oxycodone) increased 55 percent, from 207 to 320
- Psychostimulants (e.g. amphetamine, methamphetamine) increased 47 percent, from 102 to 150.

Conclusion

In light of the substantial return on investment that Byrne JAG funding provides to Arizona, increased funding for the Byrne JAG program will help Arizona law enforcement agencies directly target the growing problem of rising illegal drug use at a critical time.

In addition, Congress should remove the SORNA and PREA penalty assessment to state Byrne JAG formula allocations and seek a more effective way to implement these important laws. The net effect of these assessments has not led to substantial compliance with SORNA and PREA. However, the reductions from these assessments have further hampered Arizona's ability to adequately support efforts to control the increasing harm caused by drugs in this state and throughout the country. The High Intensity Drug Trafficking Area (HIDTA) data shows Arizona is a conduit for drug trafficking across the border into the United States. Reductions in funding to border states like Arizona puts additional strain on efforts in other states.

End Notes

1 - National Criminal Justice Association, SORNA – Remaining Barriers to Implementation, http://ncja.typografik.com/sites/default/files/documents/SORNA_barriers_to_implementing_one_pager.pdf

2 - Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking, Jurisdictions that Have Substantially Implemented SORNA, http://ojp.gov/smart/newsroom_jurisdictions_sorna.htm

3 - National Criminal Justice Association, PREA, <http://www.ncja.org/issues-and-legislation/prea>

4 - Arizona Criminal Justice Commission, Enhanced Drug and Gang Enforcement (EDGE) Report, 2013

5 - Author calculations based on 2013 Enhanced Drug and Gang Enforcement Report

6 - Arizona Department of Health Services, Population Health and Vital Statistics, <http://www.azdhs.gov/plan/hip/index.php>

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