

Bureau of Justice Assistance
Southwest Border Prosecution Initiative Guidelines
August 2003

Internet Application Process:

On-line applications may be submitted at any time via the Internet, at <http://southwest.ojp.gov>. Eligible county and state governments may apply for funds covering cases disposed on or after October 1, 2001, in accordance with established reporting periods and funding availability.

Open-Continuous Application Period:

Until further notice, this program will operate on an open-continuous basis, whereby eligible jurisdictions may apply at any time, as long as funds remain. Beginning Friday, June 27, 2003 and every few weeks thereafter, BJA will compile all submitted (completed) applications and make payments to applicant jurisdictions, based upon reported cases and available funds. Quarterly, BJA will provide new on-line worksheets for the reporting of cases disposed during the previous quarter. All eligible jurisdictions will have access to current and prior reporting period application worksheets, until such time as appropriated funds for that period are exhausted. However, once a jurisdiction's application has been approved by BJA, the jurisdiction will be prohibited from reporting additional cases that were disposed during the approved application's reporting period(s).

Final payout per appropriation may necessitate payment amounts being calculated on a pro-rata basis. Once funds are exhausted, BJA will eliminate the respective on-line reporting worksheet, to prevent additional jurisdictions from applying for that particular period.

Non-Competitive Approval Process:

Applications are reviewed and approved on the basis of their adherence to program guidelines and requirements, in keeping with funding availability. BJA is not using weighted criteria or preferences in funding decisions. Given sufficient funds, all applicants will receive 100% of the calculated dollar amount for total cases eligible for payment, as determined by the application process. If application amounts exceed available funds, applicants will receive funds on a uniform, pro-rata basis. Timely submission of applications increases the likelihood of receiving maximum payments.

Eligible Jurisdictions:

A county or state government in Arizona, California, New Mexico, or Texas may participate if it prosecuted or detained a defendant in a federally initiated and declined-referred criminal case that was disposed on or after October 1, 2001.

Eligible Applicant:

An applicant may be the Chief Executive Officer (CEO) or an authorized designee of any county in Arizona, California, New Mexico, or Texas, or of the state. CEO's are the highest ranking administrative or elected official of a unit of general government, such as:

- ' Governor (for states)

- ' President of the County Commissioners or County Executive (for counties)
- ' County Judge (for counties in Texas)

Authorized designees are government officials that act on behalf of the CEO. They are empowered to make assurances and certifications on behalf of the jurisdiction. For purposes of this program, the county prosecutor's office is the recommended designee.

Eligible Case:

An eligible case is any federally initiated and declined-referred criminal case that was prosecuted by a state or county prosecutor and disposed of during an eligible reporting period. Jurisdictions providing pre-trial detention for eligible case defendants are also eligible for funds.

Each defendant represents a separate case. That is, one case with multiple defendants should be claimed as separate cases for purposes of this application. However, one defendant charged in multiple cases should be claimed as only one case to the extent the defendant's cases are being investigated and/or prosecuted during concurrent periods of time.

Federally referred cases that are declined and not prosecuted by state or county prosecutors are ineligible.

A case is eligible, regardless of:

- ' When the case was referred (e.g., cases referred in FY2001 but not disposed of until FY2002 are eligible).
- ' What level, type, or number of criminal offenses were involved (e.g., felonies, misdemeanors, drugs, violent offenses, property, public order, etc.).
- ' What the defendant's age or citizenship status was at the time of the federal referral (e.g., juveniles, illegal or legal aliens, etc.)
- ' Whether the case was formally declined and referred by a U.S. Attorney, or through a blanket federal declination-referral policy, an accepted federal law enforcement practice, or federal prosecutorial discretion.
- ' Whether state or local law enforcement participated with federal authorities in the investigation or arrest (e.g., federal/state task forces, etc.)

Case Reporting Periods:

This program covers multiple federal fiscal years and reporting periods of varying lengths. The following are the prescribed reporting periods for the current program:

- ' October 1, 1999 to present (select jurisdictions from U.S. Attorney program)
- ' October 1, 2001 to September 30, 2002 (12 months)
- ' October 1, 2002 to March 31, 2003 (6 months)
- ' April 1, 2003 to June 30, 2003 (3 months)
- ' July 1, 2003 to September 30, 2003 (3 months, opening October 2003)

The current status and availability of reporting periods may be found at <http://southwest.ojp.gov>. With new appropriations for FY2004, additional reporting periods will be made available.

Federally Initiated Case:

A federally initiated case results from a criminal investigation or an arrest involving federal law enforcement authorities for a potential violation of federal criminal law. This may include investigations resulting from multi-jurisdictional task forces (e.g., High Intensity Drug Trafficking Areas (HIDTA), Organized Crime Drug Enforcement Task Forces (OCDETF), etc.)

Federal Declination-Referral:

This is generally a point in time during a federal investigation when a U.S. Attorney or a federal law enforcement official decides not to pursue federal criminal charges against a defendant (declination) and requests that a state or local jurisdiction prosecute the defendant(s) for possible violation of state or local criminal statutes (referral).

In some cases, a U.S. Attorney may subsequently decide to pursue federal charges against a referred defendant. When this occurs, time spent by the state or local jurisdiction in their prosecution and/or detention of the defendant on state criminal charges is eligible for funding and may be reported in the SWBPI application.

For purposes of the SWBPI application, referred cases are eligible regardless of whether the case was formally declined and referred by a U.S. Attorney, or through a blanket federal declination-referral policy, an accepted federal law enforcement practice, or by federal prosecutorial discretion.

Case Disposition:

For purposes of the SWBPI, case disposition refers to the time between a suspect's arrest and the resolution (e.g., dismissals, pleas, convictions, etc.) of the criminal charges through a county or state judicial or prosecutorial process. Only in the unlikely event that a case defendant was not physically arrested, acceptable alternative start dates include the date of indictment, or the date of the initial criminal summons or summons to appear. Disposition does not include incarceration time for sentenced offenders, or time spent by prosecutors on judicial appeals.

To complete the online application and determine the maximum payment, eligible cases must be grouped according to the length of case disposition. Maximum payment levels increase in accordance with longer dispositions, to reflect the increased cost of prosecuting and detaining defendants. The four case disposition categories are: 1 to 15 days; 16 to 30 days; 31 to 90 days; and more than 90 days.

Payment-per-case:

Each eligible case may receive the following maximum payment, based upon length of disposition, availability of funds, and the provision of both prosecution services (50% of maximum payment per case) and pre-trial detention services (50% of maximum payment per case):

- ' \$2,500 maximum for each case of 1 to 15 days
- ' \$5,000 maximum for each case of 16 to 30 days
- ' \$7,500 maximum for each case of 31 to 90 days
- ' \$10,000 maximum for each case of 91+ days

Prosecution Services:

To be eligible for 50% of the maximum payment per case, an eligible jurisdiction must have provided one or more of the following for each case:

- ' Judicial services (Judges, Commissioners, Hearing Officers, etc.)
- ' Prosecution services (District Attorney, County Prosecutor, State's Attorney, etc.)
- ' Defense services (Public Defender, Indigent Defense, etc.)

Pre-Trial Detention Services:

To be eligible for 50% of the maximum payment per case, an eligible jurisdiction must have held the case defendant overnight for one or more days in a secure facility.

Both Prosecution and Detention Services:

If a jurisdiction provides both prosecution and detention services for an eligible person, the length of the prosecution takes precedence in calculating case disposition time. For this type of case, the jurisdiction should use "Both" as the **Type of Service** provided when completing the application and the length of the prosecution should govern which **Case Disposition Category** is selected.

Special Considerations for New Mexico and Texas Applicants:

New Mexico: For counties in the State of New Mexico, only detention services may be reported in a county's on-line application. Prosecution services are provided through various state agencies and will be reflected in a special state-level application.

Texas: Counties in the State of Texas receive prosecutorial services through various judicial districts and District Attorneys. In many cases, more than one county is under the auspices of one District Attorney. County judges and detention officials should ensure close coordination with their respective district attorney in the completion and submission of applications to prevent duplication or the under-reporting of certain services or caseloads.

Electronic Payments:

Electronic payments will be sent to an applicant's bank account of record. Jurisdiction contacts, including the Financial Point of Contact, will be notified whenever a payment is processed.

For jurisdictions from the FY2000/2001 EOUSA program, payments for costs incurred will be processed and paid on a regular basis until all funds are expended or until September 30, 2003.

U.S. Attorney (USA) Program Participants:

The U.S. Attorneys are no longer accepting invoices from eligible jurisdictions involved in the FY 2000-2001 programs. However, BJA will continue to pay approved expenses through September 30, 2003, in keeping with the original EOUSA guidelines and not to exceed amounts remaining from the original agreements. Jurisdictions must register through this online system (<http://southwest.ojp.gov>) and provide current banking information to be eligible for additional payments covered by the original USA agreements. They may also apply for new funding under BJA's program. Registration and banking information are the same for both programs and are required before an application or payment request may be approved and processed.

Use of Funds:

Funds from SWBPI federal payments may be used by applicant jurisdictions for any lawful purpose. The direct support and enhancement of jurisdictions' prosecutorial and detention services are encouraged.

State Criminal Alien Assistance Program (SCAAP):

Jurisdictions that participate in SCAAP or other Federal grant, payment, or reimbursement programs are eligible and encouraged to apply. In the unlikely event that an applicant may receive in excess of 100% of their actual costs for prosecution and/or detention services once all federal funds are combined, the number of cases reported should be adjusted prior to submission. At submission, the jurisdiction's CEO or designee certifies that the total application amount, when combined with other Federal funds provided to the jurisdiction for that reporting period, does not exceed 100% of the jurisdiction's annualized costs for prosecution and/or pre-trial detention services.

Reporting Requirements:

All reporting, certification, and data collection requirements are contained in the online application.