

May 2012

# INDIGENT DEFENSE

## DOJ Could Increase Awareness of Eligible Funding and Better Determine the Extent to Which Funds Help Support This Purpose



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## Why GAO Did This Study

The Sixth Amendment to the U.S. Constitution guarantees every person accused of a crime the right to counsel. States and localities generally fund indigent defense services, and the Department of Justice (DOJ) also provides funding that can be used for these services. GAO was asked to review federal support for indigent defendants. This report addresses, for fiscal years 2005 through 2010, the (1) types of support DOJ provided for indigent defense; (2) extent to which eligible DOJ funding was allocated or awarded for indigent defense, the factors affecting these decisions, and DOJ's actions to address them; (3) percentage of DOJ funding allocated for indigent defense and how it was used; (4) extent to which DOJ collects data on indigent defense funding; and (5) extent to which DOJ assesses the impacts of indigent defense grants, indigent defense programs have been evaluated, and DOJ has supported evaluation efforts. GAO surveyed (1) all 4,229 grant recipients about funding allocations and (2) a sample of 253 public defender offices about factors influencing their decisions to apply for funding. Though not all survey results are generalizable, they provide insights. GAO also analyzed grant related documents and interviewed relevant officials.

## What GAO Recommends

GAO recommends that DOJ increase grantees' awareness that funding can be allocated for indigent defense and collect data on such funding.

DOJ concurred with the recommendations.

View [GAO-12-569](#). For more information, contact Eileen R. Larence at (202) 512-8777 or [larencee@gao.gov](mailto:larencee@gao.gov).

## INDIGENT DEFENSE

### DOJ Could Increase Awareness of Eligible Funding and Better Determine the Extent to Which Funds Help Support This Purpose

## What GAO Found

The Department of Justice (DOJ) administered 13 grant programs from fiscal years 2005 through 2010 that recipients could use to support indigent defense, 4 of which required recipients to use all or part of the funding for this purpose. DOJ also provides training to indigent defense providers, among other things.

From fiscal years 2005 through 2010, recipients of the 4 grants that required spending for indigent defense allocated or planned to use \$13.3 million out of \$21.2 million in current dollars for indigent defense. However, among the 9 grants that did not require allocations or awards for indigent defense, two-thirds or more of state, local, and tribal respondents to GAO's surveys reported that they did not use funds for this purpose, partly due to competing priorities. DOJ has listed the grants on its website. However, no more than 54 percent of grantees or public defender offices responding to GAO's surveys were aware that such funding could be used to support indigent defense. Taking steps to increase awareness would better position DOJ to help ensure that eligible grantees are aware that they can access federal funding to help address their needs. DOJ officials acknowledged that opportunities exist to enhance grantees' awareness.

When recipients allocated funding for indigent defense, the amount was generally small relative to the total award and most commonly used for personnel and training. For instance, among grant recipients who reported in GAO's surveys that they had allocated funding for indigent defense, allocations as a percentage of total awards ranged from 2 percent to 14 percent.

DOJ generally collects data on funding allocated for indigent defense when the grant program requires such funding or identifies it as a grant priority, but does not do so in two juvenile-focused grants. According to DOJ, it does not collect such data in these two programs because indigent defense is 1 of 17 purposes for which grant funds can be used. GAO has previously reported that agencies should collect data to support decision making, and the Attorney General has committed to focusing on indigent defense issues. Collecting data on the amount of funding from these two grants that is used to support indigent defense would position DOJ to better assess if it is meeting the Attorney General's commitment.

DOJ assesses the impact of indigent defense grant funding and has mechanisms to help indigent defense providers evaluate services. All 9 of the DOJ grant programs that required or prioritized funding to be used for indigent defense included output measures that described the level of grant activity, such as the number of defenders hired, and 7 of the 9 included outcome measures that described the intended results of the funds, such as the percent increase in defendants served. Nine of the 118 public defender offices or agencies that responded to GAO's survey provided GAO with a copy of an evaluation that had been conducted of their office; those that did not most frequently cited lack of personnel (28 of 62) and lack of expertise or the need for technical assistance (26 of 62) as the reasons. DOJ has mechanisms that could address these challenges. For instance, DOJ provides technical assistance through a website.

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# Contents

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Letter		1
	Background	6
	DOJ and BIA Make Funding, Training, and Technical Assistance Available to Support Indigent Defense	10
	Unless Required, Few Recipients Allocated or Planned to Use Any Federal Funding for Indigent Defense, in Part Due to Competing Priorities	17
	When Recipients Allocated Funding for Indigent Defense, in General, the Amount Was Small Relative to the Total Award and Funding Was Used for Personnel and Training	31
	DOJ Could More Consistently Collect Data on the Amount of Funding Allocated for Indigent Defense When Programs Identify It as a Priority	36
	DOJ Assesses the Impact of Indigent Defense Grant Funding and Has Mechanisms to Help Indigent Defense Providers Evaluate Services	39
	Conclusions	46
	Recommendations for Executive Action	47
	Agency and Third Party Comments and Our Evaluation	47
Appendix I	Objectives, Scope, and Methodology	51
Appendix II	Allocations and Uses of DOJ Grants That Required Indigent Defense Funding	61
Appendix III	Percentage of Survey Respondents That Allocated Funding for Indigent Defense and Allocation Amounts	62
Appendix IV	Additional Details on Number of Indigent Defense Discretionary Awards and Award Amounts	69

---

Appendix V	JAG Survey Respondents' Allocations across Purpose Areas and for Indigent Defense, by Fiscal Year	72
Appendix VI	Analysis of Indigent Defense-Related Performance Measures for Department of Justice Grant Programs	87
Appendix VII	Select Measures, Findings, and Recommendations from Public Defender Office and Agency Evaluations and Reports	94
Appendix VIII	Possible Data Elements for Evaluating Public Defender Offices, Extent to Which Respondents Collect Related Data, and Data Challenges and Limitations	101
Appendix IX	Comments from the Department of Justice	104
Appendix X	GAO Contact and Staff Acknowledgments	109

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Tables

Table 1: DOJ Grant Programs that Require Funding to Be Allocated for Indigent Defense	11
Table 2: DOJ Grant Programs for which Allocating Funding for Indigent Defense Is a Priority or Stated Purpose	13
Table 3: DOJ Grant Programs for which Allocating Funding for Indigent Defense is Allowed, but Not Required or a Priority	14
Table 4: Survey Distribution, Populations, Respondents and Rates, and Generalizability	54
Table 5: Public Defender Offices by Stratum and Population, Cases Selected, and Sample Size	57
Table 6: Number and Amount of Awards for Indigent Defense for DOJ Grant Programs That Required Funding for Indigent Defense	61

---

Table 7: Awards and Allocations in Whole or in Part for Indigent Defense, by Discretionary Grant that Did Not Require Spending for this Purpose	69
Table 8: Indigent Defense-Related Performance Measures and Type of Measure for DOJ Grant Programs	88
Table 9: Summary of Select Measures, Findings, and Recommendations from Public Defender Evaluations and Reports	94
Table 10: Survey Respondents Collecting Data Elements and Associated Challenges	101

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## Figures

Figure 1: Percentage of Survey Respondents that Received DOJ Formula Grants or BIA Tribal Courts TPA Funds and Reported Allocating These Funds for Indigent Defense	18
Figure 2: Percentage of Discretionary Grants That Were Awarded Fully or in Part for Indigent Defense during Fiscal Years 2005 through 2010	20
Figure 3: Percentage of JAG, JJDP, JABG, and Tribal Courts TPA Survey Respondents Reporting Reasons That Were Extremely or Very Important to Their Decisions Not to Allocate Funding for Indigent Defense	21
Figure 4: Percentage of Public Defender Survey Respondents Reporting Reasons That Were Extremely or Very Important for Why They Did Not Apply for Grant Funding (N=103)	22
Figure 5: Percentage of Funding That JAG SAA Respondents Reported Allocating to Each Purpose Area, Including Indigent Defense, during Fiscal Years 2005 through 2010	24
Figure 6: Percentage of Funding That JAG Local and Tribal Respondents Reported Allocating to Each Purpose Area, As Well As Indigent Defense, during Fiscal Years 2005 through 2010	25
Figure 7: Criminal Justice Areas Awarded Byrne Competitive Grants during Fiscal Years 2007 through 2010 (N=287)	26
Figure 8: Survey Respondents Who Reported They Were Aware that Funding Could Be Used for Indigent Defense	29
Figure 9: Allocations for Indigent Defense as a Percentage of Total Awards among Those Who Reported Allocating Funding for Indigent Defense, Fiscal Years 2005 through 2010	32

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Figure 10: Amounts Awarded Fully or In Part for Indigent Defense, as a Percentage of Total Amounts Awarded for Selected Discretionary Grants, during Fiscal Years 2005 through 2010	33
Figure 11: Reported Uses of JABG and JJDP Grants Allocated for Indigent Defense	34
Figure 12: Uses of Discretionary Grants Awarded for Indigent Defense	35
Figure 13: Percentage of JAG State, Local, and Tribal Survey Respondents That Reported Allocating Funding for Indigent Defense, by Fiscal Year	63
Figure 14: Percentage of JJDP and JABG Survey Respondents That Reported Allocating Funding for Indigent Defense, by Fiscal Year	64
Figure 15: Percentage of BIA Tribal Courts TPA Funding Survey Respondents That Reported Allocating Funding for Indigent Defense, by Fiscal Year	65
Figure 16: Reported Allocations as a Percentage of Total Award, by Fiscal Year, among JAG Respondents Who Reported Allocating Funding for Indigent Defense	66
Figure 17: Reported Allocations as a Percentage of Total Award, by Fiscal Year, among JABG and JJDP Respondents Who Reported Allocating Funding for Indigent Defense	67
Figure 18: Reported Allocations as a Percentage of Total Award, by Fiscal Year, among BIA Tribal Courts TPA Respondents Who Reported Allocating Funding for Indigent Defense	68
Figure 19: Percentage of Grants Awarded in Whole or in Part for Indigent Defense; Fiscal Years 2005 through 2010	70
Figure 20: Indigent Defense Awards, as a Maximum Possible Percentage of Total Awards; Fiscal Years 2005 through 2010	71
Figure 21: SAAs' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2005	73
Figure 22: SAAs' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2006	74
Figure 23: SAAs' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2007	75

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Figure 24: SAAs' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2008	76
Figure 25: SAAs' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2009	77
Figure 26: SAAs' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, ARRA	78
Figure 27: SAAs' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2010	79
Figure 28: Local and Tribal JAG Recipients' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2005	80
Figure 29: Local and Tribal JAG Recipients' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2006	81
Figure 30: Local and Tribal JAG Recipients' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2007	82
Figure 31: Local and Tribal JAG Recipients' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2008	83
Figure 32: Local and Tribal JAG Recipients' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2009	84
Figure 33: Local and Tribal JAG Recipients' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, ARRA	85
Figure 34: Local and Tribal JAG Recipients' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2010	86

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## Abbreviations

ABA	American Bar Association
AOUSC	Administrative Office of the U.S. Courts
ARRA	American Recovery and Reinvestment Act
ATJ	Access to Justice Initiative
BIA	Bureau of Indian Affairs
BJA	Bureau of Justice Assistance
BJS	Bureau of Justice Statistics
CCLI	Capital Case Litigation Initiative
DOI	Department of the Interior
DOJ	Department of Justice
ICRA	Indian Civil Rights Act
JABG	Juvenile Accountability Block Grant
JAG	Edward Byrne Memorial Justice Assistance Grant
JIDNC	Juvenile Indigent Defense National Clearinghouse
JJDP	Juvenile Justice and Delinquency Prevention Grant Title II
JRJ	John R. Justice Program
NIJ	National Institute of Justice
NTTAC	National Training and Technical Assistance Center
OJJDP	Office of Juvenile Justice and Delinquency Prevention
OMB	Office of Management and Budget
OJP	Office of Justice Programs
SAA	state administering agency
TCCLA	Tribal Civil and Criminal Legal Assistance
TJADG	Tribal Juvenile Accountability Discretionary Grants Program
TPA	Tribal Priority Allocations
WCR	Wrongful Conviction Review Program

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United States Government Accountability Office  
Washington, DC 20548

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May 9, 2012

### Congressional Requesters

Pursuant to the Sixth Amendment to the U.S. Constitution, every person accused of a crime is afforded the right to have counsel in his or her defense, even if unable to afford such representation.<sup>1</sup> Individuals accused of a crime but unable to afford representation—referred to as indigent defendants—often rely on entities such as public defender offices for the provision of counsel. Several organizations, including the National Legal Aid and Defender Association, conducted national studies of indigent defense, pointing out many challenges in providing counsel across the country, including inadequate funding of defense programs as a whole, inadequate compensation for assigned counsel, lack of investigative resources, inexperienced counsel, and understaffing of public defense offices. In affording indigent defendants their right to counsel, both state and local governments generally decide the type of indigent defense programs to employ and how to fund them.

States, localities, and, in some cases, tribes fund indigent defense services, and the federal government—through the Department of Justice (DOJ) and the Department of the Interior’s (DOI) Bureau of Indian Affairs (BIA), for tribes—also provides funding that can be used to support indigent defense services.<sup>2</sup> However, in this country’s current fiscal crisis, several states have reported that when determining how to allocate scarce budget resources, they have reduced or eliminated state funding for state and local indigent defense services. Further, although tribes—

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<sup>1</sup>See *Gideon v. Wainwright*, 372 U.S. 335 (1963) (holding that the Sixth Amendment’s effective assistance of counsel provision is a fundamental and essential right made obligatory upon states by virtue of the Fourteenth Amendment’s due process of law clause). Pursuant to the Sixth Amendment’s right to effective assistance of counsel provision, a penalty of imprisonment may not be imposed upon any defendant, indigent or otherwise, absent representation by counsel or a knowing and intelligent waiver of counsel.

<sup>2</sup>Throughout this report, we use “indigent defense” to refer to direct and indirect activities that help ensure indigent defendants are afforded counsel in criminal cases. These activities may include hiring additional public defenders, investigators, or other support staff; providing training for public defenders; making technological improvements in public defenders’ offices or systems; or providing loan repayments to help retain public defenders.

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which retain limited, inherent sovereignty—are not bound by restraints placed upon the federal or state governments through the Bill of Rights or other amendments to the U.S. Constitution, many tribal governments choose to provide indigent defense services and face similar challenges as state and local governments in doing so.<sup>3</sup>

You requested that we assess federal funding and other federal support to state, local, and tribal governments to assist them in providing counsel to indigent defendants. Specifically, this report addresses the following questions:

1. What type of support, if any, have DOJ and BIA provided for state, local, and tribal indigent defense?
2. For fiscal years 2005 through 2010, to what extent was eligible DOJ and BIA funding allocated and awarded for indigent defense, what factors affected decisions to allocate and award funding for this purpose, and what actions have DOJ and BIA taken, if any, to address these factors?
3. When fiscal year 2005 through 2010 federal funding was allocated or awarded for indigent defense, how did it compare to the total allocations or awards made, and how did recipients use the funding?
4. To what extent does DOJ collect data on indigent defense funding when the grant program specifies that funds be allocated or awarded for this purpose or highlights it as a priority?
5. When a grant program specifies that funds be spent for indigent defense or highlights it as a priority, to what extent does DOJ assess the impacts of this grant funding, and to what extent have there been evaluations of indigent defense programs and has DOJ supported these evaluation efforts?

To determine what DOJ grant programs and BIA funding could be used for indigent defense from fiscal years 2005 through 2010, we analyzed the Catalog of Federal Domestic Assistance and DOJ's website, and consulted DOJ and BIA officials responsible for administering state, local,

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<sup>3</sup>See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55-56 (1978) (recognizing that although Indian tribes no longer possess the full attributes of sovereignty, they remain a separate people, with the power of regulating their internal and social relations, and that as separate sovereigns, tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority) (internal citations and quotations omitted). See also 25 U.S.C. § 1302(2) (defining an Indian tribe's power of self-government).

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and tribal grant and funding programs.<sup>4</sup> We obtained records of all recipients of relevant DOJ grants, and identified recipients of relevant BIA funding through BIA's annual budget justifications. Further, we interviewed knowledgeable agency officials about the source of the grant data and the controls in place to maintain the integrity of the data and determined that the data were sufficiently reliable for our purposes. In addition, we interviewed DOJ and BIA officials with knowledge of other assistance the agencies provide to support indigent defense.

To determine the extent to which state, local, and tribal government recipients allocated federal funding for indigent defense, the factors that influenced their decisions, and the amounts allocated, we conducted separate web-based surveys of all recipients of fiscal year 2005 through 2010 DOJ formula grants that could be allocated for indigent defense—the Edward Byrne Memorial Justice Assistance Grant (JAG),<sup>5</sup> Juvenile Justice and Delinquency Prevention Grant Title II (JJDP) and the Juvenile Accountability Block Grant (JABG)—and tribal governments that received funding through BIA Tribal Courts tribal priority allocation (TPA) distributions from fiscal years 2005 through 2010.<sup>6</sup> Forty-six percent of JAG recipients (1,818 of 3,963; including 89 percent of state agencies and 45 percent of localities and tribes) completed the JAG survey; 89

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<sup>4</sup>We selected fiscal years 2005 through 2010 because you requested that we identify federal funding that was used for indigent defense during this time frame. The Catalog of Federal Domestic Assistance is a government-wide compendium of federal programs, projects, services, and activities that provide assistance or benefits to the American public. It contains financial and nonfinancial assistance programs administered by departments and establishments of the federal government.

<sup>5</sup>Amounts appropriated through the American Recovery and Reinvestment Act of 2009 (ARRA) are also included in our review. See Pub. L. No. 111-5, 123 Stat. 115, 130 (2009).

<sup>6</sup>An electronic supplement to this report—[GAO-12-661SP](#) (available June 2012)—provides survey results. Formula grants are funding programs for which the primary grantees do not compete, although they must submit an application and meet other specified requirements. These grants are usually administered and managed by State Administering Agencies (SAA), and the amount of the grant awards are calculated by a formula most often governed or established by statute, which may consider factors such as population or crime data. We provide further descriptions of these grants later in this report. In addition, we identified BIA funding to Courts of Indian Offenses (referred to as “CFR courts”) that could be used for indigent defense. We did not include CFR courts in our survey of tribal courts because CFR courts constitute direct services administered by BIA officials. However, according to BIA officials, every CFR court has a law-trained public defender. Also, based on discussions with BIA officials, we did not include tribal courts in BIA's Alaska region.

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percent of JJDP recipients (50 of 56) completed the JJDP survey; 82 percent of JABG recipients (46 of 56) completed the JABG survey; and 68 percent (105 of 154) of recipients completed the Tribal Courts TPA survey.<sup>7</sup> Because all recipients of JABG and JJDP funding were included in our population and we received response rates of 82 and 89 percent, we consider our results generalizable to the population of JABG and JJDP recipients. While all eligible members of our target population of JAG recipients and recipients of BIA Tribal Courts TPA distributions were included in our survey, due to the relatively low response rates and the possibility of other errors all questionnaire surveys face, our results represent only those respondents who participated in our survey and should not be generalized to the population of JAG recipients or recipients of BIA Tribal Courts TPA distributions.<sup>8</sup> Moreover, dollar amounts reported by JAG respondents have limitations and should be treated as estimates. See appendix I for additional discussion of these limitations and the reasons they occurred, and additional details of our survey methods. However, the responses provide insights into the extent to which JAG funding and BIA Tribal Courts TPA distributions have been allocated for indigent defense. Moreover, to determine the purposes for which this funding was used and to identify the most frequently reported uses, we conducted follow-up interviews with selected survey respondents who reported allocating funding for indigent defense.<sup>9</sup>

Further, to determine the extent to which DOJ awarded eligible discretionary grants for indigent defense, we obtained project descriptions of grants available for indigent defense from DOJ.<sup>10</sup> We reviewed these descriptions to identify the number and amount of grants used either all or in part for indigent defense and the uses of these funds.

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<sup>7</sup>We surveyed tribal JAG recipients separately from state and local JAG recipients. However, we combined all JAG responses for the purposes of this report. See appendix I for additional details.

<sup>8</sup>Because we included all recipients in our survey, our results are not subject to sampling error.

<sup>9</sup>See appendix I for additional details on the number of number of respondents we followed up with and how they were selected.

<sup>10</sup>Discretionary grants are awarded directly to eligible recipients, most often on a competitive basis.

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To determine what actions, if any, DOJ and BIA have taken to address factors influencing recipients' decisions to allocate funding for indigent defense, we interviewed DOJ and BIA officials responsible for each type of funding. We also reviewed DOJ's guidance to recipients to determine the extent to which DOJ communicated that funding could be used for indigent defense programs. We compared this guidance against relevant statutes, and DOJ's stated commitment to support indigent defense.

In addition, we reviewed DOJ grant documentation to identify grants for which indigent defense was identified as a priority or purpose of the grant. For these grants, we reviewed grant performance measures outlined in DOJ grant solicitations. We also conducted interviews with relevant DOJ officials about the extent to which DOJ collects data on whether grants were allocated or awarded for indigent defense and measures the impact resulting from grant funds for indigent defense. We analyzed this information to determine the status of DOJ's efforts and the mechanisms available to collect such data and assess the impact. We compared DOJ's measures against criteria in Office of Management and Budget (OMB) guidance<sup>11</sup> and our prior work on performance measures, which states that leading organizations promote accountability by establishing results-oriented, outcome goals and corresponding performance measures by which to gauge progress towards attaining these goals.<sup>12</sup> To determine whether performance measures were outcome-oriented, two analysts also independently reviewed performance measures DOJ established to assess whether the measures focused on the intended result of the program. The analysts then met to discuss and resolve any differences in the results of their analyses.

Further, to determine the extent to which evaluations had been conducted of indigent defense programs, we conducted a web-based survey of a random sample of 253 public defender offices or agencies from among 841 identified nationwide; 118 offices or agencies completed the questionnaire for an unweighted response rate of 47 percent. Respondents to this survey were generally a county or city public defender office, state-run public defender office, or firm or nonprofit

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<sup>11</sup>OMB, *Performance Measurement Challenges and Strategies* (Washington, D.C.: June 2003).

<sup>12</sup>GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#), (Washington, D.C.: June 1996).

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organization under contract to provide indigent defense services. Due to the relatively low response rate and the possibility of other errors all questionnaire surveys face, our results represent only respondents who participated in our survey and should not be generalized to the population of public defender offices or agencies. However, the results provide insights into the evaluation conducted of public defender offices and the challenges associated with conducting such an evaluation. In addition, we conducted a literature search of peer-reviewed journals. In December 2011, we held a listening session at a National Legal Aid and Defender Association conference where public defenders described challenges to conducting evaluations, among other topics.<sup>13</sup> Finally, to identify actions DOJ has taken to evaluate indigent defense systems, we reviewed studies funded or conducted by DOJ and interviewed DOJ officials about its efforts to evaluate indigent defense systems. Additional details on our scope and methodology are contained in appendix I.

We conducted this performance audit from February 2011 to May 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our analysis based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our analysis based on our audit objectives.

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## Background

States and localities have developed and largely funded their own indigent defense systems. To do so, they have generally adopted one or more of the following methods for providing indigent defense—employing full or part-time public defenders to handle the bulk of cases requiring counsel; entering into contracts with private attorneys, often after a bidding contest, to provide counsel; or developing a list, or “panel,” of private attorneys who accept a predetermined fixed rate and from which the court appoints as defense counsel when needed. Further, depending on the state, funding for the indigent defense system is provided by the

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<sup>13</sup>The 17 public defender office or agency leaders who attended the listening session also discussed characteristics of model public defender programs; factors that affect the ability of public defenders to provide effective representation; and critical funding needs facing public defender programs. We observed their discussion, recorded the information shared, and reviewed the information to identify common themes.

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state, localities within the state, or a combination of state and local funding.

According to DOJ, as of its most recent census of public defender offices issued in 2007, 22 states have established statewide—and state funded—public defender agencies to provide indigent defense in which a central office oversees the operations, policies, and practices of all public defender offices located in the state.<sup>14</sup> In another 27 states, local jurisdictions—largely counties—are responsible for providing and, in whole or in part, funding, indigent defense services. The remaining state funds 100 percent of its indigent defense services, which are provided by assigned counsel, but does not have city, county, or state public defender offices.

Unlike states, tribes—which retain limited, inherent sovereignty—are not bound by restraints placed upon the federal or state governments through the Bill of Rights or other amendments to the U.S. Constitution, including the Sixth Amendment’s right to counsel provision.<sup>15</sup> However, the Indian Civil Rights Act of 1968 (ICRA), as amended, limits the extent to which tribes may exercise their powers of self-government by imposing conditions on tribal governments similar to those found in the Bill of Rights to the U.S. Constitution.<sup>16</sup> For example, ICRA extends the protections of free speech, free exercise of religion, and due process and equal protection under tribal laws.<sup>17</sup> Among other protections afforded

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<sup>14</sup>State-based public defender offices functioned entirely under the direction of a central office that funded and administered all public defender offices in the state. BJS, *State Public Defender Programs, 2007* (Washington, D.C.: September 2010). Similarly, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the US Virgin Islands have also established centralized indigent defense agencies. Maine funds 100 percent of indigent defense services, which are provided by assigned counsel, but does not have city, county or state public defender offices.

<sup>15</sup>See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55-56 (1978) (recognizing that although Indian tribes no longer possess the full attributes of sovereignty, they remain a separate people, with the power of regulating their internal and social relations, and that as separate sovereigns, tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority) (internal citations and quotations omitted). See also 25 U.S.C. § 1301(2) (defining an Indian tribe’s power of self-government).

<sup>16</sup>See Pub. L. No. 90-284, tit. II, 82 Stat. 73, 77 (1968) (codified as amended 25 U.S.C. §§ 1301-41).

<sup>17</sup>See 25 U.S.C. § 1302(a)(1), (8).

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under ICRA, tribes must also afford a defendant the right to be represented by counsel at his or her own expense, and, as amended, the right to be provided counsel at the tribe's expense if a sentence of imprisonment for more than 1 year is sought.<sup>18</sup>

DOJ and, in the case of tribes, DOI are the primary federal agencies that play a role in supporting indigent defense.

First, DOJ, as the agency responsible for ensuring the fair and impartial administration of justice for all Americans, works to provide support to all participants in the justice system. Further, in a June 2010 speech before a nonprofit organization dedicated to protecting the rights of individuals in North Carolina, the Attorney General identified a crisis in the criminal defense system, and stated the department's commitment to focusing on indigent defense issues and developing and implementing solutions. Within DOJ, two components provide services that could support indigent defense providers, the Access to Justice Initiative (ATJ) and the Office of Justice Programs (OJP).

- Established in March 2010 to address criminal and civil access to justice issues, ATJ is charged with helping the justice system efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status. ATJ staff work within DOJ, across federal agencies, and with state, local, and tribal justice system stakeholders to increase access to counsel and legal assistance and to improve the justice delivery systems that serve people who are unable to afford lawyers. According to DOJ, ATJ is comprised of seven staff and, in fiscal year 2011, had a budget of \$1.27 million. ATJ staff focused their efforts on indigent defense as well as a range

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<sup>18</sup>See 25 U.S.C. § 1302(a)(6), (c)(1)-(2). The Tribal Law and Order Act of 2010 (TLOA), Pub. L. No. 111-211, tit. II, 124 Stat. 2258, 2261, amended ICRA by authorizing tribal courts to imprison convicted offenders for up to 3 years if the defendant has been previously convicted of the same or a comparable offense by any jurisdiction in the United States (federal, state, or tribal) or if the defendant is being prosecuted for an offense comparable to an offense that, in any U.S. or state jurisdiction, would be punishable by more than 1 year of imprisonment if prosecuted in state or federal court. See § 1302(b). In addition, the maximum term of imprisonment that may be imposed in a criminal proceeding (i.e., where a defendant is charged with multiple offenses) is 9 years. See § 1302(a)(7)(D). A tribe may not, however, impose a term of imprisonment in excess of one year unless it affords the defendant certain rights enumerated in the statute, including the right to have counsel provided at the tribe's expense. See § 1302(c).



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of pressing criminal and civil access to justice issues, including foreclosure and veterans' affairs.

- OJP works in partnership with the federal, state, local, and tribal justice communities—which include indigent defense providers—to identify the most pressing crime-related challenges confronting the justice system; to provide training, coordination, and innovative strategies and approaches for addressing these challenges; and to provide grant funding for implementing these strategies. Within OJP, several bureaus provide research, technical assistance, and funding that could support indigent defense providers. Specifically, the National Institute of Justice (NIJ) seeks to provide objective, independent, evidence-based knowledge and tools to meet criminal justice challenges, particularly at the state and local levels. Among other things, NIJ funds research and development, assesses programs and policies, and publicizes its findings. In addition, the Bureau of Justice Statistics (BJS) serves as DOJ's primary statistical agency, collecting, analyzing, publishing, and disseminating information on criminal justice systems. Finally, both the Bureau of Justice Assistance (BJA) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) provide training, technical assistance, and grant funding designed to enhance and support the criminal and juvenile justice systems, respectively. Such funding may be awarded through formula grants, which are awarded on a noncompetitive basis generally using statutorily defined calculations, or discretionary grants, for which applicants generally compete for funding.<sup>19</sup>

Second, within DOI, BIA is responsible for supporting tribes in their efforts to ensure public safety and administer justice as well as to provide related services directly to, or through contracts or compacts with, federally-

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<sup>19</sup>Other types of funding include congressionally directed awards (also referred to as earmarks), cooperative agreements, and payment programs.

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recognized tribes.<sup>20</sup> To that end, BIA's Office of Justice Services supports law enforcement, detention, and tribal court programs. In addition, the Division of Tribal Justice Support for Courts within BIA's Office of Justice Services works with tribes to establish and maintain tribal judicial systems. This includes conducting assessments of tribal courts and providing training and technical assistance on a range of topics, including establishing or updating law and order codes. Further, tribal courts may receive funding through BIA's TPA. All federally-recognized tribes are eligible to receive TPA funds—either through contracts or compacts—for operating tribal programs and, in general, these funds are available for use to provide basic tribal services, such as social services, child welfare, natural resources management, and tribal courts.

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## DOJ and BIA Make Funding, Training, and Technical Assistance Available to Support Indigent Defense

DOJ and BIA provide funding, training, and technical assistance that could support indigent defense, which may help to address challenges that public defenders face. Specifically, public defender offices or agencies that responded to our survey most frequently reported that obtaining adequate funding (75 of 106, or 71 percent) and providing appropriate compensation for their attorneys (77 of 107 or 72 percent) were extremely or very challenging to the ability of their office or agency to provide indigent defense services.<sup>21</sup> For instance, one survey respondent explained that their office's best attorneys leave to pursue positions offering higher compensation.

DOJ makes funding available through formula and discretionary grants that could be used for indigent defense. Specifically, we identified 13

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<sup>20</sup>Through the Indian Self-Determination and Education Assistance Act of 1975, Pub. L. No. 93-638, 88 Stat. 2203, as amended, the federal government established a policy of Indian self-determination whereby tribes, with the support and assistance of the federal government, would be afforded an "effective and meaningful" role in planning, conducting, and administering programs and services previously administered by federal entities. See 25 U.S.C. § 450a. Tribes generally obtain funding to assume these functions pursuant to self-determination contracts or self-governance compacts negotiated and entered into with BIA. See §§ 450h, 458cc. Self-governance compacts differ from self-determination contracts in that such compacts afford tribes more flexibility in how the agreed upon funding may be utilized.

<sup>21</sup>Our survey of public defender offices or agencies included a sample of 253 of the 841 offices. Because of the relatively low response rate, responses should not be generalized to all public defender offices or agencies. See appendix I for additional details on the survey. The total respondents differ by question because not all respondents provided answers to all questions.

grant programs that DOJ administered from fiscal years 2005 through 2010 that recipients could use for this purpose. Three of these programs—the John R. Justice Program (JRJ), Capital Case Litigation Initiative (CCLI), and Juvenile Indigent Defense National Clearinghouse Grant (JIDNC)—required recipients to allocate or use funding for indigent defense, either because of its authorizing statute or requirements that DOJ set in its grant solicitation. In addition, a fourth program—the Wrongful Conviction Review Program (WCR)—limits eligibility for funding to nonprofit organizations, as well as public defender offices, that represent convicted defendants (who are, according to DOJ, indigent) in claims of innocence. As a result, for the purposes of our review, we consider the WCR grant to require that funding be used for indigent defense. See table 1 for a description of the DOJ grant programs that require that funding be used for indigent defense.

**Table 1: DOJ Grant Programs that Require Funding to Be Allocated for Indigent Defense**

Name of grant program	Purpose	Type	Appropriated amounts, fiscal years 2005-2010
John R. Justice	Provides loan repayment assistance for local, state, and federal public defenders and state and local prosecutors. Requires funding be split between defense and prosecution	Formula <sup>a</sup>	2010: \$10 million
Capital Case Litigation Initiative	Provides training on death penalty issues to improve legal representation to indigent defendants and enhance the capability of prosecutors to represent the public. Since fiscal year 2009 requires funding in one grant category be split between defense and prosecution	Discretionary	2007: \$1 million 2008: \$2.5 million 2009: \$2.5 million 2010: \$2.5 million
Wrongful Conviction Review	Helps ensure high-quality representation for potentially wrongfully-convicted defendants in cases of post-conviction claims of innocence.	Discretionary	2009: \$3 million 2010: \$3 million
Juvenile Indigent Defense National Clearinghouse	Supports the improvement of juvenile indigent defense.	Discretionary	2010: \$500,000

Source: GAO analysis of DOJ grant documents and data.

Note: DOJ did not receive appropriations for JRJ grants in fiscal years 2005 through 2009, CCLI grants in fiscal years 2005 and 2006, WCR grants in fiscal years 2005 through 2008, and JIDNC grants in fiscal years 2005 through 2009.

<sup>a</sup>DOJ uses a formula to allocate JRJ, but the statute establishing JRJ neither establishes a formula nor requires that a formula be followed in administering the grant.

DOJ also administered nine grant programs from fiscal years 2005 through 2010 that recipients could choose to allocate or award to indigent defense, but were not required to do so. In five of these nine programs—the JAG, JABG, Tribal Juvenile Accountability Discretionary Grant (TJADG), Byrne Competitive Grant Program, and the Tribal Civil and

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Criminal Legal Assistance Grant (TCCLA)—DOJ identified indigent defense as a priority or specific purpose of the grant. It did so by identifying indigent defense either as a purpose area, a stated priority in its grant solicitation, a specific category in the grant, or as a national initiative. According to DOJ, it established indigent defense as a priority to encourage spending in this area.<sup>22</sup> See tables 2 and 3 for a description of the DOJ grant programs that do not require funding to be used for indigent defense, although recipients can use funds for such purposes.

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<sup>22</sup>Hiring court-appointed defenders is an authorized use encompassed by one of the JABG program's and TJADG program's purpose areas, which are established in statute, not by DOJ.

**Table 2: DOJ Grant Programs for which Allocating Funding for Indigent Defense Is a Priority or Stated Purpose**

Name of grant program	Purpose	Type	Appropriated amounts, fiscal years 2005-2010
Justice Assistance Grant	Is the leading source of federal justice funding to state, local, and tribal governments to support purpose areas including law enforcement; prosecution and courts; prevention and education; corrections and community corrections; drug treatment and enforcement; planning, evaluation, and technology improvements; and crime victim and witness initiatives. Indigent defense has been identified as a priority in the grant solicitation since fiscal year 2010.	Formula	2005: \$634 million 2006: \$416.4 million 2007: \$525.2 million 2008: \$170.4 million 2009: \$546 million ARRA: \$2 billion 2010: \$519 million
Juvenile Accountability Block Grant	Supports states and units of local government in their efforts to strengthen their juvenile justice systems. One purpose area includes hiring court-appointed defenders.	Formula	2005: \$55 million 2006: \$50 million 2007: \$49.4 million 2008: \$51.7 million 2009: \$55 million 2010: \$55 million
Tribal Juvenile Accountability Discretionary Grant	Provides funds to federally recognized tribes to combat delinquency and improve the quality of life in American Indian/Alaska Native communities. One purpose area includes hiring court-appointed defenders.	Discretionary	2005: \$1 million 2006: \$1 million 2007: \$1 million 2008: \$1 million 2009: \$1.1million 2010: \$1.1 million
Byrne Competitive	Helps improve the functioning of the criminal justice system, prevent or combat juvenile delinquency, and assist victims of crime (other than compensation) within specific identified areas. Indigent defense was prioritized as a national initiative in fiscal year 2009.	Discretionary	2007: \$0 2008: \$16 million 2009: \$30 million 2010: \$40 million
Tribal Civil and Criminal Legal Assistance	Provides funding to nonprofits and organizations for quality legal assistance targeting members of Indian tribes and tribal justice systems, pursuant to the federal poverty guidelines. The program also provides quality technical assistance to support development and enhancement of tribal justice systems. Indigent defense is one grant category in the program.	Discretionary	2010: \$3 million

Source: GAO analysis of DOJ grant documents and data.

Note: Allocating funding to indigent defense was not a requirement for any of these grant programs. DOJ did not receive appropriations for Byrne Competitive grants in fiscal years 2005 and 2006, and for TCCLA grants in fiscal years 2005 through 2009. According to DOJ, it awarded competitive grants for national initiatives in fiscal year 2007 using funds that had been appropriated for Byrne Discretionary grants (Byrne Congressional Earmarks) for which no specific earmark had been specified.

**Table 3: DOJ Grant Programs for which Allocating Funding for Indigent Defense is Allowed, but Not Required or a Priority**

Name of grant program	Purpose	Type	Appropriated amounts, fiscal years 2005-2010
Juvenile Justice and Delinquency Prevention Title II	Supports state and local efforts in planning, establishing, operating, coordinating, and evaluating projects for the development of more effective education, training, research, prevention, diversion, treatment, and rehabilitation programs in the area of juvenile delinquency, as well as programs to improve the juvenile justice system.	Formula	2005:\$84 million 2006:\$80 million 2007:\$79 million 2008:\$74.3 million 2009: \$75 million 2010: \$75 million
Tribal Court Assistance Program	Helps develop and enhance the operation of tribal justice systems and provides funding for training and technical assistance to tribal court and justice system staff.	Discretionary	2005: \$8 million 2006: \$8 million 2007: \$8 million 2008: \$8.6 million 2009: \$9 million 2010: \$25 million
Justice and Mental Health Collaboration	Facilitates collaboration among criminal justice and mental health treatment systems to increase access to services.	Discretionary	2007: \$5 million 2008: \$6.5 million 2009: \$10 million 2010: \$12 million
Adult Drug Court Discretionary	Expands the drug court capacity at the state, local, and tribal levels.	Discretionary	2005: \$40 million 2006: \$ 10 million 2007: \$10 million 2008: \$15.2 million 2009: \$40 million 2010: \$45 million

Source: GAO analysis of DOJ grant documents and data.

Note: DOJ did not receive appropriations for the Justice and Mental Health Collaboration Grant Program in fiscal years 2005 and 2006.

In addition, we determined that BIA funding could be used for indigent defense. According to BIA officials, if tribes choose to use BIA funding for this purpose, this funding would come from the tribes' Tribal Courts TPA, which are distributed pursuant to contracts or compacts.<sup>23</sup> Through contracts and compacts, tribes, rather than BIA, determine the best use of their funds. BIA does not specify requirements for spending levels on particular tribal court services, including indigent defense, because the

<sup>23</sup>In addition, BIA provides direct services to tribes that do not operate certain programs themselves, such as tribes that rely upon CFR courts.

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nature of tribal sovereignty precludes BIA from placing requirements on how tribes spend their TPA funding. Tribes allocated a total of approximately \$22 million through their Tribal Court TPA in each fiscal year from 2005 through 2010.

Further, within DOJ, BJA announced a new solicitation in April 2012 that focuses on helping indigent defense systems adhere to principles established by the American Bar Association (ABA) for public defense delivery systems.<sup>24</sup> These principles, approved in 2002, were created as a practical guide for those creating and funding new, or improving existing, public defense delivery systems. The principles include the fundamental criteria necessary to design a system that provides effective, efficient, high-quality, ethical legal representation for indigent defendants in which defenders have no conflicts of interest, such as representing two defendants in the same case. According to DOJ, BJA will award \$1.4 million of new discretionary grant funding to support projects that help make achievement of these principles a reality. According to officials from BJA and ATJ involved in developing the solicitation, BJA and ATJ staff worked closely together to develop the grant, and also conducted outreach to indigent defense advocates to determine the type of assistance that would benefit public defenders. The officials explained that the grant will be flexible enough that a diverse group of public defender offices will be eligible to apply for funding because it will allow both less developed and more developed offices to identify areas for improvement in adhering to the ABA principles.

In addition to funding, DOJ, BIA, and the Administrative Office of the U.S. Courts (AOUSC) provide training and technical assistance to indigent defense providers.<sup>25</sup> For instance, BJA's National Training and Technical Assistance Center (NTTAC) accepts requests for and provides training and technical assistance to state, local, and tribal criminal justice

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<sup>24</sup>American Bar Association, *ABA Ten Principles of a Public Defense Delivery System*. (Chicago, Ill.: February 2002).

<sup>25</sup>The AOUSC serves the federal judiciary in carrying out its constitutional mission to provide equal justice under law through a wide range of administrative, legal, financial, management, program, and information technology services to the federal courts. According to AOUSC officials, funding for indigent defense providers is limited to federal defender organizations, attorneys appointed to represent defendants financially unable to retain counsel in federal criminal proceedings (see 18 U.S.C. § 3006A), and expert service providers. Similarly, all training and technical assistance is directed to persons providing representation in federal criminal and related matters.

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stakeholders.<sup>26</sup> DOJ has also awarded funding to the ABA to convene a focus group of 18 successful reformers from across the country to develop strategies for reforming indigent defense systems. In its January 2012 report to DOJ, the group suggested measures DOJ could take to improve indigent defense, including providing funding for programs that bring training and resources to regions that are most in need, among other things.<sup>27</sup> In addition, BJA has a cooperative agreement with American University to provide technical assistance to criminal courts, including indigent defense providers. For instance, American University conducted a workshop on improving the criminal case process with the Texas Indigent Defense Board. Furthermore, DOJ (through ATJ and the U.S. Attorney's Offices), BIA, and AOUSC's Office of Defender Services have partnered to develop the Tribal Court Trial Advocacy Training Program, which will consist of a series of trainings for tribal court personnel, including defenders, prosecutors, and judges.<sup>28</sup> The first such training occurred in August 2011, and the second in March 2012. According to DOJ and BIA officials, an additional six trainings are planned through January 2013. A BIA official responsible for conducting the trainings stated that the trainings have resulted in court personnel coming together to create an improved tribal justice system.

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<sup>26</sup>NTTAC offers training and technical assistance services in the following criminal justice areas: adjudication (includes indigent defense), corrections, counter-terrorism, crime prevention, information sharing, law enforcement, mental health, and substance abuse.

<sup>27</sup>The focus group, entitled *National Indigent Defense Reform: The Solution is Multifaceted*, produced a preliminary report suggesting DOJ endorse the following five core principles to demonstrably improve indigent defense reform: reclassify criminal offenses to reduce pressure on public defenders; support programs that ensure counsel is present for a criminal defendant's first appearance; protect the sixth Amendment right to "effective" assistance of counsel by taking actions to support the right to counsel at the state and local level; ensure the defense bar is consulted prior to adoption of new law enforcement strategies, which could impact defender caseloads; and better utilize the resources of the private bar.

<sup>28</sup>The U.S. Attorneys are the chief federal law enforcement officers in their districts, responsible for federal criminal prosecutions and civil cases involving the United States Government.



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## Unless Required, Few Recipients Allocated or Planned to Use Any Federal Funding for Indigent Defense, in Part Due to Competing Priorities

Recipients of the four grant programs requiring funds to be used in whole or in part for indigent defense from fiscal years 2005 through 2010 allocated or planned to use \$13.3 million out of \$21.2 million—or 63 percent—of available funds for state, local, and tribal indigent defense.<sup>29</sup> For instance, 19 of 33 grantees of the Capital Case Litigation Initiative used \$3.3 million to provide training to indigent defense attorneys who handle death penalty cases.<sup>30</sup> See appendix II for additional information about the allocation and use of these grants for indigent defense.

However, two-thirds or more of the survey respondents who were recipients of the DOJ formula grants for which indigent defense was not a required use or Tribal Courts TPA distributions reported that they did not allocate funding for indigent defense, partly because of other competing priorities, such as law enforcement needs. As shown in figure 1, survey respondents for JAG State Administering Agencies (SAA)—the designated agencies in each state that establish funding priorities and coordinate JAG funds among state and local justice initiatives—and survey respondents for Tribal Courts TPA distributions more frequently reported allocating funds for indigent defense than JJDP, JABG, or local and tribal JAG survey respondents.<sup>31</sup> (See appendix III for additional information on the percentages of respondents who reported allocating nondiscretionary funding for indigent defense.)

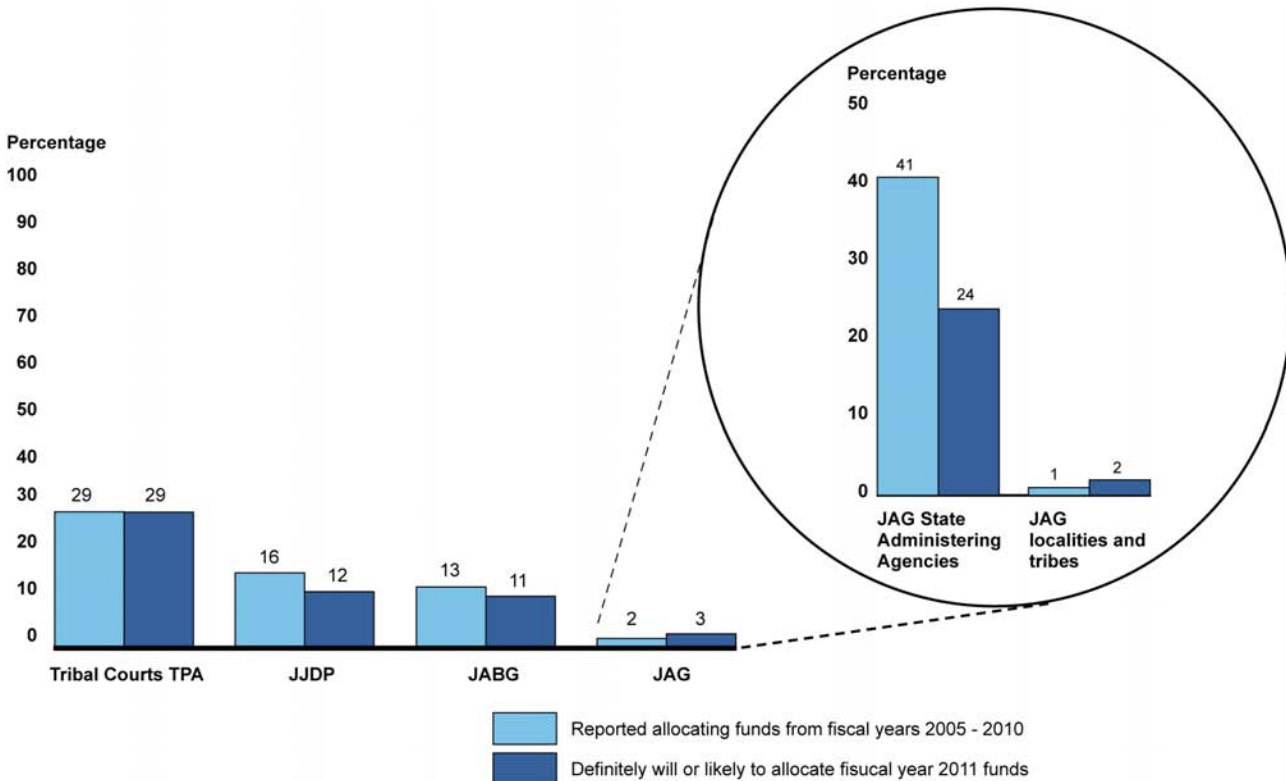
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<sup>29</sup>The dollar figures are in current dollars not adjusted for inflation. Adjusting for inflation does not affect the percentages.

<sup>30</sup>DOJ did not receive appropriations for the Capital Case Litigation Initiative in fiscal years 2005 and 2006. Eighteen of the 19 grantees who used funding to provide training to defenders also provided training to nondefenders, such as prosecutors.

<sup>31</sup>60 percent of JAG funding awarded to states is awarded directly to a SAA in each state, and each SAA must in turn allocate a formula-based share of these funds to local entities, for which SAAs may require that local entities apply. BJA awards the remaining 40 percent of the state's allocation directly to eligible units of local government, as determined by a statutorily prescribed formula, within the state.

**Figure 1: Percentage of Survey Respondents that Received DOJ Formula Grants or BIA Tribal Courts TPA Funds and Reported Allocating These Funds for Indigent Defense**



Source: GAO analysis of survey responses.

Note: We provide separate data on JAG State Administering Agencies—which directly receive 60 percent of the state’s JAG allocation—and localities and tribes that receive JAG funding—which directly receive 40 percent of the state’s JAG allocation. Survey response rates upon which these data were based were 68 percent for Tribal Courts TPA distribution recipients; 46 percent for JAG (89 percent for SAAs and 45 percent for localities and tribes); 89 percent for JJDP; 82 percent for JABG. Because of the relatively low response rates among recipients of BIA Tribal Courts TPA distributions and local and tribal JAG recipients, their results should not be generalized to the recipients of BIA Tribal Courts TPA distributions or local and tribal JAG recipient populations.

Similarly, as displayed in figure 2, our analysis of discretionary grants showed that no more than 25 percent was awarded for indigent defense from fiscal years 2005 through 2010. For example, the percentage of grants that was awarded fully or in part for indigent defense ranged from 1.3 percent for the Justice and Mental Health Collaboration program to 25

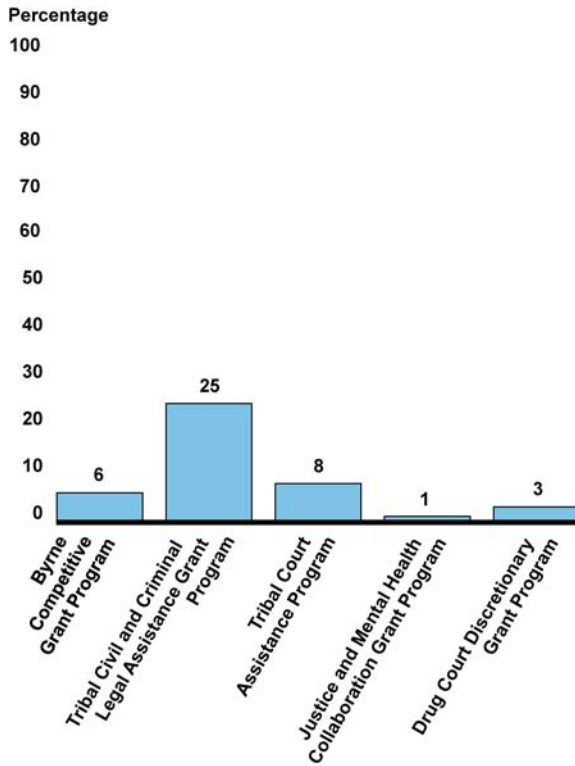
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percent for the TCCLA grant.<sup>32</sup> See appendix IV for additional information on the number of discretionary grants awarded for indigent defense.

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<sup>32</sup>DOJ determined that 35 percent of TCCLA funding was awarded for indigent defense in fiscal year 2010, and 51 percent was awarded for indigent defense in fiscal year 2011. The fiscal year 2010 percentage differs from our analysis due to the differences in the methodologies used to determine the percentage of grants awarded for indigent defense. Specifically, DOJ calculated its percentage by dividing the grants awarded under Category 2—the purpose of which is to provide criminal legal assistance services—by the total awards under the grant. In contrast, we reviewed each of the project descriptions submitted by TCCLA grantees to determine whether the descriptions indicated that the grantee planned to use the funds for indigent defense. Because the project descriptions may not have included all the planned activities of the grantee, our methodology may not have captured all grants that were awarded for indigent defense.

**Figure 2: Percentage of Discretionary Grants That Were Awarded Fully or in Part for Indigent Defense during Fiscal Years 2005 through 2010**

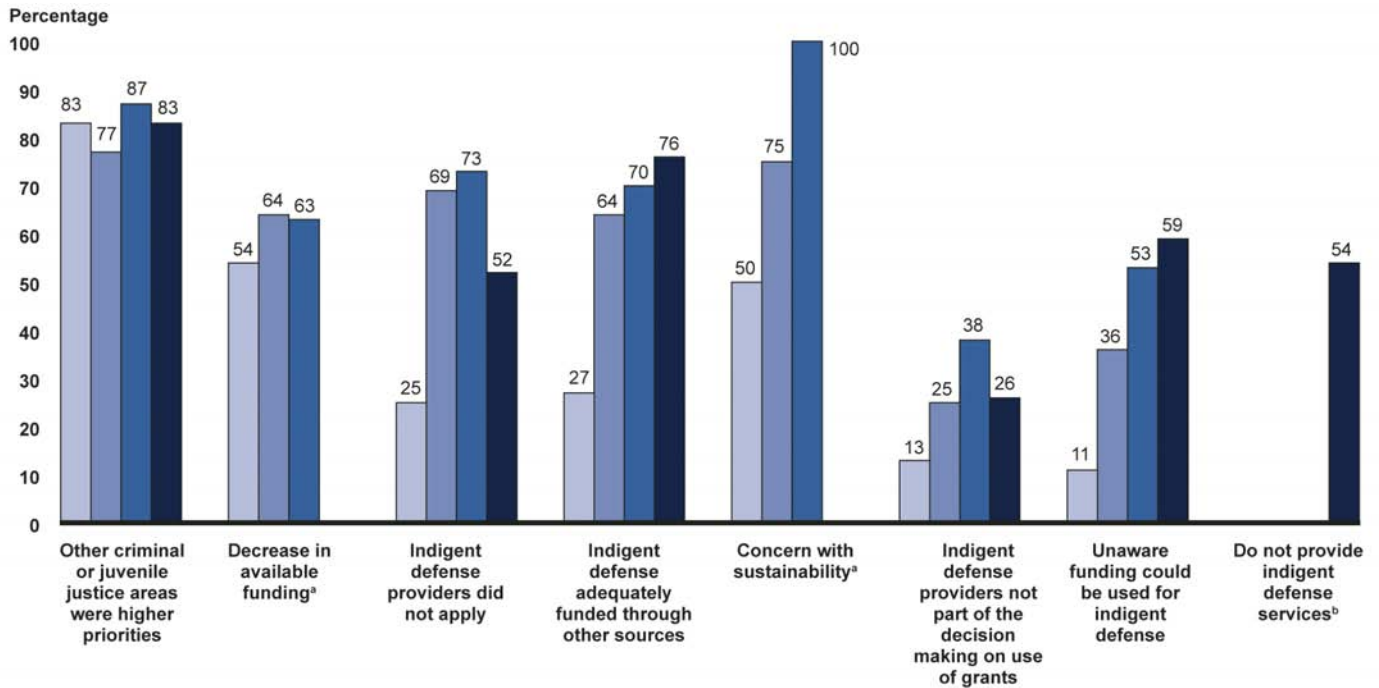


Source: GAO analysis of DOJ grant data.

Note: No grants were awarded for indigent defense in the Tribal Juvenile Accountability Discretionary Grant Program. For the years focused on in this review, DOJ awarded grants under the Byrne Competitive Grant Program in fiscal years 2007 through 2010, the Tribal Civil and Criminal Legal Assistance Grant Program in fiscal year 2010, the Tribal Court Assistance Program in fiscal years 2005 through 2010, the Justice and Mental Health Collaboration Grant Program in fiscal years 2007 through 2010, and the Drug Court Discretionary Grant Program in fiscal years 2005 through 2010.

In general, DOJ and BIA funding recipients who responded to our surveys most frequently reported that other criminal or juvenile justice areas were a higher priority and extremely or very important to their decisions not to allocate funding for indigent defense, while public defenders generally reported that they did not apply for discretionary grants because they were not aware they were eligible to do so. Figures 3 and 4, as well as the following sections, illustrate these responses in more detail.

**Figure 3: Percentage of JAG, JJDP, JABG, and Tribal Courts TPA Survey Respondents Reporting Reasons That Were Extremely or Very Important to Their Decisions Not to Allocate Funding for Indigent Defense**



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	JAG	JJDP	JABG	Tribal courts TPA
JAG	963	564	774	520
JJDP	39	33	32	11
JABG	30	27	26	10
Tribal courts TPA	34		25	25



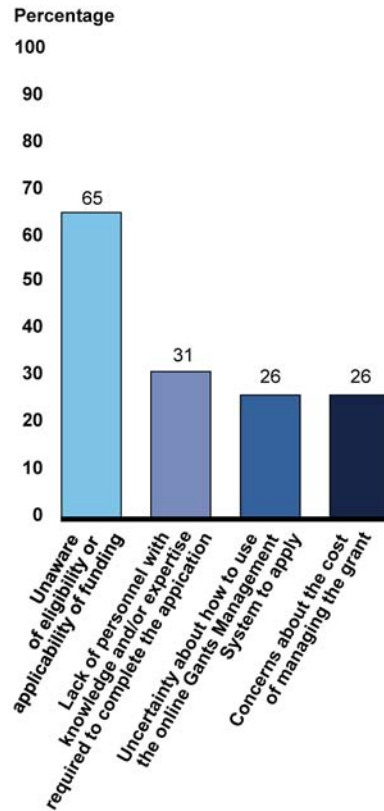
Source: GAO analysis of survey responses.

Note: The percentages are calculated out of only those respondents who indicated that the reasons were valid in their jurisdiction. Concerns with sustainability refer to grantee's concerns that indigent defense positions funded through the grant would not be sustainable after the funding ended.

<sup>a</sup>In order to compare responses across tribes, we did not ask Tribal Courts TPA or tribal JAG respondents about decreased funding or funding sustainability because BIA funding through the Tribal Courts TPA has been relatively constant from fiscal year 2005 through 2010.

<sup>b</sup>We did not ask the remaining JAG, JABG, or JJDP respondents about the importance of not providing indigent defense services because the respondents were generally representing state and local government offices, and states and local governments are required to afford defendants, including indigent defendants, the right to counsel.

**Figure 4: Percentage of Public Defender Survey Respondents Reporting Reasons That Were Extremely or Very Important for Why They Did Not Apply for Grant Funding (N=103)**



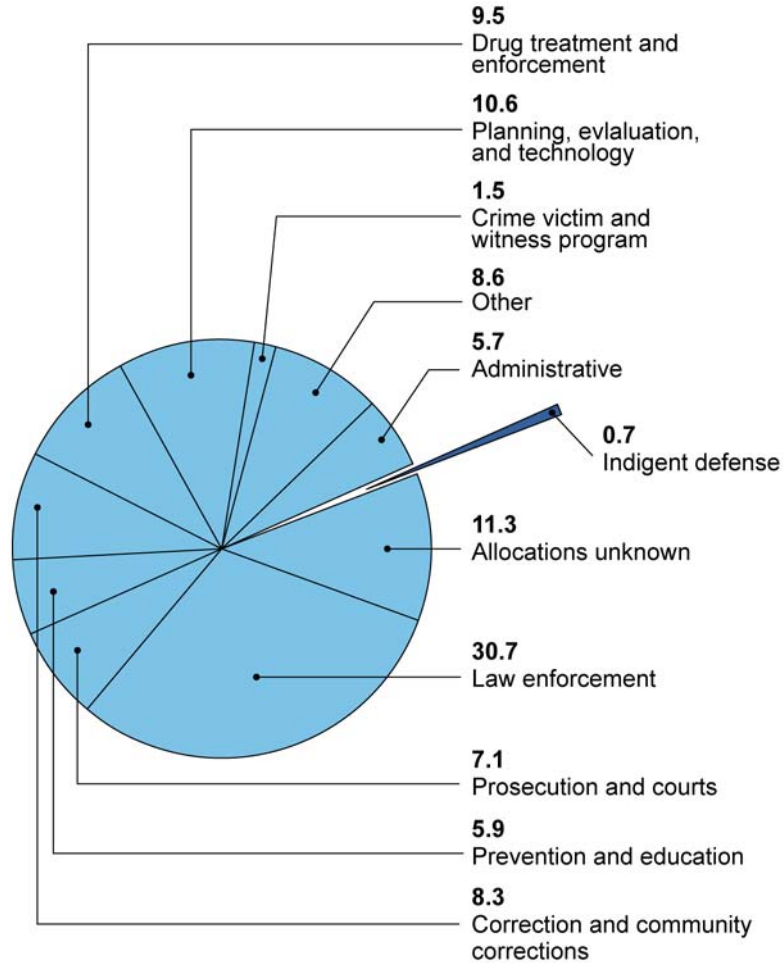
Source: GAO analysis of survey data.

**Competing priorities:** JAG respondents most frequently reported that funding for law enforcement, such as overtime for police officers; equipment, such as surveillance equipment or street lighting; and technology, such as cameras for police vehicles, were higher priorities than indigent defense. For instance, one JAG administrator with whom we spoke explained that his city was laying off over 30 police officers. Because there will now be fewer officers on the street to identify, report, and respond to crime as it happens, his jurisdiction gave priority to obtaining technology that would allow citizens to better report crimes as opposed to providing funding for indigent defense. As figure 5 shows, respondents to our JAG survey reported allocating the largest proportion of funding to the law enforcement purpose area, followed by the planning, evaluation, and technology improvement purpose area, in which funds may be used for criminal justice information systems, such as automated

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fingerprint identification systems. See figures 5 and 6 for the percentage of total JAG funding that respondents reported allocating to each of the seven JAG purpose areas, compared to indigent defense. See appendix V for additional information about survey respondents' reported allocations across purpose areas and for indigent defense in each fiscal year.

**Figure 5: Percentage of Funding That JAG SAA Respondents Reported Allocating to Each Purpose Area, Including Indigent Defense, during Fiscal Years 2005 through 2010**

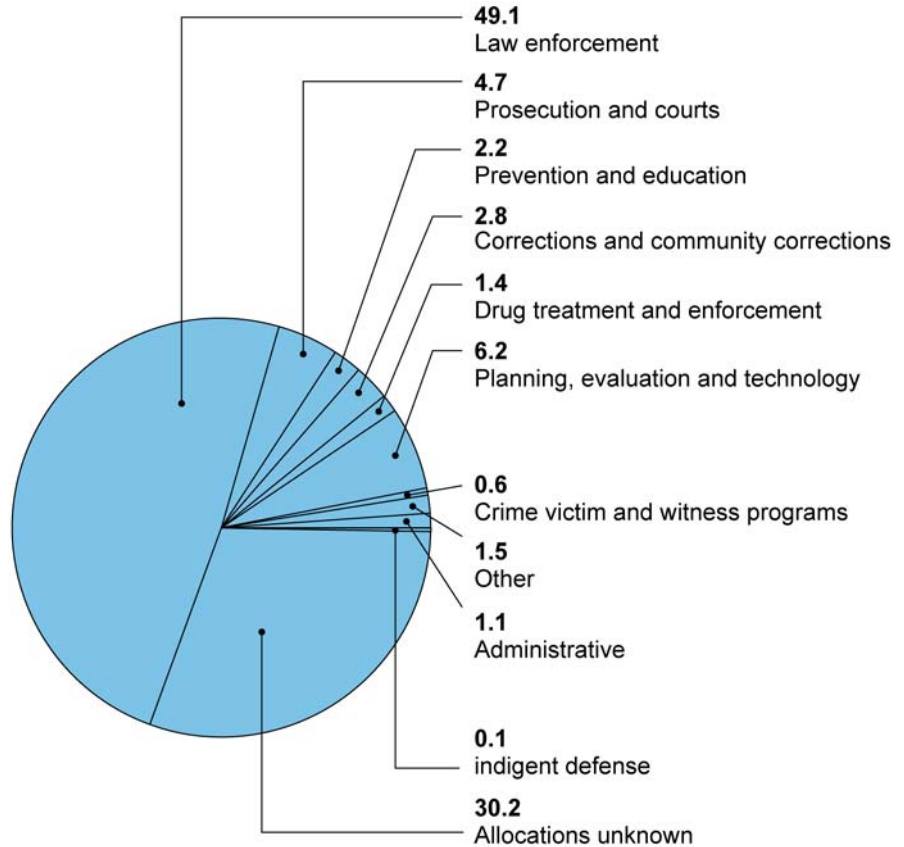


Source: GAO analysis of survey data.

Note: Funding for indigent defense can be allocated in multiple purpose areas, as indigent defense is not its own purpose area. As a result, to obtain the percentages allocated for each purpose area, we subtracted the amount respondents reported allocating for indigent defense out of the specified purpose area. As discussed in appendix I, dollar amount data reported have limitations and should be considered estimates. In particular, in this figure, our data may overrepresent allocations to law enforcement because it was the first category listed in our survey and respondents that were unable to split their funding across purpose areas may have reported allocating all funding to law enforcement. Similarly, our data may overrepresent allocations for indigent defense because JAG recipients that allocated funding to indigent defense may have been more likely to respond to our survey than recipients that had never done so. Other includes funds not yet allocated. Percentages do not add up to 100 due to rounding.



**Figure 6: Percentage of Funding That JAG Local and Tribal Respondents Reported Allocating to Each Purpose Area, As Well As Indigent Defense, during Fiscal Years 2005 through 2010**



Source: GAO analysis of survey data.

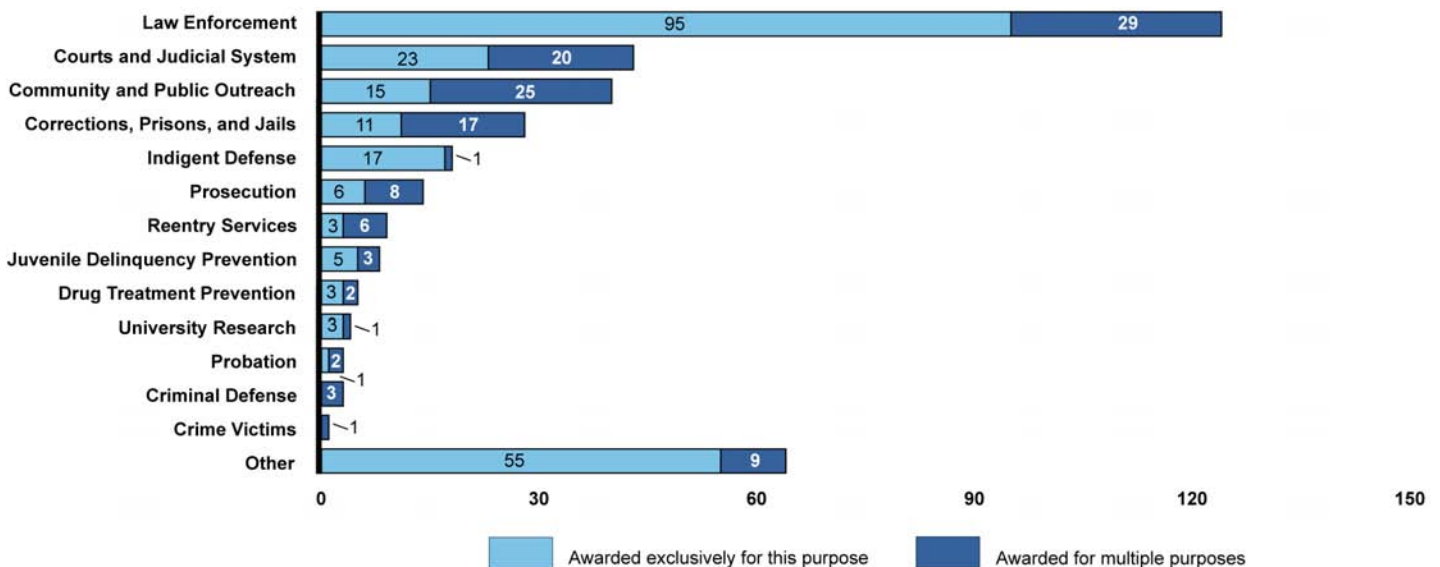
Note: Funding for indigent defense can be allocated in multiple purpose areas, as indigent defense is not its own purpose area. As a result, to obtain the percentages allocated for each purpose area, we subtracted the amount respondents reported allocating for indigent defense out of the specified purpose area. As discussed in appendix I, dollar amount data reported have limitations and should be considered estimates. In particular, in this figure, our data may overrepresent allocations to law enforcement because it was the first category listed in our survey and respondents that were unable to split their funding across purpose areas may have reported allocating all funding to law enforcement. Similarly, our data may overrepresent allocations for indigent defense because JAG recipients that allocated funding to indigent defense may have been more likely to respond to our survey than recipients that had never done so. Other includes funds not yet allocated. Percentages do not add up to 100 due to rounding.

The three JJDP and five JABG survey respondents who provided specific examples of other activities that were higher priorities than indigent defense most frequently cited alternatives to detention, such as services provided to a juvenile offender in the community as an alternative to

incarceration, and programs to address the disproportionate number of juveniles of minority groups who come into contact with the juvenile justice system.<sup>33</sup>

Further, our review of the DOJ discretionary grants that can be, but are not required to be, used for indigent defense also showed that, generally, grantees that received these awards more frequently planned to use these awards for other criminal justice priorities. For example, Byrne Competitive grantees more frequently planned to use their awards to support law enforcement and other criminal justice areas than indigent defense. Figure 7 illustrates other criminal justice areas, such as law enforcement, that grantees commonly planned to fund with Byrne Competitive grants awarded from fiscal years 2007 through 2010.

**Figure 7: Criminal Justice Areas Awarded Byrne Competitive Grants during Fiscal Years 2007 through 2010 (N=287)**



Source: GAO analysis of survey responses.

Note: Other may include crime prevention, funding to prevent or address domestic violence, pretrial justice, and county and state government criminal justice practitioners. For the years focused on in this review, DOJ awarded Byrne Competitive Grants in fiscal years 2007 through 2010.

<sup>33</sup>While Tribal Courts TPA survey respondents most commonly reported that other criminal justice areas were higher priorities, five provided examples of these priorities, which were law enforcement, court personnel, and prosecution.

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Several factors may help to explain why grants were more frequently allocated or used for other criminal justice areas as opposed to indigent defense. For instance, a JAG administrator with whom we spoke indicated that JAG recipients often allocate funding to law enforcement because the JAG grant has historically been a law enforcement grant.<sup>34</sup> In addition, 83 percent (1,484 of 1,779) of JAG survey respondents reported that their organization was a law enforcement entity—either a police department or sheriff’s office—which may not naturally allocate funding for indigent defense. Further, 64 percent (21 of 33) of JJDP, 63 percent (17 of 27) of JABG, and 54 percent (302 of 564) of JAG survey respondents reported that a decrease in the available grant funding was extremely or very important to their decision not to allocate funding for indigent defense.<sup>35</sup> Specifically, according to one JAG administrator, decreases in JAG funding make it even less likely that jurisdictions that have traditionally allocated funding for law enforcement will allocate funding for indigent defense because the law enforcement agencies need the money. Further, DOJ officials explained that OJP follows a “state and local assistance model” in administering the JAG program, whereby DOJ provides funding to states and localities but does not determine how the jurisdictions allocate the funding. Instead, the states and localities independently determine what issues within their respective jurisdictions need funding, and then allocate funds for those purposes. As a result, states and localities may choose not to allocate funding for indigent defense but instead allocate it to these higher-priority areas.

The Attorney General stated that DOJ is continuing to work to bring all criminal justice stakeholders, including indigent defense providers, together to plan comprehensive criminal justice strategies, which will help jurisdictions ensure that decisions are made with an eye toward strengthening the criminal justice system. For instance, DOJ issued new guidelines to JAG grantees in March 2012, within the fiscal year 2012 JAG solicitation, that encourage stakeholders to come together in a

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<sup>34</sup>The JAG program was formed from two existing grants, one of which was a law enforcement-focused grant. Specifically, the JAG program was created following enactment of the Violence Against Women and Department of Justice Reauthorization Act of 2005, which merged the discretionary Edward Byrne Memorial Grant program with the formula-based Local Law Enforcement Block Grant Program. See 42 U.S.C. § 3750.

<sup>35</sup>Total population numbers of JAG, JABG, and JJDP that responded to this question do not match the overall total survey population because some respondents did not answer the question.

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comprehensive criminal justice planning process. Specifically, these recommended guidelines specify that, at a minimum, the strategic planning process include law enforcement, courts, prosecutors, indigent defense providers, victim advocates, and corrections officials. Further, the JAG solicitation asks applicants to identify, among other things, the stakeholders currently participating in the strategic planning process. According to DOJ officials, these guidelines may benefit indigent defense providers in two ways. First, JAG funding is more likely to be shared with a broader range of stakeholders if they are included in the planning process, which our survey responses also suggest may be true. Specifically, among the 4 percent of JAG grantees who reported that representatives of the indigent defense community were involved in the decision making process, 22 percent reported allocating funding for indigent defense. In contrast, among the 52 percent who reported that representatives of the indigent defense community were not involved in the decision making process, 2 percent reported allocating funding for indigent defense.<sup>36</sup> Second, if indigent defense providers are included in the planning process, they can provide input to other stakeholders, such as law enforcement personnel, about the impact that their use of JAG funding may have on both the indigent defense provider and, correspondingly, the criminal justice system. For instance, an indigent defense expert explained that, when law enforcement or prosecutorial agencies receive additional funding, arrests and prosecutions may increase, which in turn increase indigent defense providers' caseloads. If the indigent defense provider does not receive additional funding to handle the caseload, cases may take longer to move through the judicial process.

**Lack of awareness of eligibility for funding:** Public defender offices or agencies responding to our survey most frequently reported (67 of 103) that their lack of awareness about their eligibility for funding was an extremely or very important reason they did not apply for DOJ discretionary grant funding from fiscal year 2005 through 2011.<sup>37</sup> For

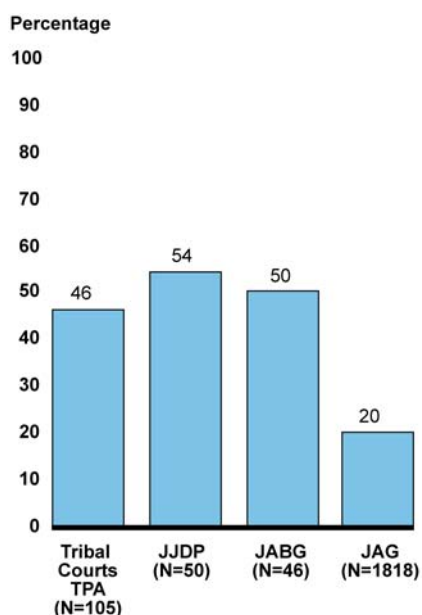
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<sup>36</sup>These percentages do not total 100 percent because 45 percent of respondents reported that they did not know if an indigent defense provider was involved in the determination of how JAG funding would be used.

<sup>37</sup>We asked public defender offices or agencies about their awareness of discretionary grants because they could apply for these grants. We did not ask about their awareness of formula grants or other funding sources because they do not have the opportunity to apply directly to DOJ or BIA for these funds.

instance, 3 public defenders who submitted additional comments also reported that they would like to have a centralized source of information on available grants, training, and best practices that they could use for assistance. In addition, as shown in figure 8, no more than 54 percent of Tribal Courts TPA, JABG, JAG, and JJDP survey respondents reported that they were aware that funding could be allocated for indigent defense.

**Figure 8: Survey Respondents Who Reported They Were Aware that Funding Could Be Used for Indigent Defense**



Source: GAO analysis of survey data.

DOJ has undertaken efforts to make grantees aware of available funding. It has provided training and technical assistance on the grant process and a list of available grants on OJP's Web site. DOJ has also provided a list of grants that may be of interest to, among others, defender agencies, on ATJ's Web site. Further, ATJ officials reported that they collaborate with public defender membership organizations, such as the National Legal Aid and Defender Association and the National Association of Criminal Defense Lawyers, to make indigent defense providers aware of grants. In addition, they mention funding opportunities during speeches to the indigent defense community. Moreover, DOJ officials reported that all available grant opportunities are listed on grants.gov, the federal government's grant clearinghouse, and grantees can search the site using keywords that would help them identify grants of interest, such as those related to indigent defense. DOJ officials reported that they

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encourage potential applicants to sign up to receive information from grants.gov. In addition, BIA officials stated that during the contracting process tribes go through to obtain TPA funds, BIA may inform tribes that they could use funding available through their Tribal Courts TPA distribution for indigent defense—or any other component of tribal courts—but did not know of any explicit efforts to make tribes aware.

Despite these efforts, no more than 54 percent of grantees or public defender offices or agencies that responded to our survey were aware of funding that could be used to support indigent defense. Moreover, 59 percent (22 of 37) of Tribal Courts TPA distribution, 53 percent (8 of 15) of JABG, and 36 percent (5 of 14) of JJDP survey respondents reported that such lack of awareness was an extremely or very important reason why they did not allocate funding for indigent defense.<sup>38</sup> While relatively few JAG recipients who responded to our surveys reported that lack of awareness was an extremely or very important reason why they did not allocate funding for indigent defense in the past, these states, localities, and tribes could make indigent defense a higher priority in the future. As a result, increasing awareness that federal funding can be used for this purpose could help DOJ and BIA to ensure that potential funding recipients are better positioned to respond to changing priorities.<sup>39</sup> In addition, JAG (50 of 105), JABG (5 of 11), and JJDP (5 of 13) survey respondents most frequently suggested in open-ended responses that, to increase allocations for indigent defense, DOJ could take steps to increase awareness that funding could be allocated for indigent defense, such as by communicating this through e-mail, or during training sessions or conferences. Given that funding through these grant programs can be used, consistent with applicable authorizing statutes, to support indigent defense, and because the Attorney General has identified a crisis in criminal defense and has committed the department to focusing on indigent defense issues, increasing awareness among grantees and indigent defense providers about available funding could help DOJ better ensure that it meets its commitment to supporting indigent defense. DOJ grant administrators and ATJ officials acknowledged that opportunities

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<sup>38</sup>These percentages are calculated only out of those respondents that indicated that they were not aware that funding could be used for indigent defense in any year from fiscal year 2005 through 2010.

<sup>39</sup>11 percent (90 of 837) of JAG survey respondents reported that lack of awareness was an extremely or very important reason why they did not allocate funding for indigent defense.

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exist to enhance grantees' awareness of funding that can be allocated or awarded for indigent defense. Further, in open-ended responses, 14 tribes stated that BIA should take actions to clarify that Tribal Courts TPA distributions may be used for indigent defense. Consistent with BIA's authority to provide financial assistance to tribes through contracts, compacts, or other means, to support the development, enhancement, and continuing operation of tribal justice systems, including for the employment and training of public defenders and appointed defense counsel, increasing tribes' awareness that funding may be used for indigent defense could better position BIA and tribes to support such systems. BIA officials responsible for providing assistance to tribal courts agreed that they could take additional actions to help increase tribes' awareness of funding available for indigent defense.

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## When Recipients Allocated Funding for Indigent Defense, in General, the Amount Was Small Relative to the Total Award and Funding Was Used for Personnel and Training

Those recipients who chose to allocate or use funding for indigent defense generally reported providing a small amount of funding for indigent defense relative to their total awards.<sup>40</sup> Specifically, the award amounts reported by JAG, JABG, JJDP, and Tribal Courts TPA recipients who allocated funding to indigent defense ranged from 2 percent of the total award (in the JJDP program) to 14 percent (in the JABG program). Similarly, in our review of discretionary grants, awards for indigent defense were generally small relative to total awards, ranging from at most 0.4 percent of the total award (in the Justice and Mental Health Collaboration and Drug Court Discretionary Grant programs) to at most 8.1 percent (in the Tribal Court Assistance Program).<sup>41</sup>

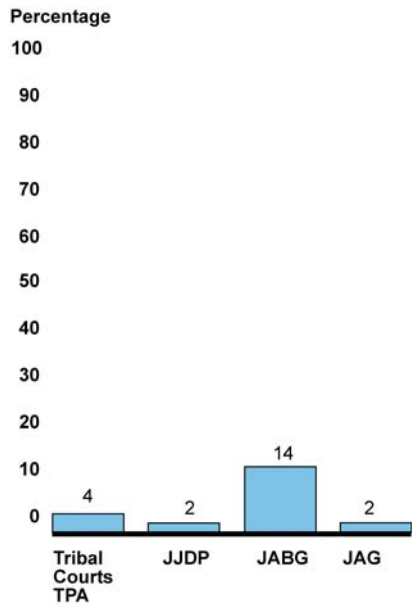
Figure 9 shows indigent defense allocations as a percentage of these survey respondents' total awards, in current dollars unadjusted for inflation, while figure 10 shows discretionary awards for indigent defense as a percentage of total awards, in current dollars. See appendix IV for additional details about these allocations and awards by year.

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<sup>40</sup>As previously discussed, recipients of grants that required that funding be allocated for indigent defense—JRJ, CCLI, WCR, and JIDNC—allocated or planned to use such funds for indigent defense in accordance with grant requirements. See appendix II for additional details on these allocations and uses.

<sup>41</sup>Because the discretionary awards include funding used in part for indigent defense, these calculations are an upper bound of allocations to indigent defense as a percentage of total award.

**Figure 9: Allocations for Indigent Defense as a Percentage of Total Awards among Those Who Reported Allocating Funding for Indigent Defense, Fiscal Years 2005 through 2010**

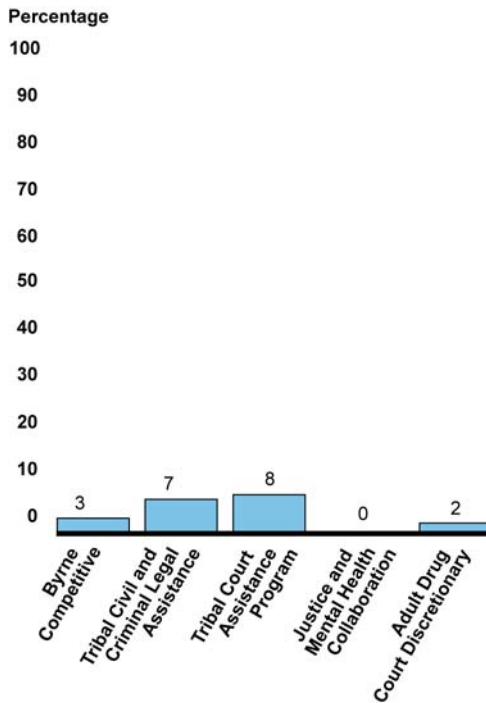


Source: GAO analysis of survey data.

Note: As discussed in appendix I, there are limitations to these data, particularly for JAG respondents. As a result, these numbers should be considered estimates.



**Figure 10: Amounts Awarded Fully or In Part for Indigent Defense, as a Percentage of Total Amounts Awarded for Selected Discretionary Grants, during Fiscal Years 2005 through 2010**



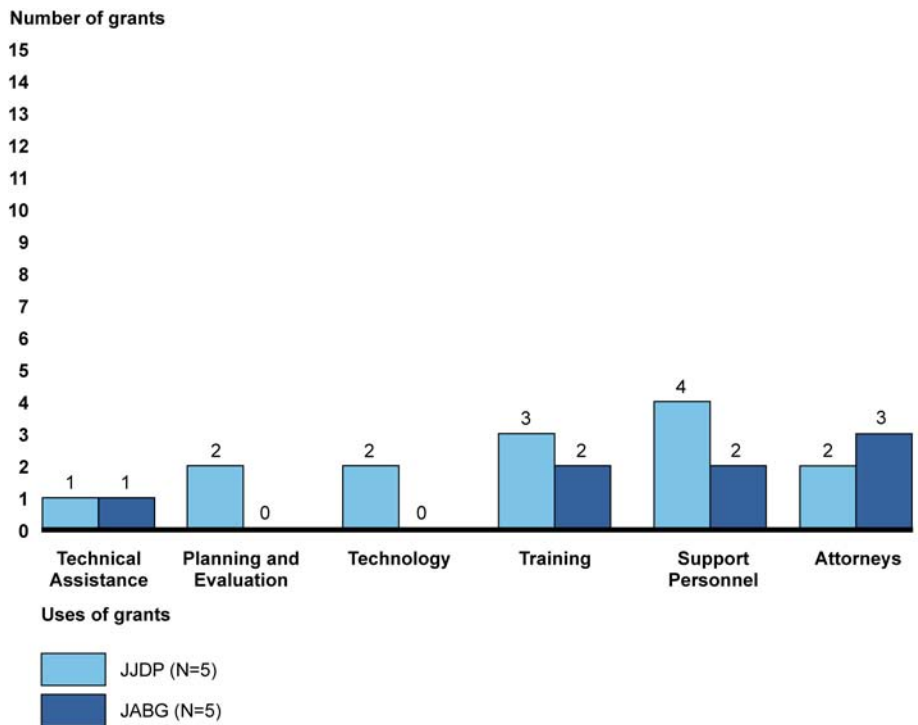
Source: GAO analysis of DOJ grant data.

Note: Includes grants that were used fully or in part for indigent defense. Thus, these percentages may represent the upper bound of the amounts awarded for indigent defense. Because the amount awarded for indigent defense as a percentage of total awards in the Justice and Mental Health Collaboration grants was so small, the percentage rounded to zero. No grants were awarded for indigent defense from the Tribal Juvenile Accountability Discretionary Grant Program.

Recipients most frequently reported using indigent defense funding for personnel and training, which may help to address challenges that public defenders face. More specifically, public defenders that responded to our survey most frequently reported that financial challenges very greatly or greatly impacted their ability to increase compensation for people working in the indigent defense system, hire additional attorneys, travel to or register for external training, and hire clerical support or investigators. Further, indigent defense providers we spoke with during a panel discussion at the National Legal Aid and Defender Association’s annual conference confirmed this position, stating that critical funding needs for public defender programs included personnel—both attorneys and support staff—as well as training.

JABG and JJDP recipients who had allocated funding for indigent defense most commonly reported using this funding for training and personnel, and our review of discretionary grants found that indigent defense funding was generally used for these same purposes. Figures 11 and 12 illustrate the most frequently reported uses of the grants. Similarly, selected recipients of JAG and BIA Tribal Courts TPA distributions with whom we spoke most commonly reported using funding for personnel.

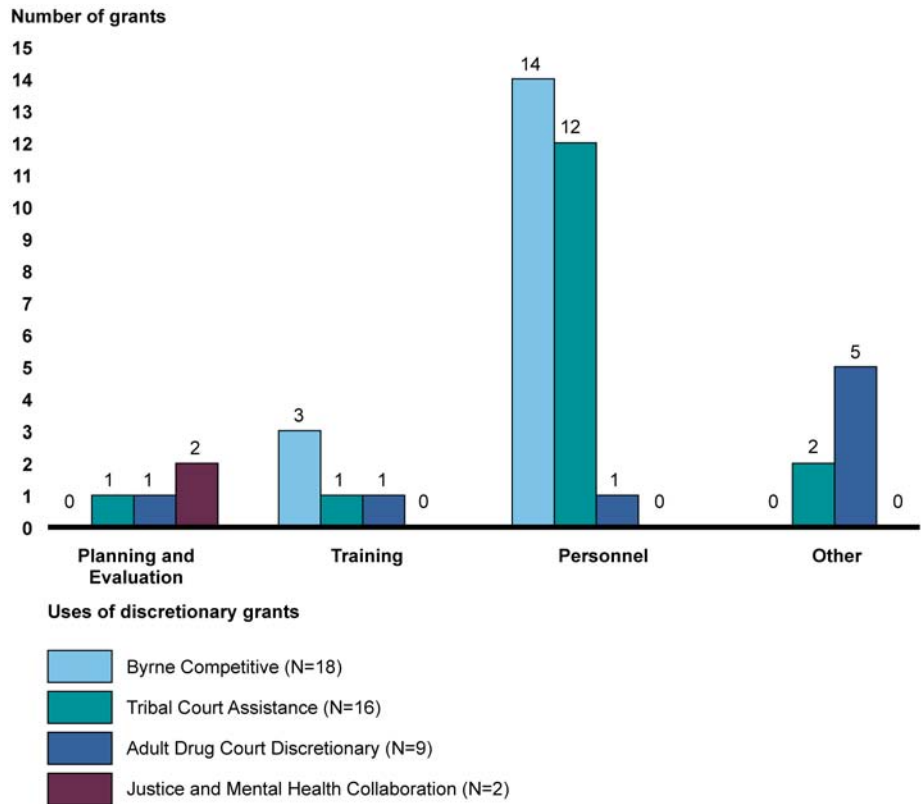
**Figure 11: Reported Uses of JABG and JJDP Grants Allocated for Indigent Defense**



Source: GAO analysis of interview data.

Note: Grants may be used for multiple purposes; therefore, single grants may be counted more than once in the above graphic.

**Figure 12: Uses of Discretionary Grants Awarded for Indigent Defense**



Source: GAO analysis of DOJ grant data.

Note: Grants may be used for multiple purposes; therefore, single grants may be counted more than once in the above graphic.

In terms of personnel, grantees funded both attorneys and support staff, including social workers, investigators, or substance abuse and treatment specialists. Support staff help to conduct investigations, process clients as they come in for assistance, or address needs clients have beyond their court case, such as challenges with substance abuse, mental health, employment, or housing. For instance, one JAG grantee reported that funds were used to hire an attorney in a county public defender office to represent veterans in the criminal court systems. The attorney represents the veterans at the county’s veterans’ court and also conducts significant outreach to treatment providers in the county to help ensure veterans can obtain any additional treatment they may need. In terms of training, grantees funded activities that included instruction on juvenile law and technology. Moreover, one grantee—The Bronx Defenders—received a Byrne Competitive grant to provide technical assistance to other public

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### The Bronx Defenders

In 2009, The Bronx Defenders, a public defender organization located in the South Bronx, New York, received a Byrne Competitive grant from DOJ. With this grant, it created The Center for Holistic Defense at The Bronx Defenders, which provides 6 months of technical assistance for selected public defender offices throughout the United States to implement a holistic model of defense, a model that targets both the causes and consequences of involvement in the criminal justice system. The Bronx Defenders operates using interdisciplinary teams of criminal, civil, and family defense lawyers, social workers, parent advocates, investigators, and community organizers to work with clients and their families to overcome the challenges they face. According to The Bronx Defenders, whether addressing the root causes of criminal justice system involvement such as addiction, mental illness, and joblessness or the collateral consequences of their criminal case, it works to provide quality legal representation and to make a long-term difference in clients' lives.

Source: GAO.

defender organizations on the public defense model they use, known as holistic defense (see sidebar).

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## DOJ Could More Consistently Collect Data on the Amount of Funding Allocated for Indigent Defense When Programs Identify It as a Priority

For grant programs that require funding be used at least in part for indigent defense, DOJ collects data on whether recipients have allocated funding for indigent defense and the allocation amounts, which allows DOJ to determine if funding was used in accordance with grant requirements. For instance, in the John R. Justice Program, which funds student loan repayments for public defenders and prosecutors, DOJ collects data on the number and amount of loan repayments made to state and local public defenders. In addition, for the Capital Case Litigation Initiative, DOJ can determine the amounts allocated for indigent defense because the grant funds must be allocated equally between prosecution and defense.<sup>42</sup>

In addition, DOJ collected data on indigent defense funding for the Byrne Competitive and TCCLA grants when funding for indigent defense was a

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<sup>42</sup>Data collection on indigent defense funding for the Wrongful Conviction Review Program and Juvenile Indigent Defense National Clearinghouse is inherent because, according to DOJ, all funding for these programs must be awarded for indigent defense.

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priority. Specifically, in 2009, when hiring public defenders was a national initiative for the Byrne Competitive grant, DOJ collected data on awards by national initiative and, thus, collected data on grant funding awarded for indigent defense under this initiative. Similarly, for the TCCLA grant, DOJ collects data on the grant category under which awards are made and, therefore, can identify funding awarded under the grant category related to indigent defense.

Further, DOJ has developed mechanisms to collect data on whether JAG recipients have allocated funding for indigent defense and the amount allocated. First, so that DOJ can determine the number of grantees that are using funds for a particular purpose, when applicants apply for JAG funding, DOJ allows them to identify which of the more than 150 “project identifiers” best describe the proposed activities for which they plan to use the funding.<sup>43</sup> According to BJA officials, DOJ created an indigent defense “project identifier” in fiscal year 2011 to better track indigent defense spending, given that indigent defense is listed as a priority in the fiscal years 2010 and 2011 JAG solicitations. Further, in its fiscal year 2011 solicitation, DOJ required that JAG applicants identify up to 5 project identifiers to catalogue their allocations. According to DOJ grant program officials, they established this requirement because they wanted to be able to track grantees’ uses of the funds and respond to questions from Congress and others about these uses. DOJ officials stated that they limited the requirement to 5 project identifiers to help ensure that the identifiers selected were most representative of the projects being funded. BJA also noted that, during its application review, BJA staff have the option to select additional project identifiers that would assist in the description and tracking of projects being funded.

Second, as part of its efforts to revise JAG performance measures, which were made partly in response to our review, BJA has drafted a performance measure for the amount of funding spent on defense. Moreover, DOJ recently improved its efforts to collect data on the extent to which JAG grantees have allocated funds for indigent defense, but DOJ does not collect data on whether JABG or TJADG grantees have allocated funding for this purpose. According to an OJP official responsible for the grant system, all project identifiers are available to any

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<sup>43</sup>GAO, *Law Enforcement Body Armor: DOJ Could Enhance Grant Management Controls and Better Ensure Consistency in Grant Program Requirements*, [GAO-12-353](#) (Washington, D.C.: Feb. 15, 2012).

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OJP grantees, including JAG as well as JABG and TJADG grantees. However, unlike the JAG program, JABG and TJADG grantees are not required to identify project identifiers to describe proposed project activities when applying for funding; therefore grantees may choose not to use them. Moreover, 3 of the 5 JABG survey respondents who reported allocating funding for indigent defense with whom we spoke reported that they were unaware of an indigent defense project identifier, and an additional respondent reported being aware, but unlikely to use it.<sup>44</sup>

DOJ officials responsible for the JABG program explained that they collect data on grantees' allocation of funds for the JABG purpose area that includes hiring court-appointed defenders, but the data are not detailed enough to identify allocations specifically for indigent defense. Moreover, the officials noted that this purpose area is only 1 out of 17 JABG purpose areas. Similarly, the purpose area that includes hiring court-appointed defenders is only 1 out of 17 TJADG purpose areas, and TJADG data we obtained from DOJ did not identify whether funding was awarded for indigent defense. In addition, JABG and TJADG applicants have not been required to identify project identifiers because, according to an official from OJJDP, the office that administers the programs, OJJDP was not aware that the project identifiers available to JAG grantees could also be used by OJJDP staff and grantees. We have previously reported that agencies should collect sufficiently complete, accurate, and consistent data to measure performance and support decision making at various organizational levels.<sup>45</sup> Given that the Attorney General has identified a crisis in criminal defense and committed the department to focusing on indigent defense issues and developing and implementing solutions, collecting data on whether grantees have allocated or awarded funding for indigent defense could help DOJ better assess whether funding is supporting this commitment.

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<sup>44</sup>These 5 respondents included all JABG recipients who reported allocating funding for indigent defense from fiscal years 2005 through 2010 with whom we were able to conduct an interview. We did not discuss the project identifiers with the remaining respondent. One additional JABG respondent who reported allocating funding did not respond to our requests for an interview.

<sup>45</sup>[GAO/GGD-96-118](#).

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## DOJ Assesses the Impact of Indigent Defense Grant Funding and Has Mechanisms to Help Indigent Defense Providers Evaluate Services

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### DOJ Has Measures to Assess the Impact of Indigent Defense-Related Grant Funding

According to the Office of Management and Budget (OMB), performance measurement indicates what a program is accomplishing and whether results are being achieved.<sup>46</sup> For all DOJ grant programs that either require funding be used for indigent defense or identify it as a priority, DOJ has or is developing indigent defense-related performance measures and requires grantees to provide data to inform these measures. For example, for the Byrne Competitive, TCCLA, TJADG, and JABG programs—where DOJ has prioritized indigent defense-related funding—DOJ requires grantees to report indigent defense-related measures such as the number of public defenders hired. In the JAG program, DOJ is developing a measure—the number of cases defended—in its revisions to its online performance measures.<sup>47</sup> For a list of performance measures DOJ uses to assess the impact of funding used for indigent defense-related activities, see appendix VI.

OMB guidance outlines four types of performance measures agencies may use to assess program impact: those that describe the level of activity that will be provided over a period of time (output measures),

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<sup>46</sup>OMB, *Performance Measurement Challenges and Strategies* (Washington, D.C.: June 2003).

<sup>47</sup>BJA launched the online Performance Measurement Tool in 2007 to improve upon its previous grants management system and allow online performance data submission. However, we previously reported that DOJ acknowledged that weaknesses exist in the current JAG performance measures and were working to update the measures with input from JAG SAAs. See [GAO-11-87](#). After developing draft revisions to the Performance Measurement Tool, DOJ posted the revised measures on its website and received stakeholder comments.

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those that describe the intended result of carrying out the program (outcome measures), those that indicate how well a procedure, process, or operation is working (process measures), and those that describe the resources used to produce outputs and outcomes (input measures).<sup>48</sup> While each type of measure provides information that can help assess the impact of the program, OMB also states that appropriate performance goals should, among other things, focus on outcomes, but use outputs when necessary.<sup>49</sup> In addition, OMB strongly encourages the use of outcomes because they are more meaningful to the public than outputs.<sup>50</sup> As we have previously reported, developing output measures is a step toward developing outcome measures, and an important initial step in measuring progress.<sup>51</sup> However, we have also previously reported that leading organizations promote accountability by establishing results-oriented, outcome goals and corresponding performance measures by which to gauge progress towards attaining these goals.<sup>52</sup>

We found that all nine of the DOJ grant programs that required or prioritized funding for indigent defense included output measures that described the level of grant activity. In addition, seven of the nine grant programs included outcome-oriented performance measures that described the intended results of the program. For example, for the Juvenile Indigent Defense National Clearinghouse Grant, DOJ developed the outcome measure “percentage of people exhibiting increased knowledge of the program area,” which demonstrates a clear linkage to the program goals to improve juvenile indigent defense, to build the capacity of the juvenile indigent defense bar, and to promote the zealous

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<sup>48</sup>OMB, *Performance Measurement Challenges and Strategies* (Washington, D.C.: June 2003); OMB, *Circular No. A-11, Part 6: Preparation and Submission of Strategic Plans, Annual Performance Plans, and Annual Performance Reports* (Washington, D.C.: August 2011).

<sup>49</sup>OMB, *Performance Measurement Challenges and Strategies* (Washington, D.C.: June 2003).

<sup>50</sup>OMB, *Performance Measurement Challenges and Strategies* (Washington, D.C.: June 2003).

<sup>51</sup>GAO, *Warfighter Support: DOD Needs Strategic Outcome-Related Goals and Visibility over Its Counter-IED Efforts*, [GAO-12-280](#) (Washington, D.C.: February 22, 2012).

<sup>52</sup>GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#) (Washington, D.C.: June 1996).



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and effective advocacy for juvenile indigent defendants. See appendix VI for our more detailed analysis of the measures used.

The John R. Justice and JAG programs do not include indigent defense-related outcome-oriented performance measures that gauge impacts or results. However, DOJ requires states that receive John R. Justice funding to submit, at the conclusion of the grant, an assessment of the program's impact on retention of prosecutors and defenders in the state, which would allow DOJ to assess whether the program is achieving intended results. DOJ officials explained that they required grantees to submit this assessment because the DOJ Inspector General is required in the statute establishing the John R. Justice program to report on the program's impact on the retention of prosecutors and public defenders.<sup>53</sup> As a result, DOJ decided to require these assessments from recipients in order to provide this information to the Inspector General, if requested.

In addition, according to DOJ officials, they have not developed indigent defense-related outcome-oriented performance measures for the JAG program because the ways in which JAG funds can be used vary significantly across and within the seven purpose areas, making the development of outcome-oriented measures that could capture the intended results of the program difficult. Even among grantees that allocated funding for indigent defense, the purposes varied significantly. For instance, one JAG grantee with whom we spoke reported using indigent defense-related JAG funds to update the case management system at a public defender's office, for which an outcome measure could be the increase in the efficiency with which cases are handled, while another used the funds to pay for an attorney, for which an outcome measure could be the decrease in the number of cases each attorney handles. Further, OMB has acknowledged that developing performance measures for programs that, like JAG, address multiple objectives and support a broad range of activities can be challenging. For programs that focus funds on specific purpose areas, as JAG does, OMB states that agencies can address the challenge by articulating national goals, and then working with state and local entities to identify specific objectives

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<sup>53</sup>See 42 U.S.C. § 3797cc-21(h) (requiring the Inspector of the Department of Justice to submit a report to Congress, not later than 3 years after the date of enactment of this section (enacted August 14, 2008), on the costs of the program and the impact of the program on the hiring and retention of prosecutors and public defenders).

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and measures linked to the national goals that the grantee will address.<sup>54</sup> However, because indigent defense is not a JAG purpose area, such a solution would not result in indigent defense-related measures. In addition, DOJ officials stated that asking grantees to develop measures would place an additional reporting burden on the grantees. DOJ officials also stated that while they do not have indigent defense-related outcome-oriented measures in the JAG program, they do ask grantees to report on what they have accomplished with their grants. Like an outcome measure, this could allow DOJ to assess the results of the program.

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### Indigent Defense Providers Generally Reported That Evaluations of Their Services Have Not Been Conducted; DOJ Has Mechanisms to Support Such Evaluations

With its indigent defense-related performance measures, DOJ can assess the impact of a grantee's use of funds, such as whether the funding resulted in an increase in the number of defenders hired. However, its assessments are not intended to evaluate the effectiveness of a grantee's, or any indigent defense provider's, programs or services, such as whether the defender's ability, training, and experience match the complexity of the case, which is one of ABA's principles for public defense delivery systems. Instead, as we have previously reported, evaluations may be used to assess a program's effectiveness, identify how to improve performance, or guide resource allocation. Moreover, evaluation can play a key role in strategic planning and in program management, providing feedback on both program design and execution.<sup>55</sup> For example, respondents to our survey of public defender offices and agencies reported using evaluations for purposes such as enacting system improvements (8), supporting funding requests (8), and addressing caseload issues (4), among others. Of the 118 public defender offices or agencies that responded to our survey, 9 provided us with copies of evaluations that they had conducted of their office or agency or that another entity conducted, such as a consultant or oversight body.<sup>56</sup> For example, one evaluation—conducted by the oversight committee for a local jurisdiction's indigent defense services—collected data and used it to assess compliance with local indigent defense standards. The evaluation considered professional

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<sup>54</sup>OMB, *Performance Measurement Challenges and Strategies* (Washington, D.C.: June 2003).

<sup>55</sup>GAO, *Designing Evaluations*, [GAO-12-208G](#). Washington, D.C. January, 2012.

<sup>56</sup>An additional 23 public defender offices or agencies reported that an evaluation had been conducted, but did not provide us with or direct us to a copy.

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independence; attorney qualifications; training; supervision; workload; performance evaluation and discipline; support services; case management and quality control; and reporting. Appendix VII provides additional details on these evaluations.

Sixty-two percent (68 of 109) of public defender offices or agencies that responded to our survey reported that no evaluation had been conducted of their office or agency. Respondents who reported reasons for not conducting an evaluation most frequently cited lack of personnel (46 percent, 29 of 63) and lack of expertise and/or the need for technical assistance (43 percent, 27 of 63) as the reasons.<sup>57</sup> Moreover, respondents identified challenges to collecting data on factors that affect their ability to provide indigent defense services—information that could be used to conduct an evaluation. For example, 50 percent (59 of 118) reported that the amount of face-to-face time a public defender spends with a client—a potential indicator of effectiveness—is difficult or burdensome to collect, and data on client satisfaction are also costly to collect (18 percent, 21 of 118), difficult to measure (47 percent, 56 of 118), and imprecise (32 percent, 38 of 118). However, respondents also reported currently collecting data on factors that DOJ and indigent defense stakeholders report could affect the quality of indigent defense services. For example, according to BJA, managing defender workloads is important to ensuring that the administration of justice is fair and equitable, and quality of service may be impacted when public defenders are forced to manage too many clients with inadequate resources.<sup>58</sup> According to respondents, data currently being collected includes both average caseload per public defender (86 percent, 96 of 111), and the number of active cases per public defender (84 percent, 94 of 112). Respondents also reported collecting data on average salary or hourly rate of public defenders (76 percent, 83 of 109)—a factor that indigent defense stakeholders have identified as relevant to the ability to attract and retain qualified attorneys.<sup>59</sup> Appendix VIII provides additional information on the extent to which public defender offices or agencies

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<sup>57</sup> Respondents were permitted to select more than one factor influencing their decision not to conduct an evaluation.

<sup>58</sup> BJA, *Keeping Defender Workloads Manageable* (Washington, D.C.: January 2001).

<sup>59</sup> National Right to Counsel Committee, *Justice Denied: America's Continuing Neglect of our Constitutional Right to Counsel* (Washington, D.C.: April 2009).

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reported collecting data that could be used to conduct an evaluation and the associated challenges or limitations of the data.

DOJ has mechanisms that could help to address some of the evaluation challenges that indigent defense offices and agencies reported, including a lack of expertise or the need for technical assistance. For instance, BJA provides technical assistance with evaluation through its Center for Program Evaluation and Performance Measurement website, and makes technical assistance available to SAAs and BJA applicants, among others.

Further, DOJ reported that it has funded more narrowly scoped, nongeneralizable, case studies intended to help inform a broader study of indigent defense and provide insights, as well as available resources, for criminal justice stakeholders. For instance, from fiscal years 2005 through 2010, the period of our review, the National Institute of Justice (NIJ) funded one study that described how outcomes differed when murder defendants were represented by public defenders versus court-appointed private attorneys in one city.<sup>60</sup> The study found that, in the city evaluated, there were significant differences between the two groups on several dimensions. Specifically, defendants represented by the public defender office had shorter average sentences, were less likely to receive a life sentence, had less expected time served, and were more likely to plead guilty.

In addition, in 2010, OJP held a National Symposium on Indigent Defense, which about 500 participants attended, including public defenders and state and local criminal and juvenile justice policymakers and practitioners. The symposium included presentations by experts on topics related to indigent defense, such as managing limited indigent defense resources in difficult economic times, among other things.<sup>61</sup> Further, in 2011, NIJ collaborated with ATJ to hold a workshop to identify

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<sup>60</sup>Preliminary findings on RAND's NIJ grant are available at Henderson, JM & P. Heaton, *How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes* (Dec. 2011). According to NIJ officials, NIJ has been conducting and supporting research on issues related to indigent defense since the 1980s.

<sup>61</sup>See <http://nij.gov/nij/topics/courts/indigent-defense/2010-symposium/welcome.htm> for information about the symposium. The 2010 symposium was an update to a 1999 National Symposium on Indigent Defense, after which a report was released. See <http://www.sado.org/fees/icjs.pdf> for this report.

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domestic and international best practices for indigent defense and to develop an agenda on criminal indigent defense research. In addition to providing suggestions for future research, the workshop produced a report containing 40 recommendations to ATJ and NIJ.<sup>62</sup> Among the major themes highlighted in the report was participant support for evidence-based research on indigent defense, including evaluation of successful domestic and international practices.<sup>63</sup> DOJ officials stated that this report was completed consistent with NIJ's practice of documenting conference proceedings and gathering information from stakeholders.

Further, DOJ has taken steps to identify characteristics of model programs, including awarding grant funding to the National Criminal Justice Association to identify innovative use of JAG funds to support indigent defense, among other criminal justice areas.<sup>64</sup>

Moreover, in addition to the studies it has conducted or funded in the past, in February 2012, NIJ issued a solicitation—Social Science Research on Indigent Defense—that seeks applications for research on the fundamental issues surrounding access to legal services and the need for quality representation at the state and local level.<sup>65</sup> Proposed topics include three areas: juvenile and adult defendants' waiver of their right to counsel, the importance of defense team members in indigent defense cases—issues indigent defense stakeholders identify as impediments to effective representation—as well as other research

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<sup>62</sup>DOJ, *Expert Working Group Report: International Perspectives on Indigent Defense*, NCJ236022 (September 2011).

<sup>63</sup>According to OJP, practices are evidence-based when their effectiveness has been demonstrated by causal evidence, generally obtained through outcome evaluations, which documents a relationship between an intervention and its intended outcome, while ruling out, to the extent possible, alternative explanations for the outcome.

<sup>64</sup>In its 2011 report, *Cornerstone for Justice: Byrne JAG and its Impact on the Criminal Justice System*, the National Criminal Justice Association highlighted the state of Minnesota for using JAG funds to support public defenders.

<sup>65</sup>According to DOJ, the recommendations documented in the report produced by the workshop on domestic and international best practices for indigent defense informed this solicitation.

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focused on important issues surrounding indigent defense.<sup>66</sup> This solicitation—which will provide up to \$1 million for research projects—will fund a rigorous, scientific study that will identify barriers defendants commonly face in securing effective representation. DOJ officials stated that they developed this solicitation after conducting a review of existing indigent defense research, which they used to identify the areas of research they believed to be most important. Given that public defenders in our survey reported the need for assistance in conducting evaluations, NIJ’s study could help provide these defenders with the information, framework, and tools to conduct such evaluations, and identify factors that may affect the provision of indigent defense services.

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## Conclusions

Identifying a crisis in the nation’s criminal defense system, DOJ has stated its commitment to focusing on indigent defense issues and developing and implementing solutions. Moreover, both DOJ and BIA have undertaken efforts to assist state, local, and tribal indigent defense providers in overcoming barriers to providing effective indigent defense services. However, consistent with OJP’s commitment to identify and address the most pressing challenges confronting the justice system and BIA’s authority to support the development, enhancement, and continuing operation of tribal justice systems, they could do more to meet the needs of indigent defense providers. Specifically, by increasing awareness among JAG, JABG, and JJDP grantees, as well as indigent defense providers, that funding is available for indigent defense, DOJ could be in a better position to ensure that eligible grantees are aware that they can access federal funding to help address their needs. In addition, by increasing awareness among recipients of Tribal Courts TPA distributions that funding can be used for indigent defense, BIA could better help tribes enhance all aspects of their criminal justice system.

DOJ collected data on the amount of funding allocated for indigent defense for the Byrne Competitive and TCCLA grants when funding for indigent defense was a priority, and has developed mechanisms to do so in the JAG program, but does not consistently do so in the JABG and

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<sup>66</sup>Indigent defense stakeholders cite invalid waivers—which, according to stakeholders, occur when defendants are not properly informed of their right to counsel—and lack of experts, investigators and interpreters as impediments to competent and effective defense services. National Right to Counsel Committee, *Justice Denied: America’s Continuing Neglect of our Constitutional Right to Counsel* (Washington, D.C.: April 2009).

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TJADG programs, where indigent defense is also a priority. Since DOJ seeks to focus on indigent defense issues and develop solutions, taking steps to collect data on allocations for indigent defense would position DOJ to better assess if it is meeting its commitment to indigent defense and help inform future funding priorities.

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## Recommendations for Executive Action

To ensure that OJP is best positioned to identify and address critical needs in the indigent defense community, determine whether it has met its commitment to indigent defense, and improve accountability in grants administration, we recommend that the Assistant Attorney General of OJP take the following three actions:

- take steps to increase JAG, JABG, and JJDP grantees' awareness that funding can be allocated for indigent defense;
- inform indigent defense providers about grants for which they are eligible to apply; and
- take steps to collect data on allocations and spending for indigent defense in the JABG and TJADG programs.

To ensure that the Office of Justice Services is best positioned to support the development, enhancement, and continuing operation of tribal justice systems, we recommend that the Director of the Bureau of Indian Affairs take actions to increase awareness among recipients of Tribal Court TPA distributions that funding can be allocated for indigent defense.

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## Agency and Third Party Comments and Our Evaluation

We provided a draft of this report for review and comment to DOJ and DOI. In addition, we provided relevant sections of the report to The Bronx Defenders and the Administrative Office of the U.S. Courts (AOUSC). DOI did not provide official written comments to include in our report. However, in an email received April 23, 2012, the DOI liaison stated that DOI concurred with our recommendation. We received written comments from DOJ, which are reproduced in full in appendix IX. In its written comments, DOJ concurred with the recommendations in this report. DOJ, The Bronx Defenders, and AOUSC also provided technical comments which we incorporated throughout the report as appropriate.

DOJ identified several actions that OJP will take to implement the recommendations related to increasing JAG, JABG, and JJDP grantees' awareness that funding can be allocated for indigent defense and informing indigent defense providers about grants for which they are eligible to apply. These actions include updating its "Frequently Asked

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Questions” document for grantees; communicating this information to grantees through email, technical assistance websites, and during national meetings; and working with national organizations, such as ABA and NLADA, to disseminate information on available funding to indigent defense providers through conferences, meetings, emails, newsletters, and publications. Increasing grantee awareness that funding can be allocated for indigent defense could help DOJ better ensure that it meets its commitment to supporting indigent defense. OJP’s proposed steps, if implemented across eligible grant programs, should address the intent of our recommendations.

With regard to the recommendation that OJP take steps to collect data on allocations and spending for indigent defense in the JABG and TJADG programs, we originally included language in the recommendation that described examples of actions OJP could take to collect such data. Specifically, we stated that such actions could include increasing JABG and TJADG applicants’ awareness of the indigent defense project identifier, to ensure more consistent use of the identifiers and allow DOJ to collect data on allocations of the grants to indigent defense, and requiring JABG and TJADG grantees to select project identifiers. After sending the draft report to DOJ for comment, officials from OJP and ATJ stated that they plan to work together to determine internally the best way to collect data on allocations and spending for indigent defense in the JABG and TJADG programs, which could include the actions we identified in the original recommendation or other measures. Thus, they requested that we remove the language that described examples of how OJP could collect this data. We agreed that DOJ was best positioned to determine how to implement the recommendation and modified the recommendation by removing the language that described such examples to address the recommendation. OJP stated that, by September 30, 2012, OJJDP will determine the mechanism by which data on allocations and spending for indigent defense in the JABG and TJADG programs can best be collected. Collecting such data would position DOJ to better assess if it is meeting its commitment to indigent defense.

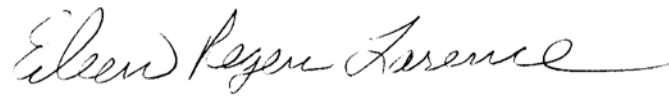
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We are sending copies of this report to the appropriate congressional committees. We are also sending copies to the Attorney General, the Secretary of the Interior, and the Director of the AOUSC. In addition, this report will be available at no charge on the GAO website at <http://www.gao.gov>.



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If you or your staff have any questions about this report, please contact me at (202) 512-8777 or [larencee@gao.gov](mailto:larencee@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix X.

A handwritten signature in cursive script that reads "Eileen R. Larence". The signature is written in black ink and is positioned above the printed name and title.

Eileen R. Larence  
Director, Homeland Security and Justice Issues

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*List of Requesters*

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate

The Honorable John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary  
House of Representatives

The Honorable Robert C. Scott  
Ranking Member  
Subcommittee on Crime, Terrorism, and Homeland Security  
Committee on the Judiciary  
House of Representatives

The Honorable Jerrold Nadler  
Ranking Member  
Subcommittee on the Constitution  
Committee on the Judiciary  
House of Representatives

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# Appendix I: Objectives, Scope, and Methodology

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We addressed the following questions as a part of our review:

1. What type of support, if any, have the Department of Justice (DOJ) and Bureau of Indian Affairs (BIA) provided for state, local, and tribal indigent defense?
2. For fiscal years 2005 through 2010, to what extent was eligible DOJ and BIA funding allocated and awarded for indigent defense, what factors affected decisions to allocate and award funding for this purpose, and what actions have DOJ and BIA taken, if any, to address these factors?
3. When fiscal year 2005 through 2010 federal funding was allocated or awarded for indigent defense, how did it compare to the total allocations or awards made, and how did recipients use the funding?
4. To what extent does DOJ collect data on indigent defense funding when the grant program specifies that funds be allocated or awarded for this purpose or highlights it as a priority?
5. When a grant program specifies that funds be spent for indigent defense or highlights it as a priority, to what extent can DOJ assess the impacts of this grant funding, and to what extent have there been evaluations of indigent defense programs and has DOJ supported these evaluation efforts ?

To determine what DOJ grant programs and BIA funding could be used to support state, local, and tribal indigent defense from fiscal years 2005 through 2010, we reviewed the Catalog of Federal Domestic Assistance, DOJ's website, and BIA's annual budget justifications.<sup>1</sup> In addition, we spoke with public defenders and state and local government offices in selected states to determine whether there were additional grants they had applied for or received related to indigent defense that we had not already identified. We selected these states based on geographical location, the extent to which state and local government offices had received federal funding, and the structure of the state's indigent defense system. We also met with agency officials in DOJ's Office of Justice Programs (OJP), who are responsible for administering the programs, and BIA's Office of Justice Services, who provide support to tribal courts,

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<sup>1</sup>We selected fiscal years 2005 through 2010 because you requested that we identify federal funding that was used for indigent defense during this time frame. The Catalog for Federal Domestic Assistance is a government-wide compendium of federal programs, projects, services, and activities that provide assistance or benefits to the American public. It contains financial and nonfinancial assistance programs administered by departments and establishments of the federal government.

to discuss the federal funding programs in more detail. Once our determinations were made, we sent OJP officials a list of funding programs to be included in our review, and asked for confirmation of this list. The DOJ grants included in our review were the Edward Byrne Memorial Justice Assistance Grant (JAG) Program; the Juvenile Accountability Block Grant (JABG); the Juvenile Justice and Delinquency Prevention Title II (JJDP); John R. Justice Program; Byrne Competitive Program; Capital Case Litigation Initiative; Wrongful Conviction Review Program; Tribal Civil and Criminal Legal Assistance Program; Tribal Courts Assistance Program; Juvenile Indigent Defense Clearinghouse Grant; Tribal Juvenile Accountability Discretionary Grant; Juvenile Justice and Mental Health Collaboration Grant; and Adult Drug Court Discretionary Grant. The BIA funding included in our review was the Tribal Courts tribal priority allocation (TPA) distributions. We obtained records of all recipients of these grants from DOJ and by reviewing BIA's budget documentation. Further, we interviewed knowledgeable agency officials about the source of the grant data and the controls in place to maintain the integrity of the data and determined that the data were sufficiently reliable for our purposes. In addition, to determine what other assistance DOJ and BIA made available to support indigent defense, we interviewed DOJ and BIA officials responsible for training and technical assistance to identify assistance other than funding that the agencies provide to support indigent defense.

To determine the extent to which state, local, and tribal governments allocated federal funding for indigent defense, the factors that influenced their decisions, and the amounts allocated, we conducted separate Web-based surveys of all recipients of fiscal year 2005 through 2010 DOJ formula grants that could be allocated for indigent defense—the JAG, JJDP, and JABG grants—and tribal governments that received BIA Tribal

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Courts TPA distributions from fiscal years 2005 through 2010.<sup>2</sup> To develop the survey questionnaires, we reviewed existing literature about the provision of indigent defense, and interviewed state JAG, JABG, and JJDP recipients, local JAG recipients, and tribes. We designed draft questionnaires in close collaboration with a GAO social science survey specialist. We conducted pretests with five state and local JAG recipients, three JABG recipients, three JJDP recipients, two tribal JAG recipients, and two recipients of BIA Tribal Court TPA distributions to help further refine our questions, develop new questions, and clarify any ambiguous portions of the survey.

We developed and administered the web-based questionnaires accessible through a secure server. We emailed each recipient a unique identification number and password, and a link to the questionnaire for their population. See table 4 for further details about the population, response rates, and generalizability of these surveys.

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<sup>2</sup>An electronic supplement to this report—[GAO-12-661SP](#) (available June 2012)—provides survey results. Amounts appropriated through the American Recovery and Reinvestment Act of 2009 (ARRA) are also included in our review. See Pub. L. No. 111-5, 123 Stat. 115, 130 (2009). Formula grants are funding programs for which the primary grantees do not compete, although they must submit an application and meet other specified requirements. These grants are usually administered and managed by State Administering Agencies (SAA), and the amount of the grant awards are calculated by a formula most often governed or established by statute, which may consider factors such as population or crime data. In addition, we identified BIA funding to Courts of Indian Offenses (referred to as “CFR courts”) that could be used for indigent defense. We did not include CFR courts in our survey of tribal courts because CFR courts constitute direct services administered by BIA officials. However, according to BIA officials, every CFR court has a law-trained public defender. Also, based on discussions with BIA officials, we did not include tribal courts in BIA’s Alaska region.

**Table 4: Survey Distribution, Populations, Respondents and Rates, and Generalizability**

Grant program	Date survey distributed	Eligible population	Number of respondents	Response rate, in percent	Considered generalizable?
Juvenile Justice and Delinquency Prevention Title II	September 22, 2011	56	50	89	Yes
Juvenile Accountability Block Grant	September 22, 2011	56	46	82	Yes
Justice Assistance Grant (overall state and local)	October 17, 2011	3,934 <sup>a</sup>	1,807	46	No
States		56	50	89	Yes
Localities		3878	1757	45	No
Justice Assistance Grant (tribes) <sup>b</sup>	December 22, 2011	29	11	38	No
Tribal Courts TPA	December 21, 2011	154	105	68	No

Source: GAO analysis of survey data.

<sup>a</sup>For the state and local JAG survey, we provisionally identified, and on October 17, 2011, attempted to contact 3,970 recipients. We later determined that 36 were ineligible or duplicates. Therefore, our final eligible population was 3,934.

<sup>b</sup>For the purposes of this report, we have combined all the tribal JAG responses with the responses of state and local JAG recipients.

Because all recipients of JABG and JJDP funding were included in our survey, and our results are therefore not subject to sampling error, and we received response rates of 82 and 89 percent, we consider our results generalizable to the populations of JABG and JJDP recipients. While we also included all eligible members of the target populations in our state and local JAG, tribal JAG, and Tribal Courts TPA surveys, because of their relatively low response rates and the possibility of other errors all questionnaire surveys face, our results represent only respondents participating in these surveys and should not be generalized to the populations. Specifically, certain members of these populations may have been more or less likely to respond to our survey and this may affect our data. For instance, our data may overrepresent allocations for indigent defense because recipients that allocated funding for indigent defense may have been more likely to respond to our survey than recipients that had never done so. In addition, on the JAG survey, recipients of larger amounts of money and recipients of multiple years of funding were more likely to respond, but recipients of funding awarded solely pursuant to amounts appropriated through the American Recovery and Reinvestment Act were less likely to respond. However, the responses provide insights into the extent to which JAG and BIA Tribal Courts TPA funding has been allocated for indigent defense.

The practical difficulties of conducting any survey may introduce errors in estimates. For example, difficulties in interpreting a particular question, sources of information available to respondents, or entering data into a database or analyzing them can introduce unwanted variability into the survey results. We took steps in developing the questionnaire, collecting the data, and analyzing them to minimize these errors. In addition, as indicated above, social science survey specialists designed the questionnaire in collaboration with GAO staff that had subject matter expertise. We then conducted pretests to check that (1) the questions were clear and unambiguous, (2) terminology was used correctly, (3) the questionnaire did not place an undue burden on respondents, (4) the information could feasibly be obtained, and (5) the survey was comprehensive and unbiased. We made multiple contact attempts with nonrespondents during the survey by e-mail, and some nonrespondents were also contacted by telephone. When we analyzed the data, an independent analyst checked all computer programs. Since this was a web-based survey, respondents entered their answers directly into the electronic questionnaire, eliminating the need to key data into a database, minimizing error. We assessed the reliability of funding allocation data that was provided by including a series of questions pertaining to the accuracy of reported data in our survey and reviewing the data for obvious errors. Dollar amounts reported through our surveys, particularly by JAG respondents, have limitations and should be treated as estimates. For instance, respondents may have had difficulty identifying the precise amount of funding allocated for indigent defense in the earlier years of our time frame (fiscal years 2005 through 2010), may have been unable to determine the exact amount of funding that was allocated for indigent defense if grant funds were used for multiple purposes, or may not have had sufficient information to provide total amounts allocated to indigent defense because they had not yet fully allocated their grant funds. In addition, our JAG data may overrepresent allocations to law enforcement because it was the first category listed in our survey and respondents that were unable to split their funding across purpose areas may have reported allocating all funding to law enforcement.

To determine the extent to which DOJ awarded discretionary grants for indigent defense, we obtained project descriptions for all discretionary grants that could have been awarded for indigent defense in fiscal years 2005 through 2010 from DOJ. We then reviewed these descriptions to determine the recipients of the grant services. In addition to indigent defense providers, this included the following categories: civil defenders, criminal defenders, prosecutors, law enforcement providers, court offices, correctional agencies, crime victims, reentry service providers, juvenile

delinquency prevention organizations, appellate defenders, drug treatment providers, community and public outreach providers, non-attorney staff, innocence projects, and universities. Many grants had multiple recipients of grant services. In these instances, we classified the grants to reflect all recipients; as a result, grants may be counted in more than one category. For each grant program we determined the number of grants used exclusively for indigent defense, the number of grants used for indigent defense with another grant recipient category, and the number and amount of grants that were not used for indigent defense. Two analysts made these classifications in order to verify each other's work.

To determine what factors influenced public defenders' decisions to apply for funding, we conducted a web-based survey of public defenders. To develop the survey questionnaire, we reviewed existing literature about the provision of indigent defense, and interviewed stakeholder groups knowledgeable about the provision of these services. We designed draft questionnaires in close collaboration with a GAO social science survey specialist. We conducted pretests with four public defenders to help further refine our questions, develop new questions, and clarify any ambiguous portions of the survey.

We drew our survey sample from 841 public defender offices identified nationwide. To identify the population of public defender offices nationwide, we started with the Census of Public Defender Offices, which was conducted in 2007 by the Bureau of Justice Statistics (BJS).<sup>3</sup> This Census collected data from all state and county funded public defender offices across the country. We further worked in partnership with the National Legal Aid and Defender Association (NLADA) to update existing contact information and identify additional offices that should be included.

We drew a stratified sample of 253 of the 841 public defenders nationwide. From this population of 841 public defenders, we sampled 100 percent of: 22 state-level offices, 6 territories, 17 tribes, 52 public defender offices in major metropolitan areas, and 71 secondary offices not in major metropolitan areas. The remaining 85 public defenders were drawn within strata defined by region. The six strata are shown in table 5.

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<sup>3</sup>BJS, *County-based and Local Public Defender Offices, 2007* (Washington, D.C.: September 2010); BJS, *State Public Defender Programs, 2007* (Washington, D.C.: September 2010).



**Table 5: Public Defender Offices by Stratum and Population, Cases Selected, and Sample Size**

Stratum	Stratum name	Population	Number of cases	Effective sample	Response rate
<b>Certainty strata</b>					
1	State offices	22	22	22	100%
2	Territories	6	6	4.8	100%
3	Tribes	17	17	13.6	59%
4	Public defender offices—major metro areas	53	52	42.4	50%
5	Secondary offices not in major metro areas	71	71	56.8	41%
	<i>Subtotal certainties</i>	<i>169</i>	<i>169</i>	<i>139.6</i>	
<b>Random sample</b>					
6	Primary offices <sup>a</sup>	672	85	68.8	29%
	<b>Total sample</b>	<b>841</b>	<b>253</b>	<b>208.4</b>	

Source: GAO analysis of survey population.

<sup>a</sup>By primary office, we mean the office or agency which has been designated by a local jurisdiction as its chief provider of indigent defense services. In general, the primary office will handle the bulk of indigent defense services in its respective jurisdiction, with other services being provided by another office, agency or individual in accordance with predetermined contractual agreement, capacity limitations (where applicable), or compliance with ethical and professional standards relating to conflicts of interest.

We developed and administered the web-based questionnaire accessible through a secure server, and emailed unique identification numbers and passwords to the 253 public defenders beginning December 6, 2011. We sent follow-up e-mail messages beginning December 13, 2011, to those who had not yet responded. Then we contacted all remaining nonrespondents by telephone, starting January 5, 2012. The questionnaire was available online until February 29, 2012.

We received 118 responses from the sample of 253, for an unweighted response rate of 47 percent. Because of this relatively low response rate, our results represent only respondents participating in our survey and should not be generalized to the population of public defenders; thus we report results based only on the respondents and do not present population estimates. However, the responses provide insights into the factors that influence public defenders' decisions to apply for federal funding. We took steps similar to those in our grant recipient surveys when developing the questionnaire, collecting the data, and analyzing them to minimize errors.

To determine what efforts, if any, DOJ has taken to address factors influencing recipients' decisions to allocate funding for indigent defense,

we interviewed DOJ and BIA officials responsible for each type of funding. We also reviewed DOJ's guidance to recipients to determine the extent to which DOJ communicated that funding could be used for indigent defense programs. We compared this guidance against the grant and BIA statutes, and DOJ's stated commitment to support indigent defense.

To determine the allocation amounts and uses of formula grants and Tribal Courts TPA distributions that were allocated for indigent defense, we asked a question pertaining to funding amounts in our state and local JAG, JABG, JJDP, tribal JAG, and Tribal Courts TPA surveys described above and also performed follow-up interviews with select grant recipients to determine the purposes for which funds were used. We contacted all 6 JABG and 7 JJDP recipients that reported allocating any fiscal year 2005 through 2010 funding for indigent defense, all 16 state and local JAG recipients that reported allocating fiscal year 2010 funding for indigent defense, and 7 recipients of BIA Tribal Courts TPA distributions that reported allocating any fiscal year 2005 through 2010 funding for indigent defense and asked them to describe how they used grants funds that were allocated for indigent defense. We conducted interviews with 5 of 6 JABG, 5 of 7 JJDP, 9 of 16 state and local JAG, and 7 of 20 recipients of BIA Tribal Courts TPA distributions that reported allocating to indigent defense.

To determine the allocation amounts and uses of discretionary grants which were awarded for indigent defense, during our review of all project descriptions of DOJ discretionary grants that could have been awarded for indigent defense from fiscal years 2005 through 2010, in addition to determining the recipient of the grant services, we also determined the use for each grant. We identified the following possible uses: training, technical assistance, personnel, planning and evaluation, technology initiatives, equipment, case management, conflict counsel, outreach and public education, facilities, codes and legal rules, and representation from an outside source. For each grant, two analysts came to agreement on the categorization. As with the recipients of grant services, many grants had multiple uses. In these instances, we classified the grants to reflect all their uses; as a result, grants may be counted more than one time in our overall analysis. With this information we were able to provide the amount and use for all discretionary grants that were used all or in part for indigent defense.

To determine the extent to which DOJ collects data on whether recipients allocate funds for indigent defense when such funding is required or

highlighted as a priority, we reviewed all grant solicitations to determine whether DOJ required that funding be allocated or awarded for indigent defense or identified indigent defense as a purpose area or priority. For grants in which we found that it was, we spoke with DOJ officials about why they chose to do so. In addition, through document requests and interviews with DOJ officials, we asked the agency to provide information that describes the extent to which they track how grantees have allocated funding, including for indigent defense, and how they do or could do so. We analyzed this information to ascertain the status of their efforts and the mechanisms available to conduct such tracking.

As part of this analysis, we requested data from DOJ on its fiscal year 2011 JAG grantees because—beginning in fiscal year 2011—JAG grantees were required to select up to five project identifiers to indicate how their 2011 JAG funds would be used, and DOJ developed a project identifier for indigent defense. We compared this data with our survey results from JAG grantees to determine the extent to which grantees that indicated in our survey that they are likely to allocate funding for indigent defense also selected indigent defense as a project identifier in their fiscal year 2011 grant application in order to assess the accuracy of the project identifier data. We compared DOJ's data collection efforts against our prior work on implementing the Government Performance and Results Act, which states that agencies should collect sufficiently complete, accurate, and consistent data to measure performance and support decision making at various organizational levels.<sup>4</sup>

To determine the extent to which DOJ can assess the impact of grant programs that specify that funds must be spent for indigent defense or highlight it as a priority, we reviewed performance measures outlined in DOJ grant solicitations. We compared DOJ's measures against criteria in Office of Management and Budget (OMB) guidance<sup>5</sup> and our prior work on performance measures, which states that leading organizations promote accountability by establishing results-oriented, outcome goals and corresponding performance measures by which to gauge progress

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<sup>4</sup>GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#), (Washington, D.C.: June 1996).

<sup>5</sup>OMB, *Performance Measurement Challenges and Strategies* (Washington, D.C.: June 2003).

towards attaining these goals.<sup>6</sup> Two analysts also independently reviewed performance measures DOJ established or is establishing for all grant programs in which indigent defense funding is required or a priority to assess whether the measures focused on the intended result of the program (were outcome-oriented). The analysts then met to discuss and resolve any differences in the results of their analysis. In addition, we spoke with DOJ officials about the feasibility of collecting performance measures for grant programs.

To determine the extent to which evaluations have been conducted of indigent defense programs, and the extent to which DOJ has supported these evaluation efforts, we asked public defender offices and agencies in our survey whether an evaluation had been conducted of their office and the challenges associated with conducting such an evaluation. We reviewed the evaluations of the 9 respondents who reported they were willing to share them, but did not assess the quality of the evaluations or their results. In addition, we conducted a literature search of peer-reviewed journals using databases such as ProQuest, PolicyFile, and LexisNexis. In December 2011, we also held a listening session at a National Legal Aid and Defender Association conference where public defenders described challenges to conducting evaluations, among other topics.<sup>7</sup> Finally, to identify actions DOJ has taken to evaluate indigent defense systems, we reviewed studies funded or conducted by DOJ and interviewed DOJ officials about its efforts to evaluate indigent defense systems.

We conducted this performance audit from February 2011 to May 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our analysis based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our analysis based on our audit objectives.

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<sup>6</sup>[GAO-10-95](#).

<sup>7</sup>The 17 public defender office or agency leaders who attended the listening session also discussed characteristics of model public defender programs; factors that affect the ability of public defenders to provide effective representation; and critical funding needs facing public defender programs. We observed their discussion, recorded the information shared, and reviewed the information to identify common themes.

# Appendix II: Allocations and Uses of DOJ Grants That Required Indigent Defense Funding

As table 6 demonstrates, grantees of the four programs that we determined require funding for indigent defense—the John R. Justice Program, Capital Case Litigation Program, Wrongful Conviction Review Program, and Juvenile Indigent Defense National Clearinghouse—have allocated or used these grants in accordance with grant requirements for indigent defense.

**Table 6: Number and Amount of Awards for Indigent Defense for DOJ Grant Programs That Required Funding for Indigent Defense**

	Fiscal years in which the grant was active from fiscal year 2005-2010	Number of grants awarded in all active fiscal years	Total amount awarded for indigent defense	Awards to indigent defense as percentage of total funding
John R. Justice <sup>a</sup>	2010	51	\$5.1 million	50%
Capital Case Litigation Initiative <sup>b</sup>	2007-2010	33	\$3.3 million	63%
Wrongful Conviction Review <sup>c</sup>	2009-2010	24	\$4.6 million	89%
Juvenile Indigent Defense National Clearinghouse	2010	1	\$500,000	100%

Source: GAO analysis of DOJ data.

<sup>a</sup>John R. Justice data include \$244,834 (2 percent of total funding) for federal public defenders; the remaining amounts were awarded to state and local public defenders. One state obtained a waiver from the requirement to allocate funding equally to prosecutors and defenders as it had few eligible defenders and no defenders with any outstanding student loans to qualify for the repayment in the state, and thus awarded all of its funding to prosecutors.

<sup>b</sup>Capital Case Litigation data are greater than the 50 percent required for indigent defense because they include 18 grants for \$3.2 million that were awarded to indigent defense in combination with another purpose, but we were unable to determine the exact amount of funding awarded for indigent defense alone.

<sup>c</sup>Wrongful Conviction data do not reflect that all grants and funding were awarded for indigent defense because, due to our methodology for categorizing grantees, two grantees were categorized as state appellate defender offices, which we classified as a separate group from indigent defense providers that handle defendants' initial cases, and one as a nonprofit organization. However, these grantees' project descriptions indicated that they would utilize the grant to provide representation in post-conviction claims of innocence, in accordance with grant requirements.

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# Appendix III: Percentage of Survey Respondents That Allocated Funding for Indigent Defense and Allocation Amounts

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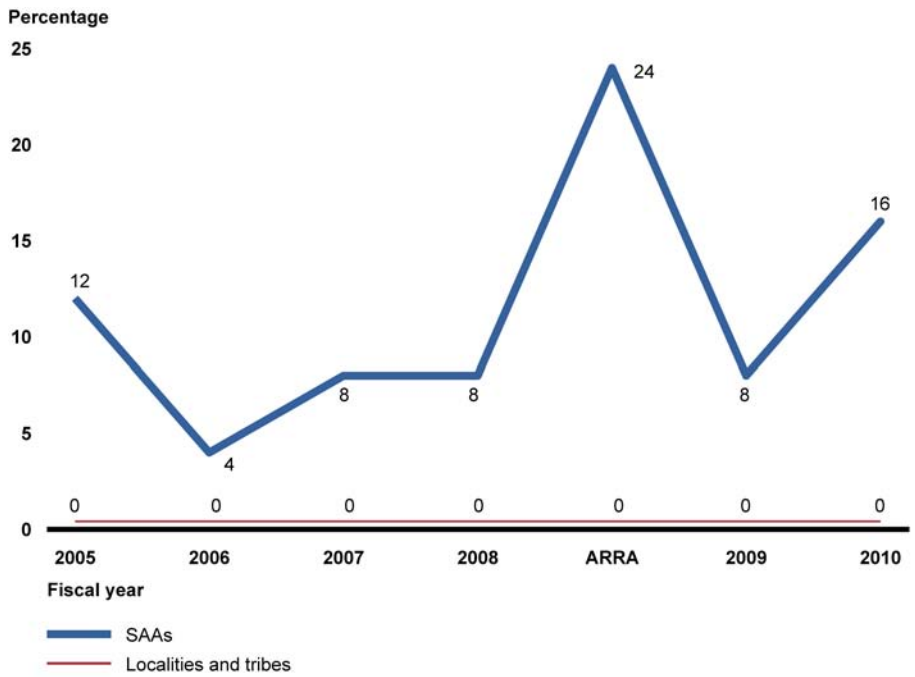
Figures 13, 14, and 15 show the percentages of Edward Byrne Memorial Justice Assistance Grant (JAG); Juvenile Accountability Block Grant (JABG); Juvenile Justice and Delinquency Prevention Title II (JJDP); and Bureau of Indian Affairs (BIA) Tribal Courts Tribal Priority Allocation (TPA) Distribution survey respondents who reported allocating funding for indigent defense from fiscal year 2005 through 2010.<sup>1</sup> As the figures demonstrate, the percentage was highest among JAG State Administering Agencies (SAA)—the state agencies that administer JAG funds—in receipt of grants awarded pursuant to amounts appropriated through the American Recovery and Reinvestment Act (ARRA). In addition, the percentage of JJDP and JABG recipients that reported allocating funding for indigent defense increased and decreased, respectively, in fiscal year 2009. Further, the percentage of BIA tribal courts survey respondents that reported allocating funding for indigent defense has increased over time.

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<sup>1</sup>Forty-six percent of JAG recipients (1,818 of 3,963, including 89 percent of SAAs and 45 percent of localities and tribes) completed the JAG survey; 82 percent of JABG recipients (46 of 56) completed the JABG survey; 89 percent of JJDP recipients (50 of 56) completed the JJDP survey; and 63 percent (106 of 169) of recipients completed the Tribal Courts survey. Because all recipients of JABG and JJDP funding were included in our population and we received response rates of 82 and 89 percent, we consider our results generalizable to the population of JABG and JJDP recipients. While all eligible members of our target population of JAG and recipients of BIA Tribal Courts TPA distributions were included in our survey, due to the relatively low response rates and the possibility of other errors all questionnaire surveys face, our results represent only respondents participating in our survey and should not be generalized to the population of JAG recipients or recipients of BIA Tribal Courts TPA distributions.

Appendix III: Percentage of Survey Respondents That Allocated Funding for Indigent Defense and Allocation Amounts

Figure 13: Percentage of JAG State, Local, and Tribal Survey Respondents That Reported Allocating Funding for Indigent Defense, by Fiscal Year

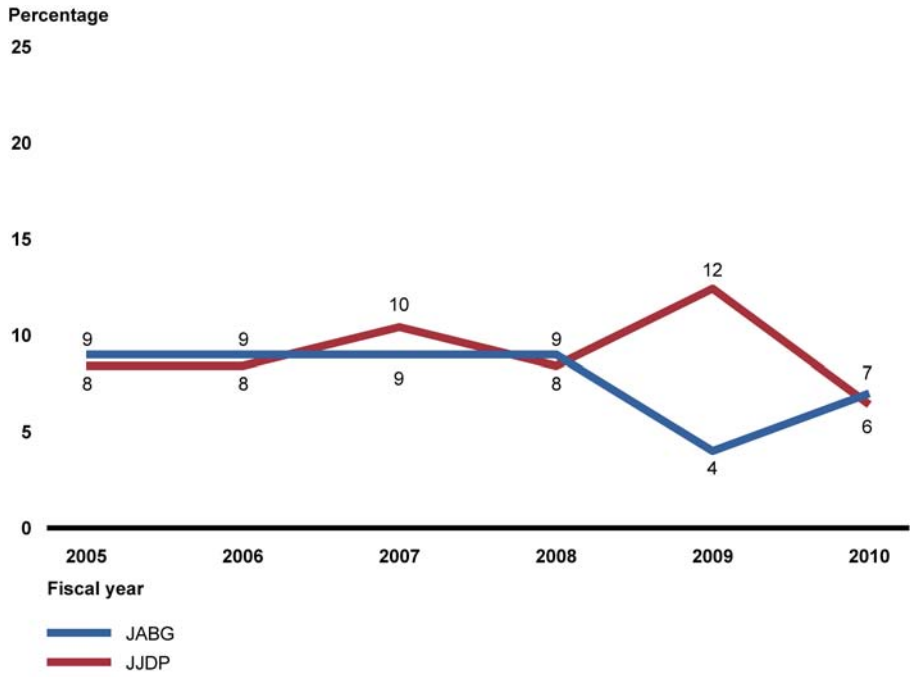


Source: GAO analysis of survey data.

Note: Because so few localities and tribes reported allocating funding for indigent defense, the numbers rounded to zero.

Appendix III: Percentage of Survey Respondents That Allocated Funding for Indigent Defense and Allocation Amounts

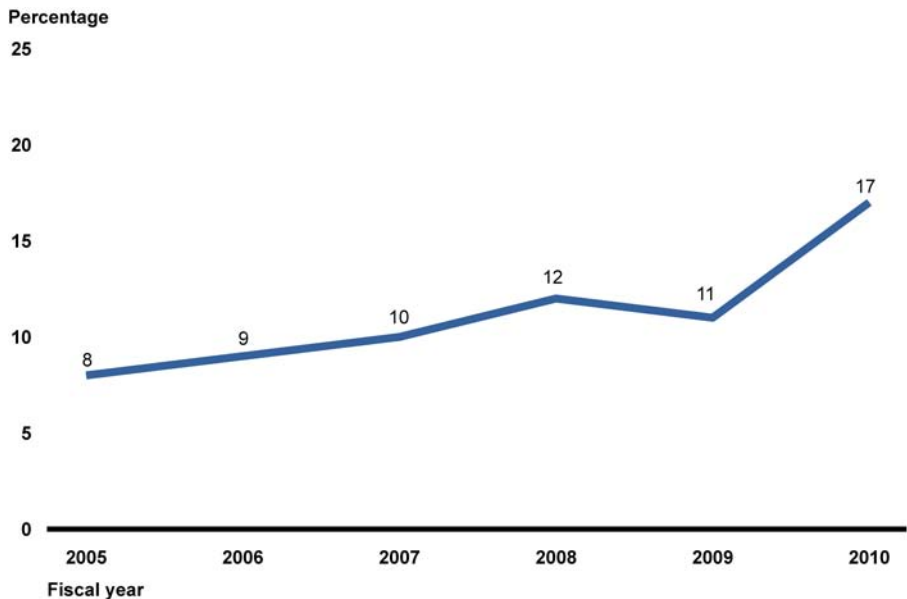
Figure 14: Percentage of JJDP and JABG Survey Respondents That Reported Allocating Funding for Indigent Defense, by Fiscal Year



Source: GAO analysis of survey data.



Figure 15: Percentage of BIA Tribal Courts TPA Funding Survey Respondents That Reported Allocating Funding for Indigent Defense, by Fiscal Year



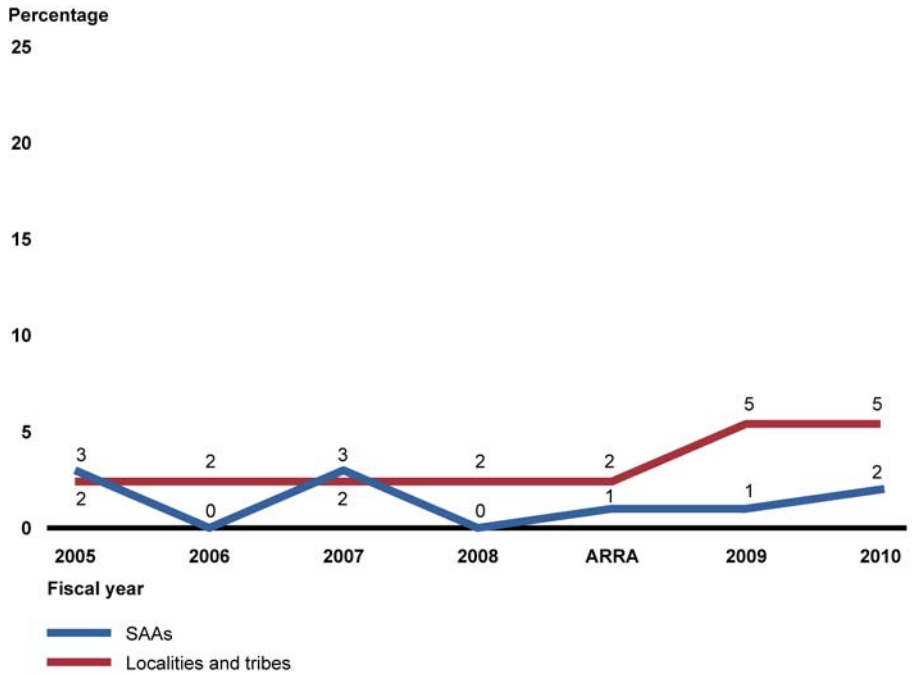
Source: GAO analysis of survey data.

As figures 16, 17, and 18 illustrate, among survey respondents who reported allocating funding for indigent defense, allocations for indigent defense as a percentage of total awards reported by survey respondents were generally small, but varied slightly across time. For instance, in the JAG program, reported allocations as a percentage of total awards were highest among localities and tribes in fiscal years 2009 and 2010. In addition, reported allocations as a percentage of total awards are highest in the JABG program, but have been decreasing over time. Further, reported allocations as a percentage of total awards among BIA Tribal Courts TPA recipients have been increasing over time. However, these data, particularly the allocation amounts, have limitations and should be treated as estimates. For instance, respondents may have had difficulty identifying the precise amount of funding allocated for indigent defense in the earlier years of our time frame (fiscal years 2005 through 2010), been unable to determine the exact amount of funding that was allocated for indigent defense if grant funds were used for multiple purposes, or not have had sufficient information to provide total amounts allocated to indigent defense because they had not yet fully allocated their grant funds. In addition, our JAG data may overrepresent allocations to law enforcement because it was the first category listed in our survey and

Appendix III: Percentage of Survey Respondents That Allocated Funding for Indigent Defense and Allocation Amounts

respondents that were unable to split their funding across purpose areas may have reported allocating all funding to law enforcement.

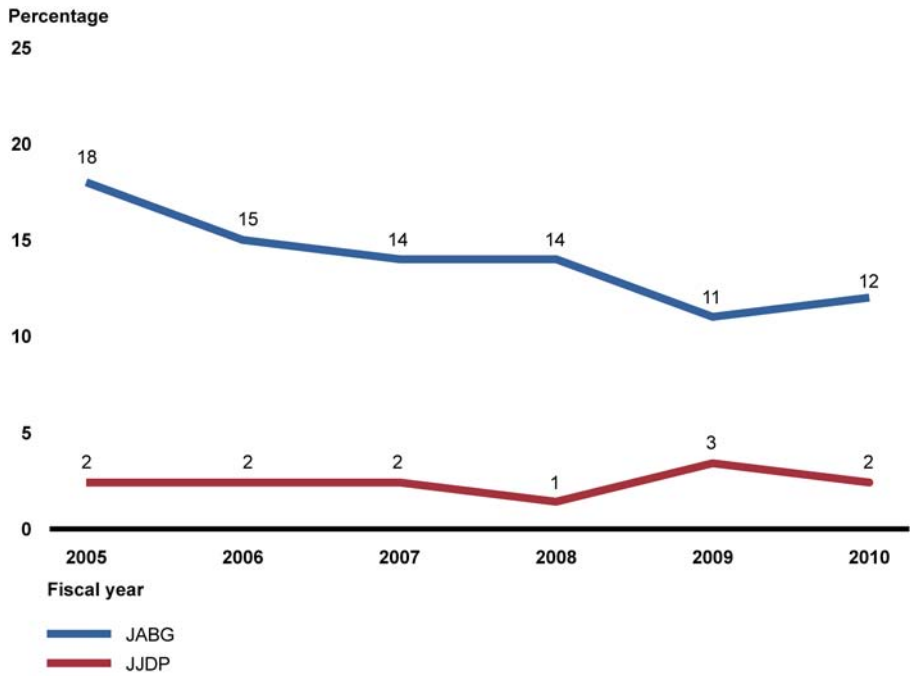
**Figure 16: Reported Allocations as a Percentage of Total Award, by Fiscal Year, among JAG Respondents Who Reported Allocating Funding for Indigent Defense**



Source: GAO analysis of survey data.

Appendix III: Percentage of Survey Respondents That Allocated Funding for Indigent Defense and Allocation Amounts

Figure 17: Reported Allocations as a Percentage of Total Award, by Fiscal Year, among JABG and JJDP Respondents Who Reported Allocating Funding for Indigent Defense



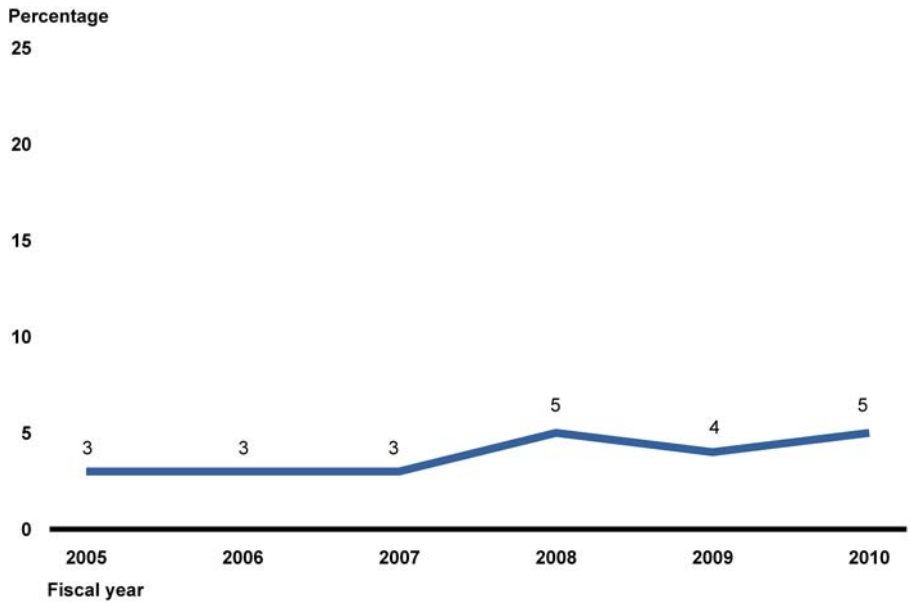
Source: GAO analysis of survey data.

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**Appendix III: Percentage of Survey Respondents That Allocated Funding for Indigent Defense and Allocation Amounts**

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**Figure 18: Reported Allocations as a Percentage of Total Award, by Fiscal Year, among BIA Tribal Courts TPA Respondents Who Reported Allocating Funding for Indigent Defense**



Source: GAO analysis of survey data.

# Appendix IV: Additional Details on Number of Indigent Defense Discretionary Awards and Award Amounts

Table 7 shows, by DOJ discretionary grant, the number of grants awarded in whole or in part for indigent defense, this number as a percentage of total awards, total allocations for indigent defense, and these allocations as a percentage of total awards. These data, particularly the award amounts, have limitations. For instance, we reviewed project descriptions that were based on grantees' applications; however, the descriptions did not identify the amount of funding specifically planned for indigent defense. Therefore, the amounts reported represent the maximum possible awards for indigent defense.

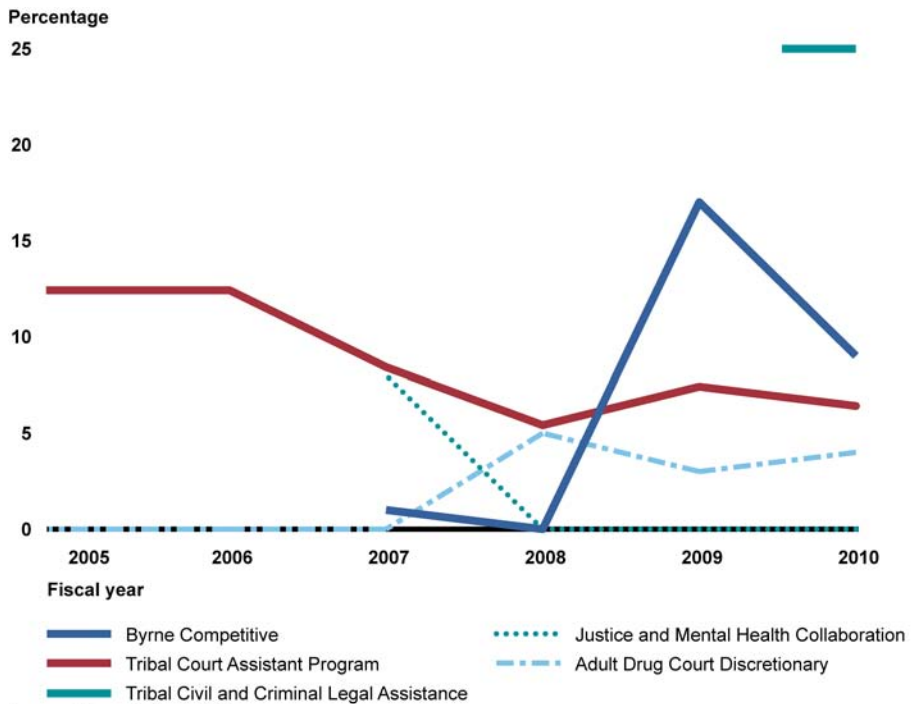
**Table 7: Awards and Allocations in Whole or in Part for Indigent Defense, by Discretionary Grant that Did Not Require Spending for this Purpose**

	Number of grants awarded, fiscal years 2005 through 2010	Percentage of total grants awarded that were for indigent defense	Maximum possible total allocation to indigent defense	Maximum possible allocation to indigent defense, as percentage of total funding
Byrne Competitive	18	6.3%	\$4,058,585	2.7%
Adult Drug Court Discretionary Grant Program	9	2.8%	\$2,088,137	2.5%
Justice and Mental Health Collaboration Grant Program	2	1.3%	\$99,955	0.4%
Tribal Courts Assistance Program	16	7.9%	\$3,863,679	8.0%
Tribal Civil and Criminal Legal Assistance	2	25.0%	\$281,400	7.1%
Tribal Juvenile Accountability Discretionary Grant	0	0%	\$0	0%

Source: GAO analysis of DOJ data.

Figures 19 and 20 show the percentage of grants awarded in whole or in part for indigent defense as well as maximum possible awards for indigent defense as a percentage of total grant awards from 2005 through 2010. As figure 19 demonstrates, the percentage of grants awarded for indigent defense was highest for fiscal year 2010 TCCLA grants, and in the fiscal year 2009 Byrne Competitive grant program, when indigent defense was part of a national initiative.

**Figure 19: Percentage of Grants Awarded in Whole or in Part for Indigent Defense; Fiscal Years 2005 through 2010**



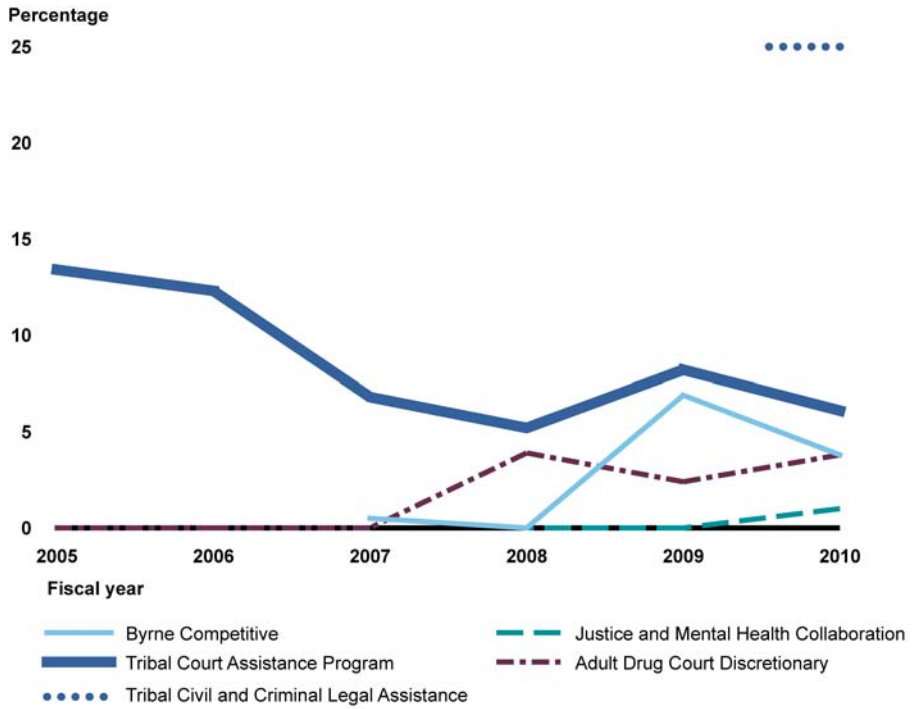
Source: GAO analysis of DOJ data.

Note: DOJ determined that 35 percent of TCCLA funding was awarded for indigent defense in fiscal year 2010, and 51 percent was awarded for indigent defense in fiscal year 2011. The fiscal year 2010 percentage differs from our analysis due to the differences in the methodologies used to determine the percentage of grants awarded for indigent defense. Specifically, DOJ calculated its percentage by dividing the grants awarded under Category 2—the purpose of which is to provide criminal legal assistance services—by the total awards under the grant. In contrast, we reviewed each of the project descriptions submitted by TCCLA grantees to determine whether the descriptions indicated that the grantee planned to use the funds for indigent defense. Because the project descriptions may not have included all the planned activities of the grantee, our methodology may not have captured all grants that were awarded for indigent defense.

In addition, as figure 20 illustrates, awards to indigent defense as a percentage of total awards were highest in the Tribal Court Assistance Program, although they were decreasing over time.

Appendix IV: Additional Details on Number of Indigent Defense Discretionary Awards and Award Amounts

**Figure 20: Indigent Defense Awards, as a Maximum Possible Percentage of Total Awards; Fiscal Years 2005 through 2010**



Source: GAO analysis of DOJ data.

Note: The figure includes grants that were used fully or in part for indigent defense. The Tribal Juvenile Accountability Discretionary Grant Program had no grants awarded for indigent defense and, thus, is not included in the figure.

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# Appendix V: JAG Survey Respondents' Allocations across Purpose Areas and for Indigent Defense, by Fiscal Year

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Figures 21 through 34 display the percentages of their total awards that Edward Byrne Memorial Justice Assistance Grant (JAG) State Administering Agencies (SAA)—state agencies that administer JAG funds—and local and tribal JAG recipients that responded to our survey reported allocating for all seven JAG purpose areas by fiscal year.<sup>1</sup> The figures also include the percentage of their total awards that these respondents reported allocating for indigent defense.<sup>2</sup> However, our data have limitations and should be treated as estimates. Specifically, respondents may have had difficulty identifying the precise amount of funding allocated for indigent defense in the earlier years of our timeframe (fiscal years 2005 through 2010, including funding awarded pursuant to amounts appropriated through the American Recovery and Reinvestment Act (ARRA)), been unable to determine the exact amount of funding that was allocated for each purpose area if grant funds were used for multiple purposes, or not have had sufficient information to provide total amounts allocated to each purpose area because they had not yet fully allocated their grant funds. In addition, the data may overrepresent allocations to law enforcement because it was the first category listed in our survey and respondents that were unable to split their funding across purpose areas may have reported allocating all funding to law enforcement. Finally, our data may overrepresent allocations for indigent defense because JAG recipients that allocated funding to indigent defense may have been more likely to respond to our survey than recipients that had never done so.

As figures 21 through 27 illustrate, SAAs who responded to our survey reported allocating the largest proportion of funding to the law enforcement purpose area.

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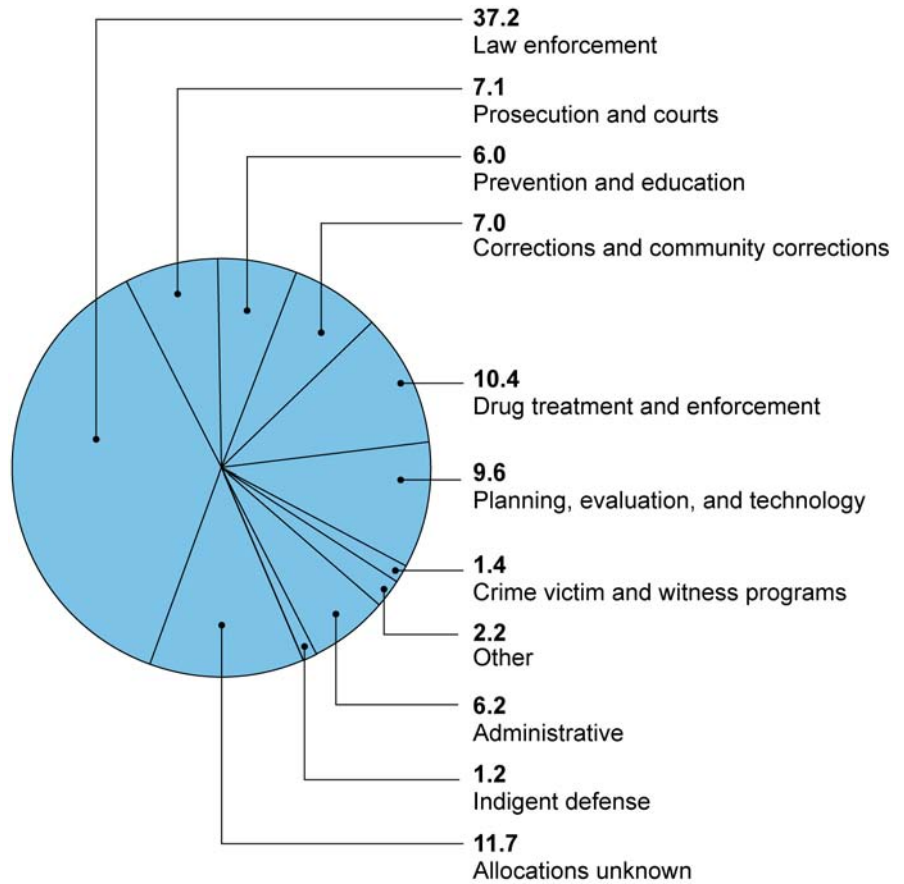
<sup>1</sup>Forty-six percent of JAG recipients (1,818 of 3,963, including 89 percent of SAAs and 45 percent of localities and tribes) completed the JAG survey. While all eligible members of our target population of JAG and recipients were included in our survey, due to the relatively low response rate and the possibility of other errors all questionnaire surveys face, our results represent only respondents participating in our survey and should not be generalized to the population of JAG recipients.

<sup>2</sup>Funding for indigent defense can be allocated in multiple purpose areas, as indigent defense is not its own purpose area. As a result, to obtain the percentages allocated for each purpose area, we subtracted the amount respondents reported allocating for indigent defense out of the specified purpose area.



Appendix V: JAG Survey Respondents' Allocations across Purpose Areas and for Indigent Defense, by Fiscal Year

Figure 21: SAAs' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2005

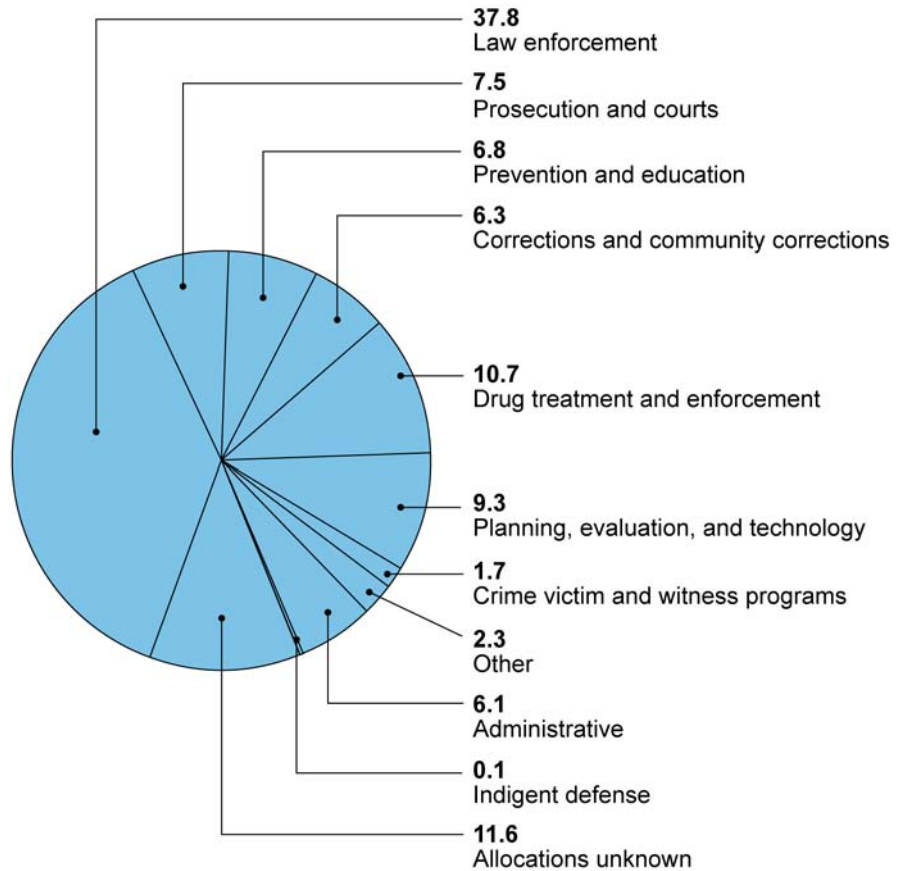


Source: GAO analysis of survey data.

Note: Other includes funds not yet allocated.

Appendix V: JAG Survey Respondents' Allocations across Purpose Areas and for Indigent Defense, by Fiscal Year

Figure 22: SAAs' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2006

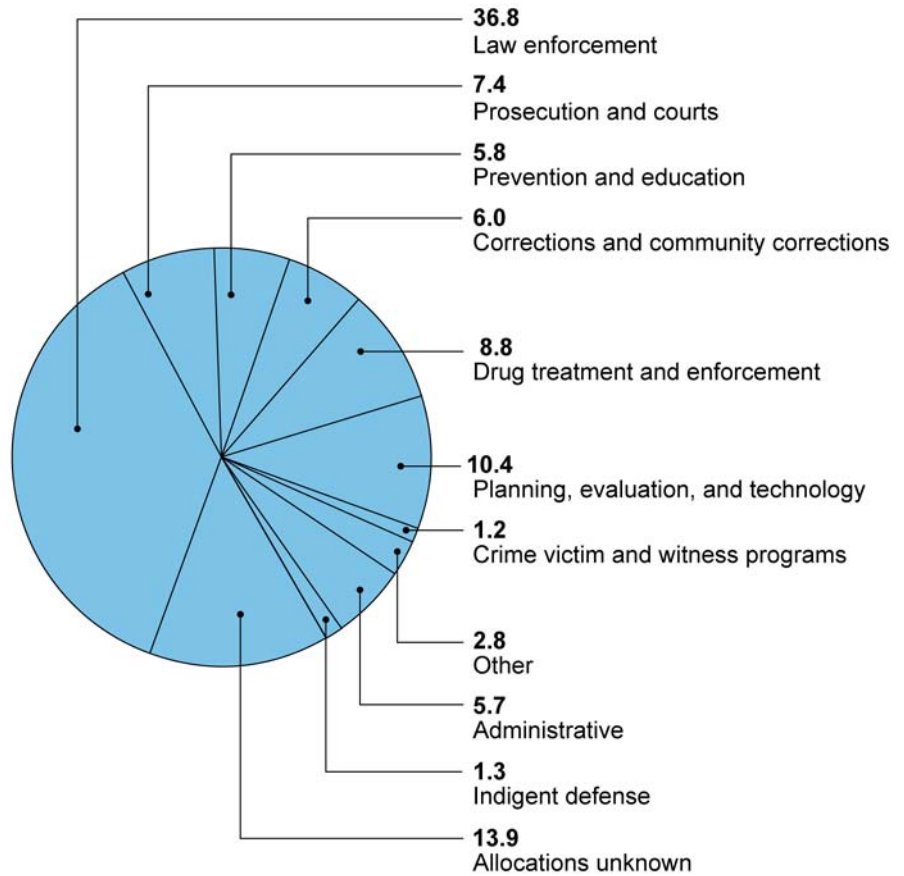


Source: GAO analysis of survey data.

Note: Other includes funds not yet allocated. Percentages do not add up to 100 due to rounding.

Appendix V: JAG Survey Respondents' Allocations across Purpose Areas and for Indigent Defense, by Fiscal Year

Figure 23: SAAs' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2007

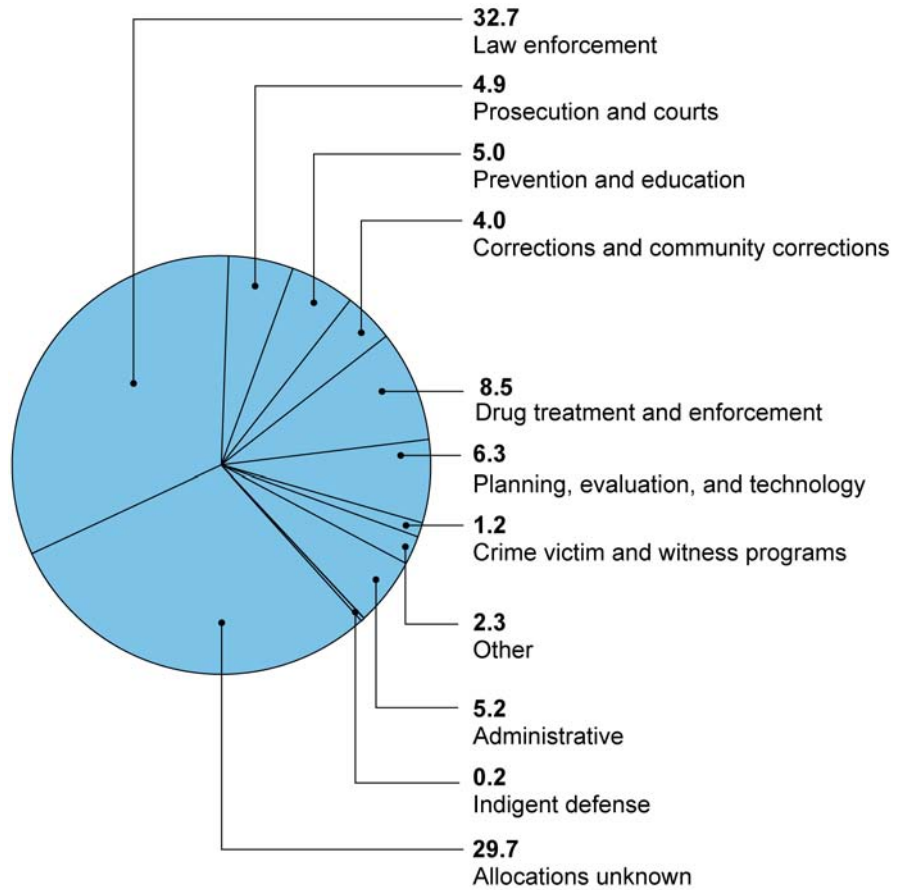


Source: GAO analysis of survey data.

Note: Other includes funds not yet allocated. Percentages do not add up to 100 due to rounding.

Appendix V: JAG Survey Respondents' Allocations across Purpose Areas and for Indigent Defense, by Fiscal Year

Figure 24: SAAs' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2008

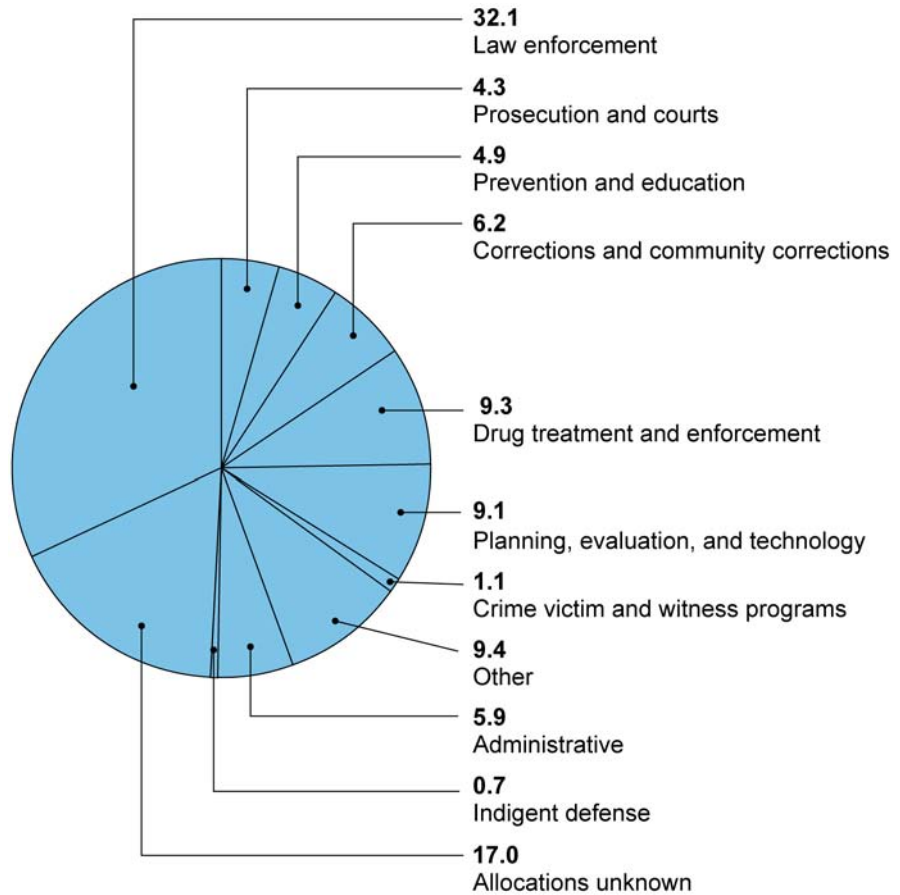


Source: GAO analysis of survey data.

Note: Other includes funds not yet allocated.

Appendix V: JAG Survey Respondents' Allocations across Purpose Areas and for Indigent Defense, by Fiscal Year

Figure 25: SAAs' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2009

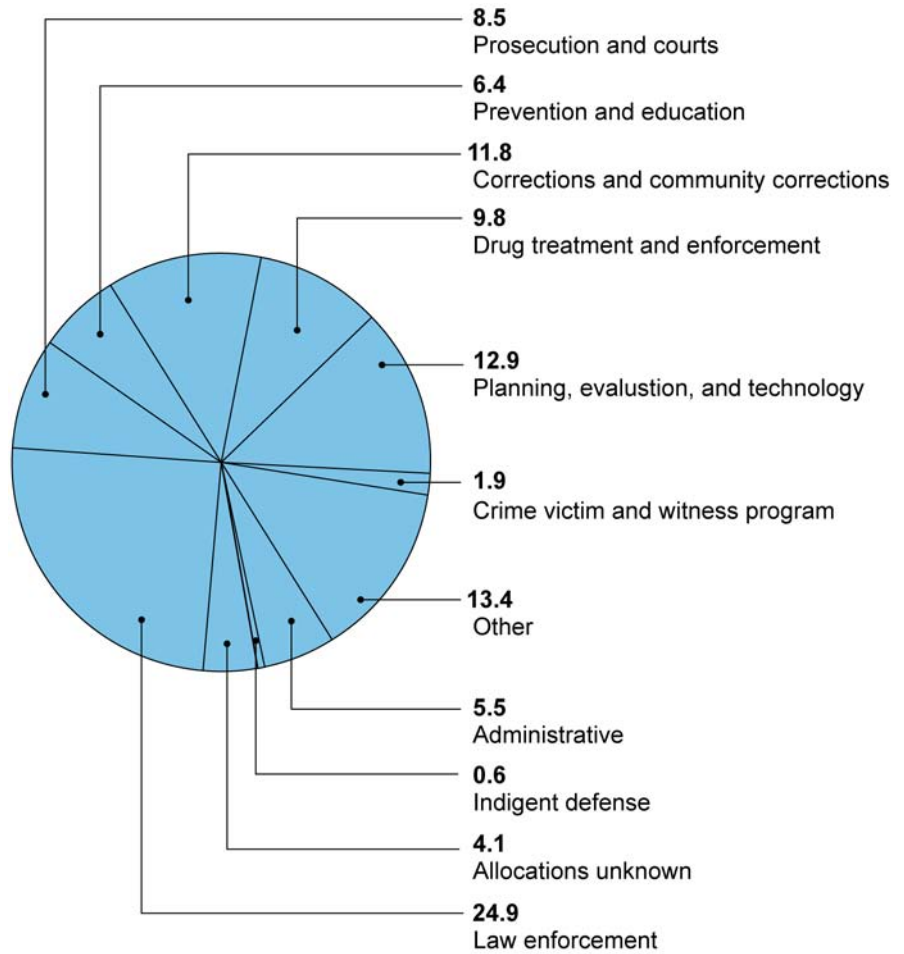


Source: GAO analysis of survey data.

Note: Other includes funds not yet allocated.

Appendix V: JAG Survey Respondents' Allocations across Purpose Areas and for Indigent Defense, by Fiscal Year

Figure 26: SAAs' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, ARRA

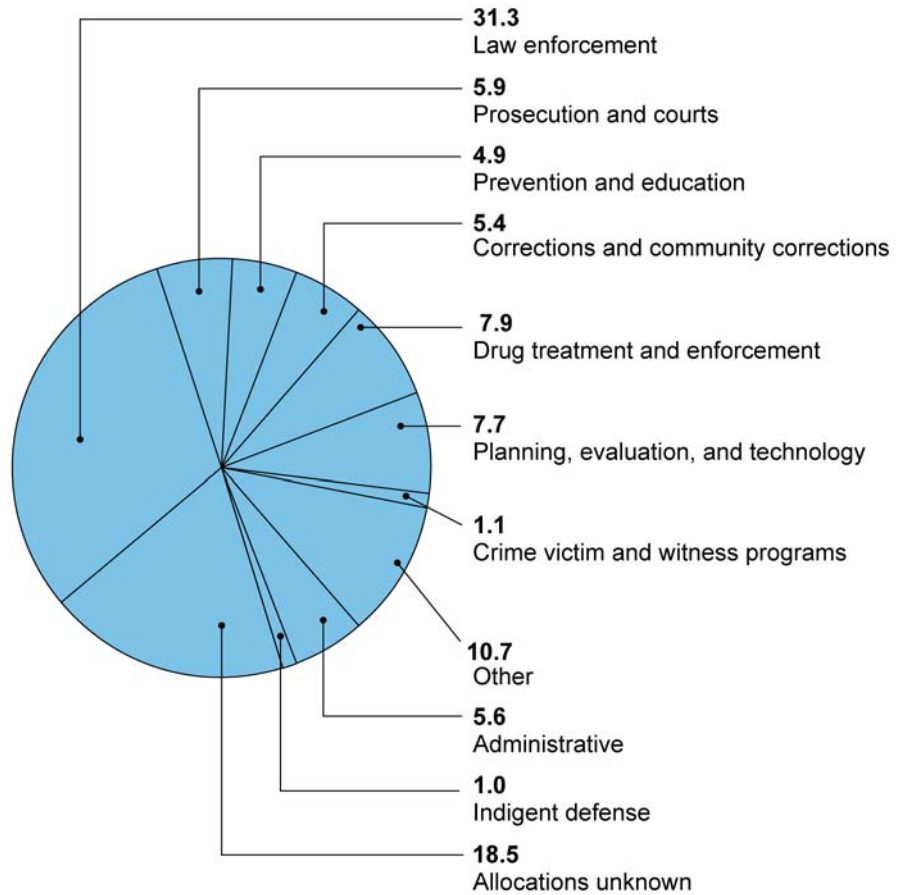


Source: GAO analysis of survey data.

Note: Other includes funds not yet allocated. Percentages do not add up to 100 due to rounding.

**Appendix V: JAG Survey Respondents' Allocations across Purpose Areas and for Indigent Defense, by Fiscal Year**

**Figure 27: SAAs' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2010**

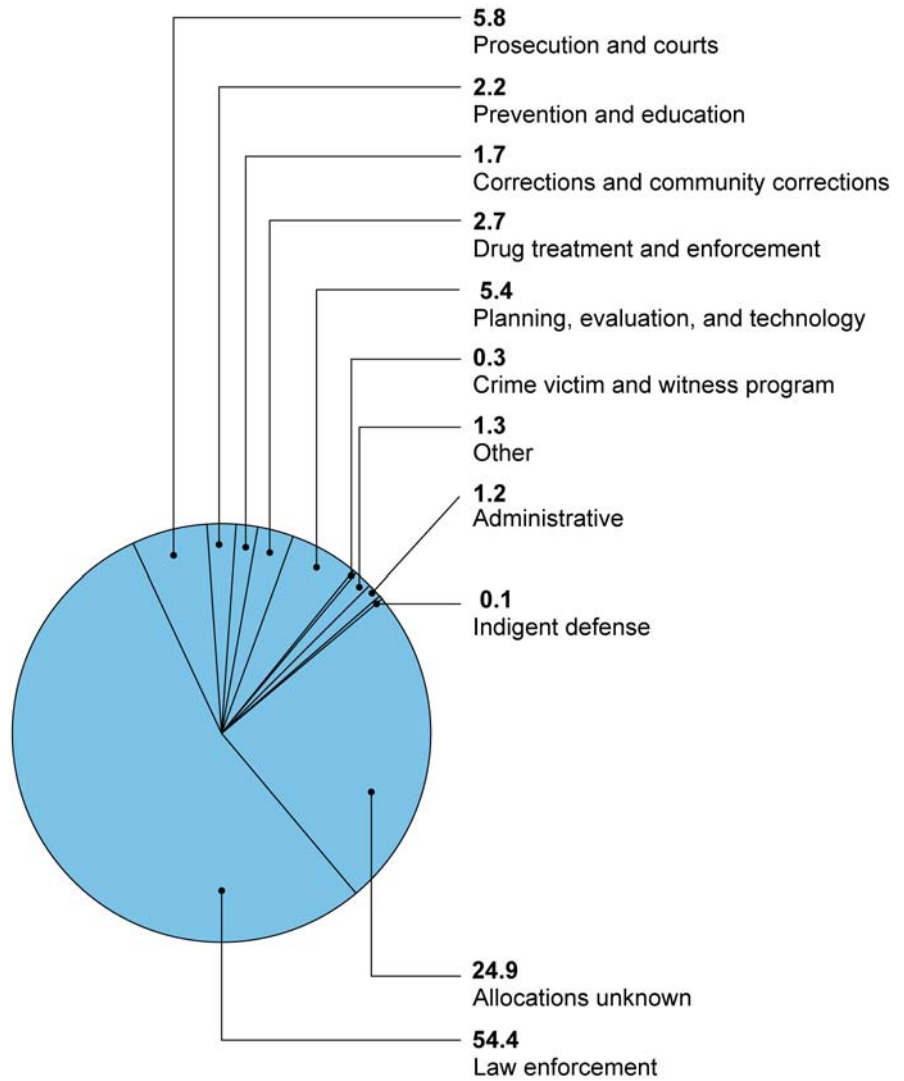


Source: GAO analysis of survey data.

Note: Other includes funds not yet allocated.

As figure 28 through 34 demonstrate, localities and tribes that received JAG funding and responded to our survey reported allocating the largest proportion of their funding to the law enforcement purpose area.

Figure 28: Local and Tribal JAG Recipients' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2005

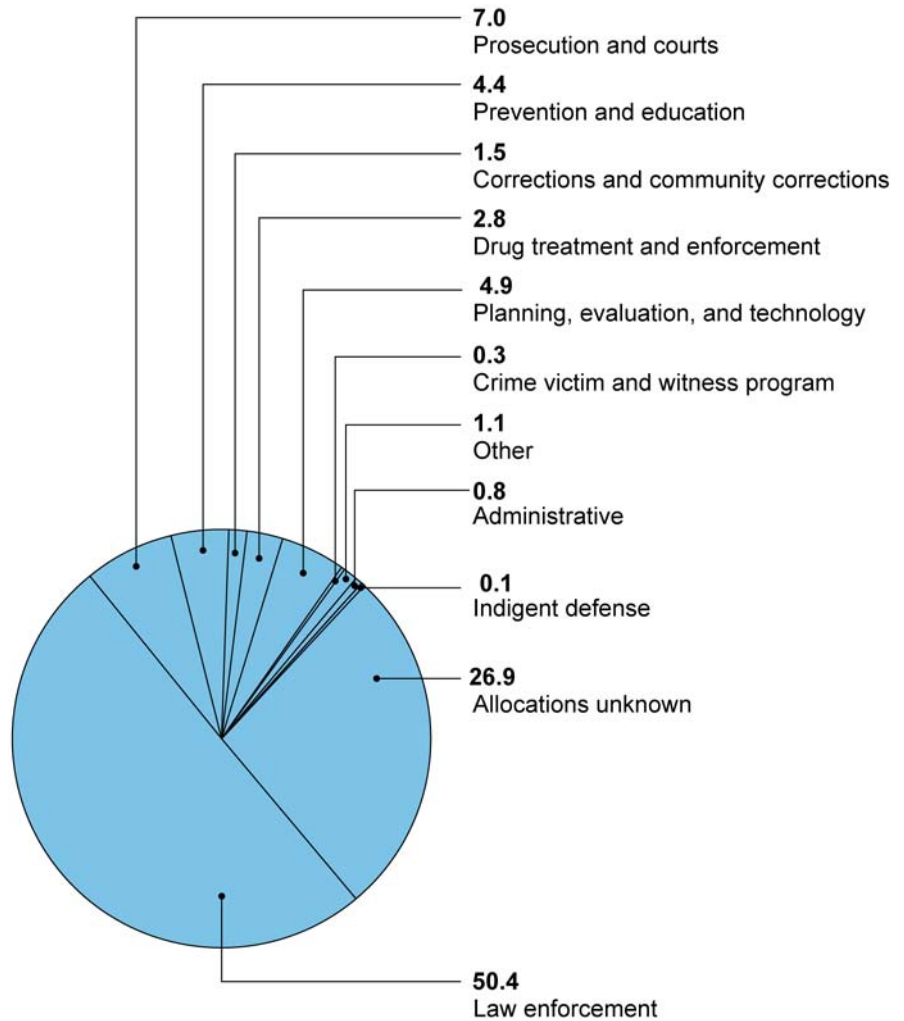


Source: GAO analysis of survey data.



Appendix V: JAG Survey Respondents' Allocations across Purpose Areas and for Indigent Defense, by Fiscal Year

Figure 29: Local and Tribal JAG Recipients' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2006

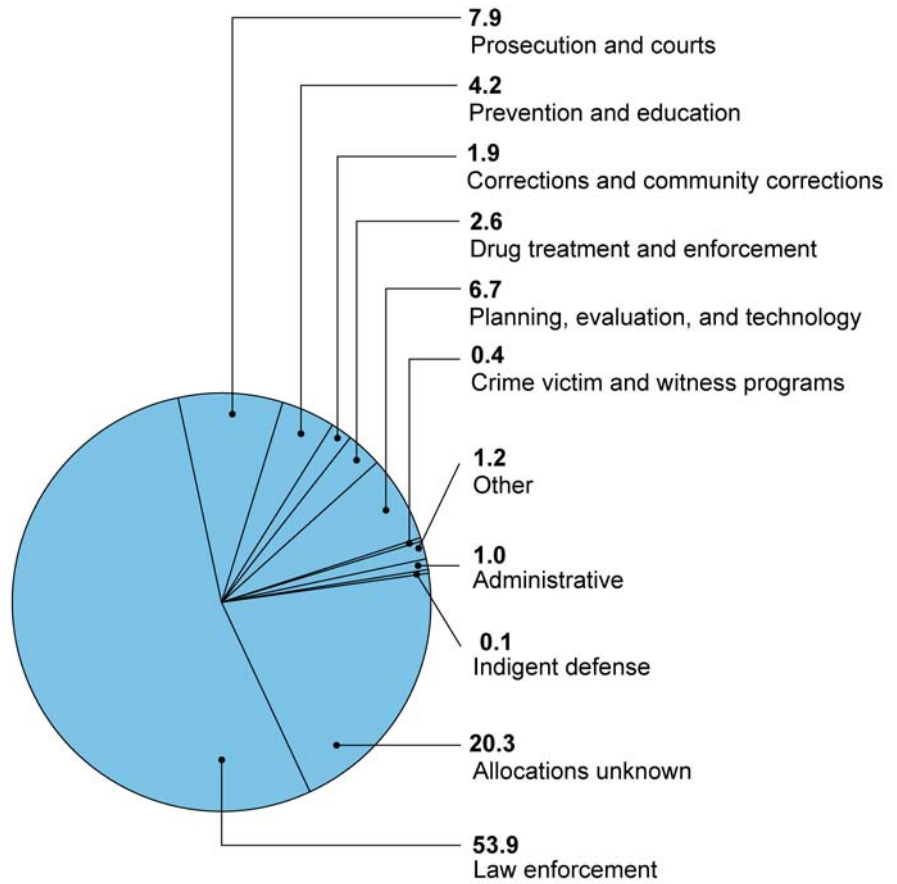


Source: GAO analysis of survey data.

Note: Percentages do not add up to 100 due to rounding.

Appendix V: JAG Survey Respondents' Allocations across Purpose Areas and for Indigent Defense, by Fiscal Year

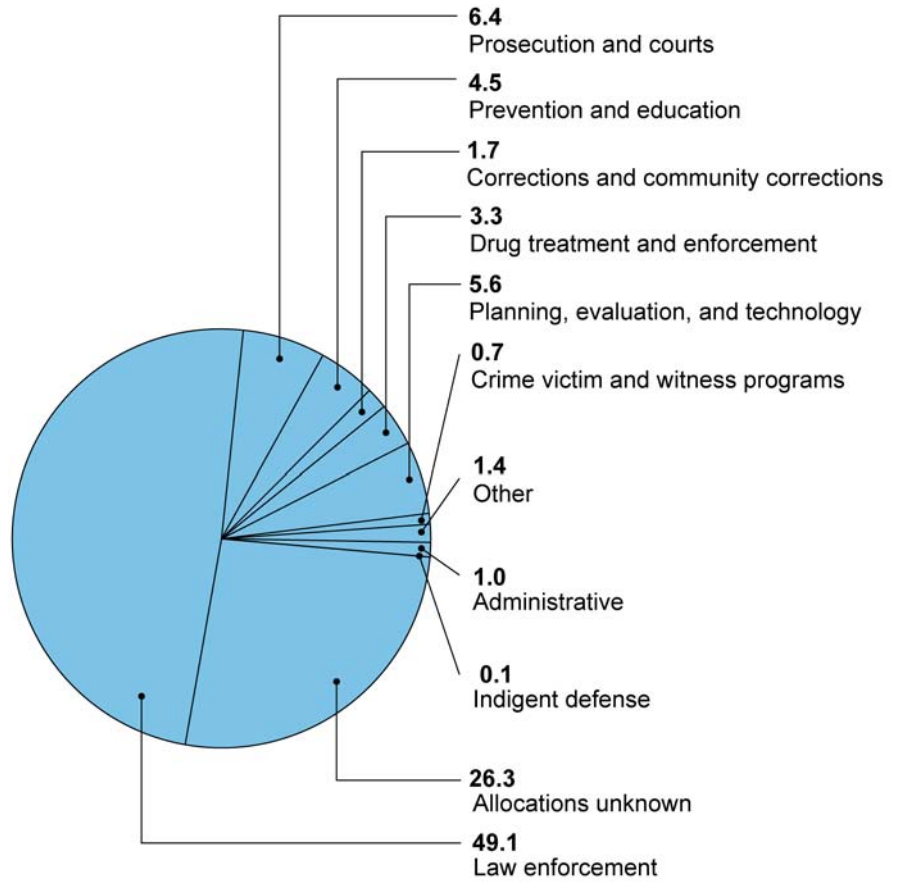
Figure 30: Local and Tribal JAG Recipients' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2007



Source: GAO analysis of survey data.

Note: Percentages do not add up to 100 due to rounding.

Figure 31: Local and Tribal JAG Recipients' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2008

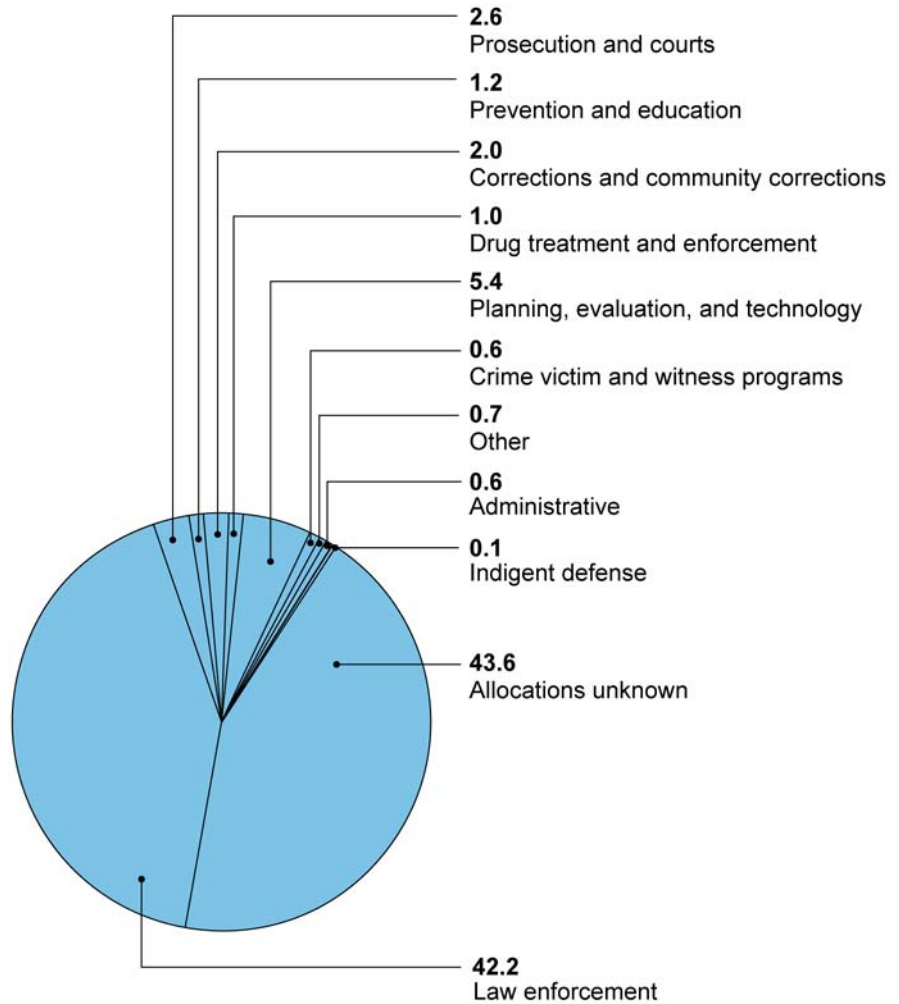


Source: GAO analysis of survey data.

Note: Percentages do not add up to 100 due to rounding.

Appendix V: JAG Survey Respondents' Allocations across Purpose Areas and for Indigent Defense, by Fiscal Year

**Figure 32: Local and Tribal JAG Recipients' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2009**

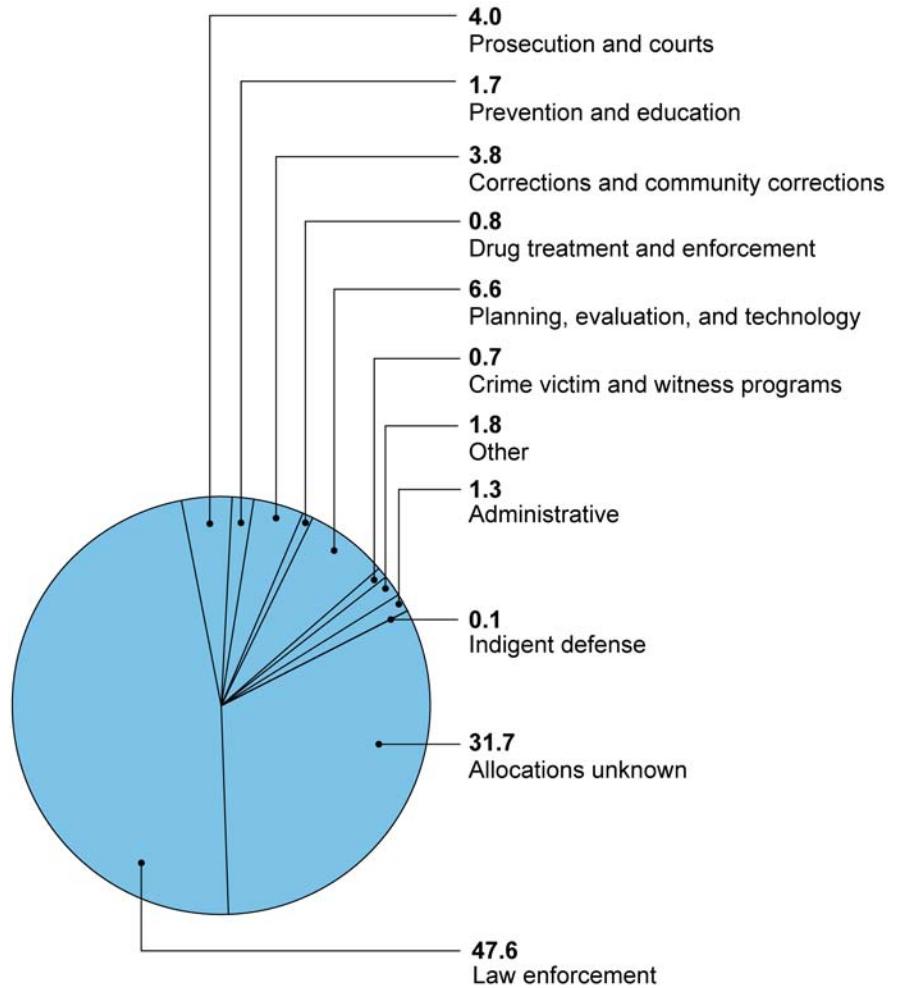


Source: GAO analysis of survey data.

Note: Other includes funds not yet allocated.

Appendix V: JAG Survey Respondents' Allocations across Purpose Areas and for Indigent Defense, by Fiscal Year

Figure 33: Local and Tribal JAG Recipients' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, ARRA

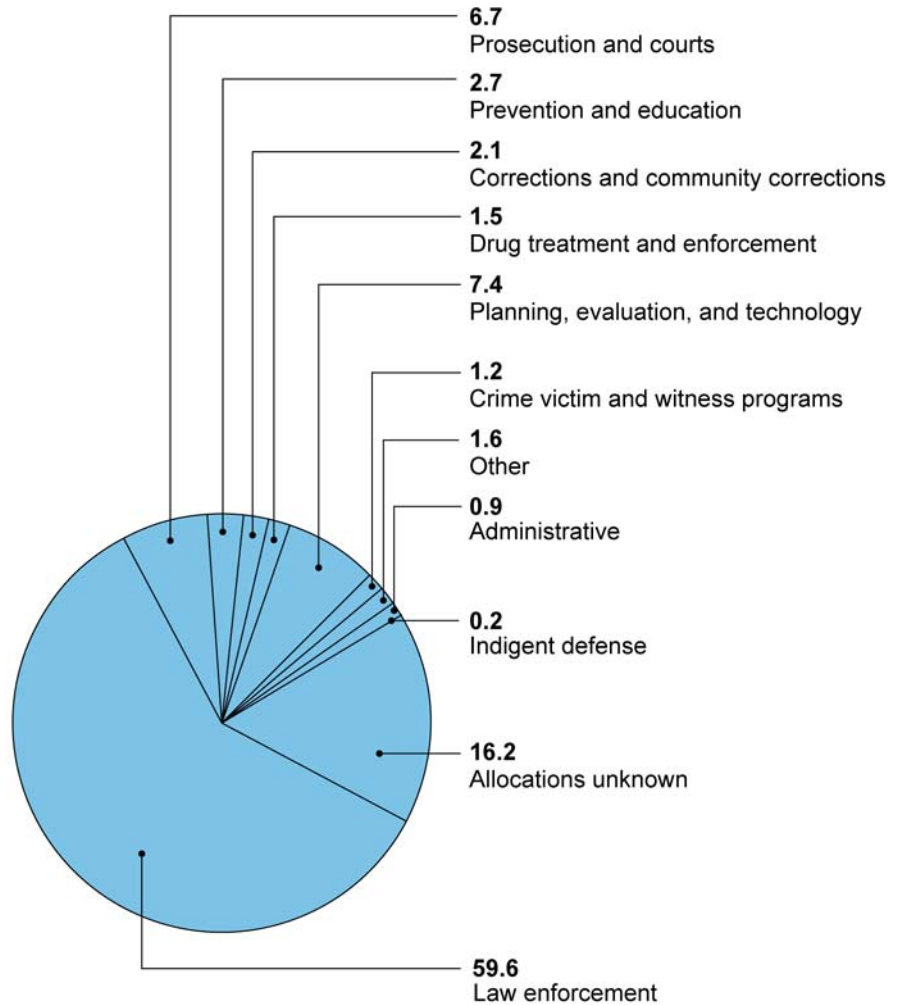


Source: GAO analysis of survey data.

Note: Other includes funds not yet allocated. Percentages do not add up to 100 due to rounding.

Appendix V: JAG Survey Respondents' Allocations across Purpose Areas and for Indigent Defense, by Fiscal Year

Figure 34: Local and Tribal JAG Recipients' Reported Allocations across JAG Purpose Areas and for Indigent Defense as a Percentage of Total Awards, Fiscal Year 2010



Source: GAO analysis of survey data; Other includes funds not yet allocated.

Note: Percentages do not add up to 100 due to rounding.

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# Appendix VI: Analysis of Indigent Defense-Related Performance Measures for Department of Justice Grant Programs

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For all grant programs in which funding for indigent defense is required or prioritized—the John R. Justice Grant Program; the Capital Case Litigation Initiative; the Wrongful Conviction Review Program; the Juvenile Indigent Defense National Clearinghouse; the Edward Byrne Memorial Justice Assistance Grant (JAG); the Juvenile Accountability Block Grant (JABG); the Byrne Competitive Grant Program; the Tribal Juvenile Accountability Discretionary Grant Program; and the Tribal Civil and Criminal Legal Assistance Grant Program (TCCLA)—the Department of Justice (DOJ) has developed or is developing indigent defense-related performance measures. Table 8 identifies these measures and whether the measures are output measures, or those that describe the level of activity that will be provided over a period of time; outcome measures, or those that describe the intended result of carrying out the program; input measures, or those that describe the resources used to produce outputs and outcomes; or process measures, or those that indicate how well a procedure, process, or operation is working.

**Appendix VI: Analysis of Indigent Defense-Related Performance Measures for Department of Justice Grant Programs**

**Table 8: Indigent Defense-Related Performance Measures and Type of Measure for DOJ Grant Programs**

Grant	Objectives	Performance measure	Output	Outcome	Input	Process
Byrne Competitive Grant Program–National Initiative: Adjudication <sup>a</sup>	Increase the number of trained public defenders.	Percentage of trainees who successfully completed the program	X			
	Increase the knowledge of criminal justice practitioners through in-person training.	Percentage of trainees who completed the training whose post test indicated an improved score over their pre-test		X		
	Increase the knowledge of criminal justice practitioners through web-based learning.	Percent increase in trained public defenders	X			
	Increase the knowledge of criminal justice practitioners through distance learning using CD/DVDs.	Percentage of trainees who completed the training who rated the training as satisfactory or better				X
	Increase a criminal justice agency's ability to solve problems and/or modify policies or practices.	Percentage of organizations that completed the survey who expressed satisfaction that the CD/DVD met their training needs				X
	Increase the knowledge of criminal justice practitioners through the development and/or revision of training curricula.	Percentage of requesting agencies who rated services as satisfactory or better in terms of timeliness and quality following completion of an onsite visit				X
	Increase information provided to the criminal justice community.	Percentage of requesting agencies that were planning to implement at least some of the report recommendations six months after the onsite visit			X	
		Percentage of requesting agencies of other onsite services who rated the services provided as satisfactory or better				X
		Percentage of advisory/focus groups evaluated as satisfactory or better				X
		Percentage of curricula that were pilot tested				X
	Percentage of curricula that were revised after pilot testing				X	



**Appendix VI: Analysis of Indigent Defense-Related Performance Measures for Department of Justice Grant Programs**

<b>Grant</b>	<b>Objectives</b>	<b>Performance measure</b>	<b>Output</b>	<b>Outcome</b>	<b>Input</b>	<b>Process</b>	
Byrne Memorial Justice Assistance Grant Program	<p>JAG funds may be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and criminal justice information systems that will improve or enhance such areas as:</p> <ul style="list-style-type: none"> <li>• Law enforcement programs</li> <li>• Prosecution and court programs</li> <li>• Prevention and education programs</li> <li>• Corrections and community corrections programs</li> <li>• Drug treatment and enforcement programs</li> <li>• Planning, evaluation, and technology improvement programs</li> <li>• Crime victim and witness programs (other than compensation)</li> </ul>	Number of cases defended					
Capital Case Litigation Initiative	<p>Provide training on death penalty issues to attorneys who litigate death penalty cases. Increase the knowledge of criminal justice practitioners through in-person training.</p>	<p>Percent increase in the number of capital litigation attorneys trained in capital case procedures and strategies</p>					

**Appendix VI: Analysis of Indigent Defense-Related Performance Measures for Department of Justice Grant Programs**

<b>Grant</b>	<b>Objectives</b>	<b>Performance measure</b>	<b>Output</b>	<b>Outcome</b>	<b>Input</b>	<b>Process</b>
John R. Justice Grant Program	To encourage qualified individuals to enter and continue employment as prosecutors and public defenders.	Number and amount of loan repayments awarded	X			
		Percent increase in outreach to eligible beneficiaries	X			
		Average number of days between application for repayment benefits and the loan repayment occurring	X			
Juvenile Accountability Block Grant Program <sup>b</sup>	<p>The goal of the JABG program is to reduce juvenile offending through accountability-based programs focused on the offender and juvenile justice system.</p> <p>The objective is to ensure that states address 1 or more of 17 purpose areas and receive information on best practices from OJJDP. <i>[Note: indigent defense is included within the purpose area "Hiring Court Staff/Pretrial Services."]</i></p>	Percent of people exhibiting an increased knowledge of the program area during the reporting period		X		
		Number of program policies changed, improved, or rescinded during the reporting period		X		
		Percent of organizations reporting improvements in operations based on training and technical assistance (TTA)			X	
		Number of hours per week and percent of staff time (including defenders) spent directly serving clients	X			
		Amount of funds awarded for system improvement				X
		Number and percent of defenders hired	X			
		Number of cases per staff member	X			
		Number and percent of vacant positions for defenders				X
		Number of training requests received				X
		Number of technical assistance requests received				X
		Number of program materials developed during the reporting period	X			
		Number of planning or training events held during the reporting period	X			
		Number of people trained during the reporting period	X			

**Appendix VI: Analysis of Indigent Defense-Related Performance Measures for Department of Justice Grant Programs**

Grant	Objectives	Performance measure	Output	Outcome	Input	Process	
		Percent of those served by TTA who reported implementing an evidence based program and/or practice during or after the TTA		X			
Juvenile Indigent Defense National Clearinghouse Program	To improve juvenile indigent defense; objectives include to increase: <ul style="list-style-type: none"> <li>• training opportunities for juvenile indigent defense</li> <li>• technical support efforts for juvenile indigent defense</li> <li>• publications and resources for juvenile indigent defense</li> <li>• policy development and leadership opportunities</li> </ul>	Percentage of people exhibiting increased knowledge of the program area		X			
		Percentage of organizations reporting improvements in operations based on training and technical assistance		X			
		Number of program policies changed, improved, or rescinded			X		
		Percentage of those served by TTA who reported implementing an evidence-based program/practice during/after TTA			X		
		Number of training requests received					X
		Number of technical assistance requests received					X
		Number of program materials developed	X				
		Number of planning or training events held	X				
		Number of people trained	X				
		Tribal Civil and Criminal Legal Assistance Program <sup>c</sup>	(Category 2) Provide criminal legal assistance services for Indian tribes, members of Indian tribes, and tribal justice systems, pursuant to the federal poverty guidelines. Criminal legal assistance services may include adult criminal actions, juvenile delinquency actions, guardian ad litem appointments arising out of criminal or delinquency acts. <sup>d</sup>	Percent increase in number of defendants served		X	
Percent of defendants who rated the services of their grant-funded attorney as satisfactory or better						X	

**Appendix VI: Analysis of Indigent Defense-Related Performance Measures for Department of Justice Grant Programs**

Grant	Objectives	Performance measure	Output	Outcome	Input	Process
Tribal Juvenile Accountability Discretionary Grant Program <sup>e</sup>	To provide funds to federally recognized American Indian and Alaska Native (AI/AN) communities to develop and implement programs that hold AI/AN youth accountable for their delinquent behavior and strengthen tribal juvenile justice systems.  Among the 17 purpose areas is the following: "hiring juvenile court judges, probation officers, and court-appointed defenders and special advocates, and funding pretrial services (including mental health screening and assessment) for juvenile offenders, to promote the effective and expeditious administration of the juvenile justice system.	Percentage of eligible youth served using graduated sanctions approaches <sup>f</sup>	X			
		Percentage of funds awarded for system improvement			X	
		Percentage of program youth completing program requirements	X			
		Percentage of programs employing evidence-based practices, i.e., a practice shown through rigorous evaluation and replication to be effective in preventing or reducing delinquency or related risk factors	X			
		Percentage of youth with whom an evidence-based practice was used	X			
		Percentage of program youth who reoffend (rearrested or seen at juvenile court for a new offense)			X	
		Number and percent of defenders hired	X			
		Number of cases per staff member	X			
		Number and percent of vacant positions for defenders				X
		Number of hours per week and percent of staff time spent directly serving clients	X			
Wrongful Conviction Review Program <sup>g</sup>	Provide representation to defendants in post-conviction claims of innocence cases.	Number of cases in which actual perpetrators are identified through re-examination of evidence		X		
		Percent of cases in which actual perpetrators are identified through re-examination of evidence in post-conviction innocence claims			X	
		Percent increase in number of cases evaluated for potential wrongful convictions	X			
		Number of people/experts consulted.	X			
		Number of hours of forensic re-analysis services provided	X			

**Appendix VI: Analysis of Indigent Defense-Related Performance Measures for Department of Justice Grant Programs**

Grant	Objectives	Performance measure	Output	Outcome	Input	Process
		Number of hours of screening, evaluation, and litigation services provided	X			

Source: GAO analysis of DOJ grant documents.

<sup>a</sup>The measures for the Byrne Competitive Grant Program were only for the year and category for which indigent defense funding was a priority.

<sup>b</sup>Measures displayed for the Juvenile Accountability Block Grant Program include those which are related to indigent defense; measures unrelated to indigent defense are not displayed.

<sup>c</sup>The measures for the Tribal Civil and Criminal Legal Assistance Program were for fiscal year 2010 and only for the category for which indigent defense funding was a priority.

<sup>d</sup>A guardian ad litem is an individual, usually a lawyer, appointed by the court to represent the interests of a minor or incompetent person in a legal action.

<sup>e</sup>Measures displayed for the Tribal Juvenile Accountability Discretionary Grant Program include those which are related to indigent defense; measures unrelated to indigent defense are not displayed.

<sup>f</sup>For example, the term “graduated sanctions” has been defined as an accountability-based, graduated series of sanctions (including incentives, treatment, and services) applicable to juveniles within the juvenile justice system to hold such juveniles accountable for their actions and to protect communities from the effects of juvenile delinquency by providing appropriate sanctions for every act for which a juvenile is adjudicated delinquent, by inducing their law-abiding behavior, and by preventing their subsequent involvement with the juvenile justice system. See 42 U.S.C. § 5603(24).

<sup>g</sup>The Wrongful Conviction Review Program limits eligibility for funding to non-profit organizations as well as public defender offices that represent convicted defendants (who, according to DOJ, are indigent), in claims of innocence. As a result, we consider the grant to be related to indigent defense.

# Appendix VII: Select Measures, Findings, and Recommendations from Public Defender Office and Agency Evaluations and Reports

Of the 118 respondents to our survey of public defender offices or agencies, 9 provided us with, or directed us to, copies of evaluations of or reports on their office or agency. Table 9 shows select measures used in these evaluations or reports, and their findings and recommendations.

**Table 9: Summary of Select Measures, Findings, and Recommendations from Public Defender Evaluations and Reports**

Office or Agency (Random Identifier)	Measures	Findings	Recommendations	Reporting period	Evaluator
1	<ul style="list-style-type: none"> <li>Caseload (for each attorney; weighted by case type)</li> <li>Training (number of staff that attended each offering)</li> <li>Cases opened and closed (sum totals)</li> <li>Length of cases (average number of days open)</li> </ul> Active and inactive cases (sum totals)	N/A	N/A	Year	Internal
2	<ul style="list-style-type: none"> <li>Attorney staffing levels</li> <li>Caseloads (office total by case type; quarterly caseload by attorney for select case types as percentage of office total)</li> <li>Training (attorney attendance at continuing legal education programs offered during reporting period)</li> <li>Representation at clients' first appearances</li> <li>Timeliness of jail visits</li> <li>Client complaints</li> <li>Investigator staffing and use of investigators (rate)</li> <li>Use of experts</li> <li>Supervision</li> <li>Motions Practice</li> <li>Trials (number and type)</li> <li>Use of interpreters</li> <li>Overall quality of representation</li> <li>Conflicts</li> </ul>	Attorney turnover rate is high. Jail visits and use of investigators are inconsistent across attorneys. Expert witness requests are not always handled properly. Supervision of attorneys does not provide quality control.	Increase use of investigators, as appropriate; consider providing training on this topic. Provide defenders with training opportunities each quarter. Supervisor should be more proactive in monitoring staff. Address continued problems related to sealing motions.	Quarter	External (appointed monitor)

**Appendix VII: Select Measures, Findings, and Recommendations from Public Defender Office and Agency Evaluations and Reports**

Office or Agency (Random Identifier)	Measures	Findings	Recommendations	Reporting period	Evaluator
3	<ul style="list-style-type: none"> <li>• Number of cases assigned to ad hoc counsel over ten years<sup>a</sup></li> <li>• Debentures received for ad hoc cases<sup>b</sup></li> <li>• Cost per disposed ad hoc case</li> </ul>	<p>The ad hoc program is the most fiscally unpredictable and costly method of providing public defense services, with little or no check on the quality of representation provided.</p>	<p>Continue to expand the assigned counsel contract program.</p> <p>Maintain the Serious Felony Units.</p> <p>Impose firm caps consistent with administrative order.</p> <p>Enforce strict standards for identifying conflicts.</p> <p>Refuse payment of assignments for frivolous post conviction relief matters.</p>	Year	Internal
4	<ul style="list-style-type: none"> <li>• Independence</li> <li>• Attorney qualifications</li> <li>• Training</li> <li>• Supervision</li> <li>• Workload</li> <li>• Attorney-client relationships</li> <li>• Parity between prosecution and defense</li> <li>• Involvement of private bar</li> </ul>	<p>Agency is a model provider of indigent defense services, meeting or exceeding all recognized national standards for the delivery of indigent defense services.</p> <p>Agency is independent; controls caseloads; and has sufficient funding to represent every client competently.</p>	<p>Consider evaluating the need to reduce supervisory caseload.</p> <p>Consider formalizing rotations to reduce turnover.</p> <p>Consider creating a full-time training director.</p> <p>Consider creating the position of a full-time assigned counsel administrator.</p> <p>Draft bylaws.</p>	Snapshot of current conditions	External (consultant)
5	<ul style="list-style-type: none"> <li>• Professional independence</li> <li>• Attorney qualifications</li> <li>• Training</li> <li>• Supervision</li> <li>• Workload</li> <li>• Evaluation, performance and discipline</li> <li>• Support services</li> <li>• Case management and quality control</li> <li>• Reporting</li> </ul>	<p>Provider exceeded the contractual requirement. Moreover, the percentage of felonies and misdemeanors was sufficiently high as to cause that caseload to exceed the maximum standard in each year of the reporting period.</p> <p>Provider has failed to institute a sufficiently formalized system of supervision and review.</p>	<p>Monitor case intake to prevent workload from exceeding caseload standard.</p> <p>Meet level of basic compliance standard regarding attorney evaluation and discipline.</p> <p>Increase the number of formal checks of management and quality controls.</p>	2 years	External (oversight body)

**Appendix VII: Select Measures, Findings, and Recommendations from Public Defender Office and Agency Evaluations and Reports**

Office or Agency (Random Identifier)	Measures	Findings	Recommendations	Reporting period	Evaluator
6	<ul style="list-style-type: none"> <li>• Office space</li> <li>• Technology</li> <li>• Organizational Leadership and Structure</li> <li>• Attorney recruitment, retention &amp; staff needs</li> <li>• Education and development programs</li> </ul>	<p>Provider has the leadership capacity and present ability to successfully fulfill its obligations to its clients, to the courts and justice systems, to its community, and to the county.</p>	<p>Plan ahead for replacement and/or upgrading of hardware and software, and work together to sustain the current high level of technology competence.</p> <p>Implement management reorganization that establishes a clear, integrated line of supervision and authority that would, among other things, preserve a chief defender responsible and accountable for all aspects of the operation, but also include supervisors authorized to direct and manage particular administrative and representational responsibilities.</p> <p>Consider adding staff to meet current and anticipated case and workload challenges.</p>	Multi-year	External (consultant)
7	<ul style="list-style-type: none"> <li>• Uniformity of the public defender system across the state</li> <li>• Performance assessment and accountability</li> <li>• Reliance on part-time public defenders</li> <li>• Strategic planning and budgeting</li> <li>• Management of resource reductions</li> <li>• Size and nature of public defender workloads</li> <li>• Impact of public defender workloads on how they do their work</li> <li>• Case outcomes</li> <li>• Court efficiency</li> <li>• Statutory framework for determining eligibility for</li> </ul>	<p>Public defender workloads are too high, resulting in public defenders spending limited time with clients, difficulties preparing cases, and scheduling problems that hinder the efficient operation of criminal courts.</p> <p>Staff reductions are the most immediate cause of high workloads, but case complexity and other factors add to the time required per case.</p> <p>Heavy reliance on part-time public defenders presents risks that need to be addressed, but the public defender's office has few staff resources</p>	<p>The Board of Public Defense (BPD) should ensure that district chief public defenders' presentations to the board focus more on district performance and challenges rather than descriptive characteristics of the district.</p> <p>The state public defender should establish stricter criteria for the structure and content of district chiefs' work plans.</p> <p>BPD and the state public defender should establish standards for and measures of quality representation of clients.</p> <p>BPD and the state public defender should improve</p>	Multi-year	External (government auditor)



**Appendix VII: Select Measures, Findings, and Recommendations from Public Defender Office and Agency Evaluations and Reports**

Office or Agency (Random Identifier)	Measures	Findings	Recommendations	Reporting period	Evaluator
	<p>appointment of a public defender</p> <ul style="list-style-type: none"> <li>• Application of statutory eligibility criteria by judges and court staff</li> <li>• Procedures for determining eligibility</li> <li>• Accuracy of eligibility determinations</li> <li>• Ordering, collection, and distribution of reimbursements</li> </ul>	<p>available for planning, research, and policy development activities.</p> <p>Oversight body has strengthened accountability in the public defender system but could do more to measure and supervise the quality of services.</p> <p>Standards for determining eligibility for a public defender are not clearly defined in law, and judges reported wide differences in how they weigh eligibility factors.</p> <p>Judges reported having little confidence in the accuracy of information they use to assess defendants' financial circumstances, but it appears that the vast majority of applicants cannot afford a private attorney.</p> <p>Law requires defendants with some financial means to reimburse a portion of their public defender costs, but reimbursements are inconsistently ordered and collected.</p>	<p>management practices that ensure active supervision of full- and part-time assistant public defenders to monitor their performance representing clients and litigating in court.</p> <p>BPD and the state public defender should complete long-range planning efforts to: estimate future staffing needs in light of anticipated retirements among long time public defenders; evaluate the proper balance of full-time and part-time public defenders needed in the future; study the costs associated with establishing additional public defender satellite offices; and consider other options to recruit and retain public defenders.</p> <p>BPD should seek the resources necessary to fund a planning and analysis position in the administrative services office.</p> <p>When funding becomes available, BPD should conduct a caseload study that includes methods sufficient to develop separate caseload standards for metropolitan area, suburban, and rural public defender districts.</p> <p>The state public defender should ensure that the office collects and records staff counts by position at regular intervals during the fiscal year.</p>		

**Appendix VII: Select Measures, Findings, and Recommendations from Public Defender Office and Agency Evaluations and Reports**

Office or Agency (Random Identifier)	Measures	Findings	Recommendations	Reporting period	Evaluator
8	<ul style="list-style-type: none"> <li>• Case processing</li> <li>• Structure and number of public defense contractors</li> <li>• Quality of representation</li> </ul>	<p>In juvenile cases, the average period from first appearance to jurisdiction is more than 90 days.</p> <p>Attorneys need training on how to conform to performance standards.</p> <p>There is a need for additional attorneys in the county.</p>	<p>Consider structure of current public defense systems and the need for additional attorneys in developing a service delivery plan.</p> <p>Consider offering longer contracts to indigent defense providers who are willing to relocate or live in remote areas.</p> <p>Consider supplementing insufficient trial-level caseloads with appellate work.</p> <p>Consider law school recruitment and specialized apprenticeship training for new lawyers interested in relocating.</p> <p>Consider assisting providers with office space and initial capital needs.</p>	Snapshot of current conditions	External (oversight body)

**Appendix VII: Select Measures, Findings, and Recommendations from Public Defender Office and Agency Evaluations and Reports**

Office or Agency (Random Identifier)	Measures	Findings	Recommendations	Reporting period	Evaluator
9	<ul style="list-style-type: none"> <li>• Caseloads</li> <li>• Indigency standards and eligibility requirements</li> <li>• Attorney turnover rates</li> <li>• Staffing and personnel issues</li> <li>• Compensation</li> <li>• Organizational practices (overhead, office location, technology, resources, etc.)</li> </ul>	<p>There has been no increase in staff in prior 6 years while caseload has increased by 12,000 cases.</p> <p>Attorney turnover rate is high.</p> <p>Attorney supervisors carry full caseloads, resulting in inadequate training, mentoring, and supervision.</p> <p>Office space is inadequate.</p>	<p>Research and consider specifying circumstances that would trigger the right to be represented by a public defender in probation violation cases.</p> <p>Take efforts to return the caseloads to the caseload standard.</p> <p>Contract out certain cases involving misdemeanors, traffic violations, and probation violations to private attorneys when economically feasible in order to reduce the numbers of cases for which each public defender is responsible.</p> <p>Promulgate a rule requiring prosecuting attorneys to file all charges against the same defendant arising out of the same transaction or occurrence in a single document.</p> <p>Eliminate certain unconstitutional court costs and replace them with a lesser court cost to help fund the public defender system and provide revenue to pay contract attorneys, fund an increase in support staff and fund an increase in base salary for public defenders.</p> <p>Research the feasibility of creating a student loan forgiveness program.</p> <p>Make technology available to the counties of the state to allow attorneys to meet with their clients via videoconference or teleconference.</p>	Snapshot of current conditions	External (oversight body)

Source: GAO analysis of evaluations and reports from select public defender offices or agencies who responded to GAO survey and provided GAO with copies or directed GAO to publicly available copies.

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**Appendix VII: Select Measures, Findings, and  
Recommendations from Public Defender Office  
and Agency Evaluations and Reports**

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Note: The evaluations summarized above were conducted by or on behalf of survey respondents; GAO has not assessed the quality of the evaluations or their results.

<sup>a</sup>Consistent with Office 3 documentation, ad hoc cases are those cases in which representation is provided by assigned attorneys who are not staff employees of the public defender office or agency to avoid a conflict of interest.

<sup>b</sup>In this context, a debenture is a submission by assigned counsel to the public defender office or agency to request compensation for time and funding expended in providing representation in ad hoc cases.

# Appendix VIII: Possible Data Elements for Evaluating Public Defender Offices, Extent to Which Respondents Collect Related Data, and Data Challenges and Limitations

Respondents to our public defender office survey reported collecting data that could be used to conduct an evaluation, but also reported challenges to collecting this data. Table 10 shows the percentage of survey respondents collecting each data element, and the associated challenges.

**Table 10: Survey Respondents Collecting Data Elements and Associated Challenges**

<b>Data element</b>	<b>Percentage collecting data<sup>a</sup></b>	<b>Challenges and limitations associated with data (based on 118 possible respondents)</b>
Average caseload per defender	87% (97 of 112)	Costly to collect: 6% (7 ) Difficult/burdensome to collect:10% (11) Difficult to measure: 7% (8 ) Imprecise: 7% (8)
Number of active cases per defender	84% (95 of 113)	Costly to collect: 6% (7 ) Difficult/burdensome to collect: 10% (12) Difficult to measure: 3% (4 ) Imprecise:11% (13)
Average salary or hourly rate of defenders, as applicable	76% (83 of 109)	Costly to collect: 3% (4) Difficult/burdensome to collect: 6% (7) Difficult to measure: 3% (3) Imprecise: 5% (6 )
Whether or not defenders are in compliance with professional and ethical standards	67% (74 of 111)	Costly to collect:6% (7) Difficult/burdensome to collect:11% (13) Difficult to measure:14% (16) Imprecise: 13% (15)
Whether or not salary is accompanied by additional benefits (e.g., loan repayment, health insurance)	66% (72 of 109)	Costly to collect:4% (5) Difficult/burdensome to collect: 6% (7) Difficult to measure: 3% (4) Imprecise: 3% (4)
Ratio of attorneys to non-attorney support staff (e.g., clerical, paralegal, etc.)	65% (72 of 110)	Costly to collect: 3% (4) Difficult/burdensome to collect: 7% (8) Difficult to measure: 7% (8) Imprecise: 2% (2)
Whether or not cases are handled using a case management system	62% (68 of 111)	Costly to collect: 12% (14) Difficult/burdensome to collect: 8% (9) Difficult to measure: 3% (4) Imprecise: 7% (8)

**Appendix VIII: Possible Data Elements for  
Evaluating Public Defender Offices, Extent to  
Which Respondents Collect Related Data, and  
Data Challenges and Limitations**

<b>Data element</b>	<b>Percentage collecting data<sup>a</sup></b>	<b>Challenges and limitations associated with data (based on 118 possible respondents)</b>
Whether or not the same defender represents a client in all stages of proceedings once he or she is assigned the case (vertical representation)	61% (69 of 113)	Costly to collect: 9% (10) Difficult/burdensome to collect: 13% (15) Difficult to measure: 5% (6) Imprecise: 6% (7)
Average number of defenders' continuing legal education (CLE) and/or training hours completed per year	59% (66 of 112)	Costly to collect: 3% (4) Difficult/burdensome to collect: 6% (7) Difficult to measure: 3% (3) Imprecise: 3% (3)
Average caseload per defender, relative to any established caseload standard (e.g. some percent or number higher or lower than whatever standard is used, as applicable)	57% (64 of 112)	Costly to collect: 5% (6) Difficult/burdensome to collect: 10% (12) Difficult to measure: 15% (17) Imprecise: 15% (17)
Ratio of attorneys to investigators	56% (61 of 108)	Costly to collect: 4% (5) Difficult/burdensome to collect: 5% (6) Difficult to measure: 5% (6) Imprecise: 3% (4)
Type(s) of cases a defender has ever handled (e.g. capital, felony, misdemeanor, juvenile, etc.)	54% (60 of 112)	Costly to collect: 11% (13) Difficult/burdensome to collect: 27% (3) Difficult to measure: 10% (12) Imprecise: 10% (12)
Number of requests for funding for expert witnesses	48% (51 of 107)	Costly to collect: 8% (9) Difficult/burdensome to collect: 18% (2) Difficult to measure: 8% (9) Imprecise: 7% (8)
Number of times expert witnesses are used	42% (46 of 110)	Costly to collect: 10% (12) Difficult/burdensome to collect: 22% (26) Difficult to measure: 5% (6) Imprecise: 9% (10)
Individual defender performance ratings, as determined by a methodology in place at your office or agency	40% (44 of 110)	Costly to collect: 7% (8) Difficult/burdensome to collect: 19% (22) Difficult to measure: 31% (36) Imprecise: 18% (21)
Number of cases a defender has ever handled	41% (45 of 111)	Costly to collect: 11% (13) Difficult/burdensome to collect: 34% (40) Difficult to measure: 18% (21) Imprecise: 15% (17)

**Appendix VIII: Possible Data Elements for  
Evaluating Public Defender Offices, Extent to  
Which Respondents Collect Related Data, and  
Data Challenges and Limitations**

<b>Data element</b>	<b>Percentage collecting data<sup>a</sup></b>	<b>Challenges and limitations associated with data (based on 118 possible respondents)</b>
Whether or not a defender is present for the client's first appearance	38% (43 of 113)	Costly to collect: 12% (14) Difficult/burdensome to collect: 24% (28) Difficult to measure: 13% (15) Imprecise: 10% (12)
Meetings held between defender and client (per case)	38% (42 of 111)	Costly to collect: 12% (14) Difficult/burdensome to collect: 39% (46) Difficult to measure: 11% (13) Imprecise: 12% (14)
Amount of time defender spends per case	33% (37 of 113)	Costly to collect: 12% (14) Difficult/burdensome to collect: 45% (53) Difficult to measure: 23% (27) Imprecise: 19% (22)
Complexity of cases a defender has ever handled (e.g. number and/or severity of charges)	32% (36 of 112)	Costly to collect: 14% (16) Difficult/burdensome to collect: 36% (42) Difficult to measure: 26% (30) Imprecise: 27% (32)
Amount of face-to-face time defender spends with client	23% (25 of 111)	Costly to collect: 16% (19) Difficult/burdensome to collect: 50% (59) Difficult to measure: 15% (18) Imprecise: 15% (17)
Elapsed time between arrest and appointment of counsel	20% (23 of 113)	Costly to collect: 15% (18) Difficult/burdensome to collect: 34% (40) Difficult to measure: 15% (18) Imprecise: 11% (1)
Satisfaction of other criminal justice partners	14% (15 of 109)	Costly to collect: 13% (15) Difficult/burdensome to collect: 27% (31) Difficult to measure: 36% (42) Imprecise: 30% (35)
Satisfaction of clients	8% (9 of 106)	Costly to collect: 18% (21) Difficult/burdensome to collect: 38% (44) Difficult to measure: 48% (56) Imprecise: 32% (37)

Source: GAO analysis of survey data.

<sup>a</sup>The number responding to each question varied.

# Appendix IX: Comments from the Department of Justice



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

23 APR 2012

Ms. Eileen Larence  
Director  
Homeland Security and Justice Issues  
Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Larence:

Thank you for the opportunity to review and comment on the draft Government Accountability Office (GAO) report entitled, "Indigent Defense: DOJ Could Increase Awareness of Eligible Funding and Better Determine the Extent to which Funds Help Support This Purpose" (GAO-12-569). The U.S. Department of Justice (Department) appreciates the GAO's work in planning and conducting this review and issuing the report.

The draft GAO report contains three Recommendations for Executive Action to the Department, which are restated in bold text below and are followed by our response.

**To ensure that OJP is best positioned to identify and address critical needs in the indigent defense community, determine whether it has met its commitment to indigent defense, and improve accountability in grants administration, we recommend that the Assistant Attorney General of OJP take the following three actions:**

- 1. Take steps to increase JAG, JABG, and JJDP grantees' awareness that funding can be allocated to indigent defense.**

The Office of Justice Programs (OJP) agrees with the Recommendation for Executive Action. The Bureau of Justice Assistance (BJA) will continue to build on current efforts to increase grantees' awareness that funding in its Edward R. Byrne Memorial, Justice Assistance Grant (JAG) program can be allocated to support indigent defense. BJA plans to update its "Frequently Asked Questions" document, as well as increased staff awareness regarding the use of JAG program funding. Additionally, BJA will explore other outreach strategies, through its own website and the National Training and Technical Assistance Center (NTTAC) website, to communicate to JAG grantees that JAG funding can be allocated to support indigent defense.



Further, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) will explore ways to increase Juvenile Accountability Block Grant (JABG) and Juvenile Justice and Delinquency Prevention Grant Title II (JJDP) grantees' awareness that funding can be allocated to support indigent defense in these grant programs. This will be accomplished in several ways: 1) OJJDP staff will be reminded to advise states of this during routine phone calls, teleconferences, or sites visits; 2) OJJDP will remind state grantees, via email and through the NTTAC website, that under various purpose areas of the JABG and JJDP Acts, indigent defense is an allowable funding area; and 3) OJJDP will look for opportunities when presenting at national meetings to highlight these funding options. One example will be at the Coalition for Juvenile Justice meeting, scheduled in June 2012. This meeting is typically attended by many JJDP Title II state grantees.

**2. Inform indigent defense providers about grants for which they are eligible to apply.**

OJP agrees with the Recommendation for Executive Action. BJA will continue to work with national organizations to disseminate information on indigent defense funding at their conferences, meetings, and through organizations' LISTSERV, newsletters, and publications. For example, BJA worked with national organizations to inform indigent defense providers of the April 4, 2012 announcement of the solicitation "Answering Gideon's Call: Improving Indigent Defense Delivery Systems." This grant program is designed to improve indigent defense delivery systems at the state or local level. The following is a selection of national organizations which are involved in BJA's efforts.

**American Bar Association (ABA)** – At BJA's request, the ABA disseminated the above solicitation announcement to 600 people attending the following training provided by the ABA.

**1. National Training Attendees – Supervisor Track**

The training attendees for this session included 160 supervisors and managers of public defender programs, who also attended the ABA's National Legal Aid and Defender Association (NLADA) National Training series funded by BJA.

**2. ABA Standing Committee on Legal Aid and Indigent Defendants Defender Database Training**

The training attendees for this session included 450 heads of public defender offices and programs across the country; leaders of national organizations involved in indigent defense reform activities; ABA Leaders interested in indigent defense issues; and state Supreme Court justices who have been involved in indigent defense reform (frequently the chairs of commissions).

NLADA disseminated the above solicitation announcement through its LISTSERV to the following groups:

1. American Council of Chief Defenders - this LISTSERV includes approximately 230 chief defender members from across the nation.
2. Defender Policy Group - this LISTSERV includes 18 defenders (chiefs and staff), members of the academia community, and other experts (e.g., social workers and investigators), who are the policy-making body of NLADA governance for the defender membership community. These members have a broad reach, inside and outside of the defender community.

**National Association of Criminal Defense Lawyers (NACDL)** – At BJA’s request, the NACDL disseminated the above solicitation announcement, as noted below.

1. On April 17, 2012, NACDL emailed the solicitation announcement to the 18,000 NACDL members via their Monthly Electronic Newsletter. The link to this announcement can be found at:  
<http://www.nacdl.org/News.aspx?id=23972&libID=23941>
2. The next issue of *The Champion* magazine, NACDL’s flagship publication, with a circulation of 12,000, NACDL will include an article on the solicitation announcement. NACDL anticipates that the next issue of *The Champion* magazine will be distributed on April 26-27, 2012.
2. NACDL sent the solicitation announcement to the executive director of every NACDL affiliate organization in the U.S. There are a total of 91 affiliate organizations, including 80 in the U.S., who comprise of 35,000 members.

**National Criminal Justice Association (NCJA)** – At BJA’s request, the NCJA posted the solicitation announcement on its website, and disseminated the solicitation to 450 people through a membership-only publication called “Beltway Short Takes.”

BJA will continue to work with relevant national partners to keep the indigent defense community informed of funding opportunities, and will explore additional outreach strategies through BJA’s website and the NTTAC.

OJJDP will also explore ways, as previously stated in OJP’s response to Recommendation 1, to inform JABG and JJDP Title II grantees that under various purpose areas of the JABG and JJDP Acts, indigent defense is an allowable funding area, in which sub-awards can be made to indigent defense providers.

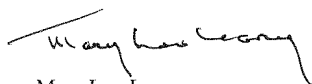
Additionally, Access to Justice Initiative, which was established by the Department in March 2010 to address the access-to-justice crisis in the criminal and civil justice system, is preparing a Resource Page on its website for courts and indigent defense providers. This Resource Page will cover such topics as: funding opportunities, training and technical assistance opportunities, links to DOJ grants, and resources on Grants Management. Additionally, the Resource Page will allow the indigent defense community to sign up for: 1) OJP email alerts, which will inform the indigent defense community when OJP releases funding opportunities; and 2) a link to Grants.gov, so that the indigent defense community can find and apply for grants, and have access to the central storehouse for information on over 1,000 funding opportunities. Through Grants.gov, the indigent defense community can search for, and register to receive, email alerts on specific government-wide funding opportunities.

**3. Take steps to collect data on allocations and spending for indigent defense in the JABG and TJADG programs.**

OJP agrees with the Recommendation for Executive Action. By September 30, 2012, OJJDP will determine the mechanism by which data on allocations and spending for indigent defense, in the JABG and Tribal Justice Accountability Block Grant programs, can best be collected.

If you have any questions regarding this response, you or your staff may contact Maureen Henneberg, Director, Office of Audit, Assessment, and Management, at (202) 616-3282.

Sincerely,



Mary Lou Leary  
Acting Assistant Attorney General

cc: James H. Burch, II  
Deputy Assistant Attorney General  
for Operations and Management

Denise O'Donnell  
Director  
Bureau of Justice Assistance

Melodee Hanes  
Acting Administrator  
Office of Juvenile Justice and Delinquency Prevention

cc: Leigh Benda  
Chief Financial Officer

Maureen Henneberg  
Director  
Office of Audit, Assessment, and Management

Louise Duhamel, Ph.D.  
Acting Director, Audit Liaison Group  
Internal Review and Evaluation Office  
Justice Management Division

OJP Executive Secretariat  
Control Number 20120399

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# Appendix X: GAO Contact and Staff Acknowledgments

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## GAO Contact

Eileen R. Larence, (202) 512-8777 or [larencee@gao.gov](mailto:larencee@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Kristy N. Brown, Assistant Director; Jill Verret, Analyst-in-Charge; Heather Hampton; Christine Hanson; and Alicia Loucks made significant contributions to this report. Other key contributors were Michele Fejfar, Cynthia Grant, Thomas Lombardi, Lara Miklozek, Karen O'Connor; Carl Ramirez, Christine San, Jerome Sandau, and Janet Temko.

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