

THE BIPARTISAN SAFER COMMUNITIES ACT

THE BASICS FOR STATE COURTS



What is the Bipartisan Safer Communities Act?

The Bipartisan Safer Communities Act ("the Act"), Public Law 117-159, is wide-ranging gun violence legislation signed into law on June 25th, 2022.

The Act's major provisions include:

- Funding for mental health services across a wide spectrum of agencies and programs;
- Expanded restrictions on the sales of firearms to certain individuals; and
- Adding persons in a dating relationship (as defined) to the category of domestic violence perpetrators who may not purchase guns. This is known informally as "closing the boyfriend loophole."

Provisions of Interest to the State Courts

- The Act supports improvements in the reporting of certain juvenile adjudication records to the National Instant Criminal Backgrounds Check System, or "NICS."
- The Act increases funding through the formula Byrne-JAG program for implementing "crisis intervention court proceedings and related programs and initiatives."

Juvenile Records

Federal law (18 USC 922(d)) bans sales of firearms to anyone who meets certain criteria. The Act specifies that the restrictions apply to all person in the listed categories, "including as a juvenile." The restricted categories include, for example, anyone:

- Who is "under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year"; or
- Who has been "adjudicated as a mental defective or has been committed to any mental institution."

For gun purchasers under 21, the Act now requires NICS to check for a possibly disqualifying adjudication by consulting all of the following:

- The state criminal history repository or juvenile justice information system;
- The state "custodian of mental health adjudication records"; and
- A local law enforcement agency

Funding

- The Act appropriates \$200 million over 5 years (\$40 million per year) beginning in FY 22 to assist states in implementing the juvenile records provisions. Because FY 22 ends in September, funding may roll over to FY 23 (i.e., \$80 million may be available in FY 23).
- Funding will be administered by the DOJ, Bureau of Justice Statistics (BJS).

FAQs

- When will funding be available? Best guess is Fall of 2022. BJS will issue the solicitation for grants.
- Can state courts apply for funding? The Act states that grants "shall be made available to State criminal records repositories and State court systems."
- Where would courts apply for funding? We think BJS will accept applications directly (i.e., not through a state agency). It is likely that a single state application/plan will be required. Courts should be proactive in considering their plans and how funding could be used to facilitate juvenile records sharing under the Act.

Byrne-JAG Funding

Byrne-JAG is the primary source of federal criminal justice funding to state and local government. Most funding has historically gone to law enforcement agencies. Major changes in the Act include:

- Expands the scope of grants to cover civil proceedings in addition to criminal proceedings.
- Creates a new purpose area: "crisis intervention court proceedings and related programs or initiatives." Examples noted in the Act: mental health courts, drug courts, veterans' courts, and extreme risk protection order ("red flag laws") programs.
- Requires an annual report to Congress on grants under the new purpose area
- Appropriates \$750 million over 5 years (\$150 million per year) beginning in FY 22 for implementation of programs in the new purpose area. FY 22 funding is likely to be rolled over into FY 23. The funding is to be distributed to states using the current Byrne-JAG formula based on population, crime rate, and other factors.

FAQs

- How will funding be distributed? Most likely through the State Administering Agency (SAA) in each state. SAAs currently administer Byrne-JAG and other criminal justice funds. Courts interested in utilizing the new funding should work with their SAA.
- When will funding be available? The timing won't be known until DOJ issues guidance, most likely later in 2022.
- Will the new funding all go to fund programs in the new purpose area? The Act states that the new funding "shall be for the purposes described in" the new purpose area. DOJ will determine how it will implement that mandate in its funding guidance.