



U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Assistance

Office of the Director

Washington, D.C. 20531

The Honorable Marty Jackley
South Dakota Office of the Attorney General
George S. Mickelson Criminal Justice Center
1302 East Highway 14, Suite 5
Pierre, SD 57501-8501

Dear Attorney General Jackley:

On July 3, 2013, the Bureau of Justice Assistance (BJA) received your application for the John R. Justice (JRJ) Grant Program. As noted in your program's narrative, you included a waiver request regarding the JRJ Equal Allocation Requirement. A copy has been attached for reference. In this request, you assert that: 1) You've encouraged both eligible Prosecutors and Public Defenders to apply for the program; 2) There are consistently more eligible Prosecutor applicants in South Dakota than Public Defender applicants resulting in significantly disproportionate award amounts between the eligible Prosecutors and the eligible Public Defenders; and 3.) You intend to divide the available award equally between all applicants to mitigate the disparity.

The JRJ solicitation, in accordance with the JRJ Act, states that in order to demonstrate "good cause" a waiver request must, at a minimum, include documentation of the state agency's efforts to comply with the equal distribution requirement and state its reasons for its inability to comply. In the event that a waiver is granted, the equal allocation requirement shall be suspended and a state agency shall be permitted to make a disproportionate funding distribution to prosecutors and public defenders.

Based on the documentation included in your waiver request, and in accordance with the JRJ solicitation, I find that you have satisfied the "good cause" threshold and have demonstrated an inability to comply with the equal allocation requirement. This means that you are not held to the Equal Allocation Requirement. This waiver pertains to Fiscal Year 2013 funding only and shall not be construed as a waiver of any other requirement of the JRJ Program.

I encourage you to access the John R. Justice web page on the BJA web site to keep apprised of program updates and developments. On this page, we will include a new section entitled, "Equal Allocation Requirement Waivers." We intend to list South Dakota as a state that has requested and been granted a waiver. We also plan to post a copy of your waiver request on this page for purposes of informing the field and transparency.

If you have any questions, please do not hesitate to contact Latanza Wilson at (202) 514-8267 or by e-mail at Latanza.Wilson@usdoj.gov.

Sincerely,

Tracy Trautman
for Denise E. O'Donnell
Director

Cc: Wanda Fergen

prosecutors and defenders, however it is recognized that various factors may affect the ability of a state to achieve 100 percent equality in the number of repayment distributions.

If a JRJ administering agency demonstrates good cause, a waiver of the equal allocation requirement may be granted, but only at the discretion of the BJA Director. The waiver request must be submitted to BJA in writing, at the time of application and prior to any funding commitments. In order to demonstrate "good cause," an application for such a waiver must, at a minimum, include documentation of the JRJ agency's efforts to comply with the equal distribution requirement (including outreach efforts) and state the reasons for its inability to comply. In the event that a waiver is granted, the equal allocation requirement shall be suspended and a JRJ agency shall be permitted to make a disproportionate funding distribution to prosecutors and public defenders. Such a waiver shall pertain only to the fiscal year in which it is granted and shall not, under any circumstances, be construed as a waiver of any other requirement of this program.

II. Factors to Consider in Assessing Eligible Beneficiaries

Eligible Beneficiaries

The purpose of this program is to encourage qualified individuals to enter and continue employment as prosecutors and public defenders. JRJ agencies must give top consideration to those eligible beneficiaries who have the least ability to repay their loans, and to those who have received JRJ benefits in the prior fiscal year (and have less than 3 years remaining on their JRJSLRP Service Agreement). Individuals are permitted to apply for JRJ funding only from the state where they are employed. The JRJ agency must accept applications from federal defenders who practice in that state, regardless of where the applicant is licensed to practice law.

For purposes of this program the following persons shall be considered eligible:

Prosecutor—full-time employee of a state or unit of local government (including tribal government) who is continually licensed to practice law and prosecutes criminal or juvenile delinquency cases at the state or unit of local government level (including supervision, education, or training of other persons prosecuting such cases). 42 U.S.C. §3797cc-21(b)(1). Prosecutors who are employees of the federal government are not eligible.

Public Defender—an attorney who is continually licensed to practice law and is a full-time employee of a state or unit of local government (including tribal government) who provides legal representation to indigent persons in criminal or juvenile delinquency cases including supervision, education, or training of other persons providing such representation; is a full-time employee of a nonprofit organization operating under a contract with a state or unit of local government who devotes substantially all of the employee's full-time employment to providing legal representation to indigent persons in criminal or juvenile delinquency cases including supervision, education, or training of other persons providing such representation; or employed as a full-time federal defender attorney in a defender organization pursuant to Subsection (g) of section 3006A of Title 18, United States Code, that provides legal representation to indigent persons in criminal or juvenile delinquency cases. 42 U.S.C. §3797cc-21(b)(2).

**Bureau of Justice Assistance (BJA)
John R. Justice (JRJ) Grant Program
FY 2012 State Solicitation
Frequently Asked Questions (FAQs)**

- 1. If a state or territory, including the District of Columbia, does not have public defenders that are eligible, as defined by the statute, to apply for John R. Justice (JRJ) funds, is such state still eligible to administer the JRJ grant program?**

A state or territory, including the District of Columbia, without eligible public defenders may still apply for JRJ funding. If a state does not have eligible "public defenders" (as defined by the JRJ statute) that state's loan repayment disbursements will go to state and local prosecutors, by default. Please note that such practice is a technical violation of the JRJ Program's "equal allocation" requirement. States should note that certain federal public defenders are eligible beneficiaries under the JRJ statute. Every state has full-time federal public defenders who practice within that state. Thus, the absence of eligible state or local "public defenders" will not, in and of itself, absolve the state from meeting the equal allocation requirement.

As described in the JRJ solicitation, in order to waive the equal allocation requirement, a state will need to submit a waiver request with its application. To be considered, such waiver request must document the structure of the state's public defender system and clearly outline why it will be unable to meet the "equal allocation" requirement. Requests for waivers of this requirement will be granted only at the discretion of the BJA Director.

- 2. Are individuals who are elected prosecutors or public defenders eligible for the JRJ program?**

No. Although the statute does not specifically prohibit the awarding of JRJ funds to elected officials (assuming they otherwise would qualify as an eligible beneficiary), BJA, in its discretion, has determined that policy and ethical considerations preclude elected officials from being eligible. This prohibition does not extend to persons who hold elected offices other than as a prosecutor or public defender (e.g., city council member status unrelated to prosecutor/public defender position), provided: (1) a reasonable person could conclude that the individual's elected status did not form a basis for their selection for JRJ benefits; (2) that the person did not use their office to influence a decision pertaining to the application; and (3) that the person's obligations to his/her elected office do not interfere with the fulfillment of the JRJ service obligation.

- 3. Has BJA administered the JRJ grant program prior to this year?**

Yes. This is the third year BJA is administering the JRJ grant program.

- 4. What amount of JRJ funding will each state receive?**

The state and territory funding allocation list can be found on the BJA web site at:
www.ojp.usdoj.gov/BJA/grant/johnrjustice.html.

- 5. How much money from the JRJ allocation can each state spend on administrative costs?**

Each state can spend no more than 10 percent of their total allocation on administrative costs. Please refer to OJP's financial guide for further information on allowable costs (www.ojp.usdoj.gov/financialguide/index.htm).

Note: Previously, up to 15 percent of a state's total allocation of JRJ funds were allowable for states to appropriate toward administrative costs. This higher percentage was prescribed to account for the increased costs of starting up and structuring the program in its inaugural implementation. The

South Dakota
2013 John R Justice Student Loan Repayment Grant Application

A. Distribution of Funding – WAIVER REQUEST

Awards will be fairly distributed. South Dakota is a rural state and does not have any metropolitan areas. Applicants are encouraged to apply from each county. This is a request for waiver consideration for the State of South Dakota Office of Attorney General, as the JRJ administrating agency, to more equitably distribute the FY 2013 JRJ funds awarded to our state. There are more full-time prosecutors than full-time public defenders in the state which leads to more applications from prosecutors. In 2011, there were 48 requests for funds (29 prosecutors and 19 defenders); in 2012, there were 43 applications (33 prosecutors and 10 defenders). There are only two target groups of eligible beneficiaries among public defenders: 1) full-time public defenders from three counties and 2) assistant federal public defenders. If this waiver is granted, the intent would be to divide the award equally between all applicants rather than the two groups (prosecutors and defenders).

South Dakota
2012 John R Justice Student Loan Repayment Grant Application

Narrative

South Dakota is applying for 2012 John R. Justice Student Loan Repayment Grant funding which will be used to recruit and retain prosecutors and public defenders in the state. The program will reduce student loan debt for eligible applicants, which will encourage attorneys to enter and continue work in public service.

A. Outreach Plan

South Dakota will provide outreach to public defenders and for prosecutors through the following methods.

- *Public Defender Outreach Plan*

South Dakota has two target groups of eligible beneficiaries among public defenders. The first target group is public defenders, which operate out of individual county offices. South Dakota has 66 counties including 63 counties that do not have a full-time public defender (and thus do not meet the eligibility criteria). The three counties that have full-time public defenders are Minnehaha, Pennington, and Lawrence. The second group is the assistant federal public defenders located in the offices of the Federal Public Defender of South Dakota. Outreach to the two identified groups would employ three different methods described below.

Electronic: A representative from the South Dakota Association of Criminal Defense Lawyers (SDACL) will electronically send to all public defenders information on the John R. Justice Loan Repayment for Prosecutors and Public Defenders Program, its eligibility requirements, application form, and any available webpage links to other information about the program. The SDACL will make all public defenders aware

South Dakota
2012 John R Justice Student Loan Repayment Grant Application

that information about this program is available on the Office of Attorney General and South Dakota State Bar websites.

Print: A notice will be published in the South Dakota Bar Newsletter, which is distributed to each licensed South Dakota attorney once a month.

Word of mouth: Announcements will be made at conferences and seminars.

- *Prosecutors Outreach Plan*

The South Dakota State's Attorney Association (SDSAA), is a primary resource for SD prosecutors and will notify and assist prosecutors on the John R. Justice Program.

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B. Program Plan Overview

1. Evaluation Criteria for Applicants

Applicants will be evaluated for eligibility according to the following criteria:

- Applicants must be a full-time employee of the state of South Dakota or unit of local government (including tribal government) who prosecutes criminal or juvenile delinquency cases at the state or local government level, including

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