

United States Department of Justice

Office for Access to Justice



**FY 2022 Performance Budget
Congressional Budget Submission
May 2021**

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I. Overview for the Office for Access to Justice

A. Introduction

The Department of Justice (DOJ or “the Department”) is requesting **\$6.0 million** in FY 2022 to reinvigorate the Office for Access to Justice (ATJ or “the Office”) under the General Legal Activities (GLA). The ATJ will serve as the U.S. Government’s central authority on access to justice and lead the Legal Aid Interagency Roundtable (LAIR). By working with Federal agencies and state, local, and tribal stakeholders, the Office is able to increase access to legal assistance and improve the justice delivery systems that serve people who are unable to afford lawyers. Today’s challenges to accessing justice for all Americans require the Department to revitalize and expand the ATJ program to develop new approaches and best practices to address these problems.

Background

In March 2010, the Department established the Access to Justice initiative under the Office of the Associate Attorney General to address access issues in the criminal and civil justice system.

“[T]he current deficiencies in our indigent defense system and the gaps in legal services for the poor and middle class constitute not just a problem, but a crisis. And this crisis appears as difficult and intransigent as any now before us.”

Attorney General Eric Holder
Remarks at the Shriver Center Awards Dinner
October 14, 2010

The primary focus of the Access to Justice initiative was to improve indigent defense, enhance delivery of legal services to the poor and middle class, and identify and promote alternatives to court- and lawyer-intensive solutions. As part of this initiative the LAIR, was launched in 2012 under the leadership of the White House Domestic Policy Council and the Department. The LAIR brought together dozen federal agencies to raise agencies’ awareness of how

civil legal aid can help advance a wide range of objectives including employment, family stability, housing, consumer protection, and public safety. These initiatives were formally established in 2015. Additionally, the Director of the ATJ, or their designee, served as the Executive Director of the LAIR and the ATJ staff also served as the staff of the LAIR.

In FY 2018, the ATJ’s duties and activities were absorbed by the Department’s Office of Legal Policy (OLP). Operating in a smaller capacity than what is now warranted to address the present access to justice issues occurring in the United States, the Department is looking to reinvigorate the Office for Access to Justice and enhance the ATJ program.

On May 18, 2021, President Biden issued a memorandum reaffirming the Justice Department’s role in leading efforts across government to seek and secure meaningful access to justice and reconvening the Legal Aid Interagency Roundtable, which the Attorney General will co-chair and Justice Department personnel designed to support the Department’s access-to-justice function will staff.¹

¹ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/18/memorandum-on-restoring-the-department-of-justices-access-to-justice-function-and-reinvigorating-the-white-house-legal-aid-interagency-roundtable/>.

The President's FY 2022 Budget request for \$6.0 million will enable the Department to revitalize and bolster the work of the Office to address and narrow the current justice gaps (the gap between legal needs and services available) existing today.

Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: <https://www.justice.gov/doj/budget-and-performance>.

B. Mission and Objectives

28 C.F.R. §0.33 states that the ATJ's principal functions are to "plan, develop, and coordinate access to justice policy initiatives of a high priority including criminal indigent defense and civil legal aid."² Additionally, the ATJ should promote uniformity of DOJ and government-wide policies relating to equal access to justice, and examine proposed legislation, rules, and other policies to ensure access to justice principles are properly considered.

Fundamentally, the ATJ mission is to help the justice system efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status. There are millions of people in the United States who cannot get legal assistance or adequate help both civilly and criminally. In the criminal justice system, public defenders handle extremely large caseloads that jeopardize their ability to provide quality and timely representation. Lack of finances, and knowledge not only impact indigent defendants but also create barriers to obtaining civil justice such as related to health care, housing, government benefits, employment, victim services and domestic violence. This is what the ATJ aims to resolve. With approximately 34.0 million Americans living in poverty per the 2019 census reports³, the ATJ sets to ensure that all Americans not only are able to obtain legal representation but also fair, timely, and equitable justice in both the criminal and civil legal systems.

Office for Access to Justice Principles

- *Promoting Accessibility* — eliminating barriers
- *Ensuring Fairness* — delivering fair and just outcomes for all parties
- *Increasing Efficiency* — delivering fair and just outcomes effectively, without waste or duplication

Three basic principles have governed the Department's access to justice programs: (1) promoting accessibility; (2) ensuring fairness; and (3) increasing efficiency. By leading the Federal Government's efforts and working with stakeholders, the ATJ would develop and coordinate new policy initiatives, guidance, and best practices; lead reform efforts; and raise awareness on topics such as criminal indigent defense, enforcement of fines and fees, and civil legal aid.

² <https://www.law.cornell.edu/cfr/text/28/0.33>

³ <https://www.census.gov/library/publications/2020/demo/p60-270.html>

C. Internal and External Challenges

External Challenges

The COVID-19 pandemic has further exposed and exacerbated inequities in the Nation’s justice system. For example, the Southeast Louisiana Legal Services has had a 300 percent increase in eviction cases and a 600 percent increase in unemployment assistance cases with the majority of the cases being African American women raising children. In addition to matters pertaining to unemployment and housing, attorneys noted that problems associated with poverty cause jumps in domestic violence⁴. Equally impacted are indigent defendants, who are experiencing delays in their cases, due to closure of courts and trial postponements stemming from COVID-19. Indigent defendants in pre-trial detention are also more exposed to the virus. “Eight of the 10 largest clusters of COVID-19 in the country are in correctional facilities. And the criminal justice system’s overreliance on incarceration has a particularly pernicious effect on Black Americans, who are not only disproportionately jailed before trial, but who also experience dramatically higher rates of infection of COVID-19.”⁵ Further, once the moratoriums on evictions expires and more companies file bankruptcies, there will be a greater impact with evictions and unemployment. All of which will increase the need for legal aid and assistance and further widen the gap in access to justice.

Internal Challenges

The disparity in low- and middle-income families and the vulnerable populations access to justice is a problem that has existed for decades. The Department will work with multiple components to develop operating, staffing, and performance plans to re-establish the ATJ, while also addressing the challenges to shrink the justice inequality gaps.

II. Summary of Program Changes

Item Name	Description	Pos. ⁶	FTE ⁵	Dollars (\$000)	Page
Access to Justice Programs	Funding requested is to reinvigorate and re-establish the Office for Access to Justice.	8	8	\$6,000	10

III. Appropriations Language and Analysis of Appropriations Language

General Legal Activities language is displayed in the GLA rollup budget submission.

⁴ Wise, Justin. “Legal Aid Attys Chart Course for 2021”. December 6, 2020.

<https://www.law360.com/articles/1334803/legal-aid-attys-chart-course-for-2021-after-spike-in-demand>

⁵ Turberville, Sarah & Hawkins, Katherine. “Pretrial Detention in a Pandemic”. June 23, 2020.

<https://www.pogo.org/analysis/2020/06/pretrial-detention-in-a-pandemic/>

⁶ ATJ’s FY 2022 request includes a minimum of eight positions, eight FTE, currently estimated to include six attorneys and two support positions. Final staffing, including distribution of resources between attorney and support positions, will be determined by the Attorney General’s plan.

IV. Program Activity Justification

A. Access to Justice

Access to Justice	Direct Pos. ^{1/}	Estimate FTE ^{1/}	Amount
2020 Enacted	0	0	\$0
2021 Enacted	0	0	0
Adjustments to Base and Technical Adjustments	0	0	0
2022 Current Services	0	0	0
2022 Program Increases	8	8	6,000
2022 Request	8	8	6,000
Total Change 2021-2022	8	8	\$6,000

Access to Justice - Information Technology Breakout	Direct Pos.	Estimate FTE	Amount
2020 Enacted	0	0	\$0
2021 Enacted	0	0	0
Adjustments to Base and Technical Adjustments	0	0	0
2022 Current Services	0	0	0
2022 Request	0	0	0
Total Change 2021-2022	0	0	\$0

^{1/} FY 2022 program increase includes a minimum of eight positions, eight FTE, currently estimated to include six attorneys and two support positions. Final staffing, including distribution of resources between attorney and support positions, will be determined by the Attorney General's plan in accordance with the memoranda issued by the President and the Attorney General on May 18, 2021.

1. Program Description

The ATJ will serve as the U.S. Government's central authority on access to justice, promotes inclusive and equal justice, and helps to solve limitations of legal representation throughout the criminal and civil legal systems. The Office will lead the Government's efforts in cross-agency, state, local and third-party collaborations protecting the rights for low- and middle-income and underserved communities within America's legal systems. This can be through raising stakeholder awareness, developing policy and guidance, best practices, outreach, and filing Statements of Interest and amicus briefs in cases that align with the Department's commitment to the constitutionally protected right to counsel. The ATJ's focus is not just on the indigent defense system, but also the civil legal system, and cross-cutting initiatives. Critical work to ensure equality for all across the entire legal spectrum, both criminal and civil, while also helping the most vulnerable protect their rights and entitlements.

"our criminal justice system, and our faith in it, depends on effective representation on both sides."

Attorney General Holder
National Symposium on Indigent Defense
February 18, 2010

Legal Aid Interagency Roundtable (LAIR)

One of the more notable aspects of the ATJ's work is the LAIR. The goal of the LAIR is to foster innovative interagency collaborations, amongst the approximate 22 Federal agencies to more effectively support underserved individuals and address legal aid issues throughout the federal government. The LAIR identifies opportunities for: Federal funding to improve outcomes and efficiently reach program goals; agency collaborations with legal aid to improve enforcement and outreach activities; and elimination of barriers that prevent legal aid providers from becoming grantees, sub-grantees, or partners in initiatives that serve underrepresented and vulnerable populations⁷. Through its meetings with members, working groups and workshops, the LAIR is able to invoke positive change.

⁷ Department of Justice. "First Annual Report of the White House Legal Aid Interagency Roundtable". November 2016. <https://www.justice.gov/atj/page/file/913981/download>

Performance and Resource Tables

PERFORMANCE AND RESOURCES TABLE											
Decision Unit: Department Leadership											
RESOURCES		Target		Actual		Projected		Changes		Requested (Total)	
		FY 2020		FY 2020		FY 2021		Current Services Adjustments and FY 2022 Program Changes		FY 2022 Request	
Total Costs and FTE (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		0	\$0 [\$0]	0	\$0 [\$0]	0	\$0 [\$0]	8	\$6,000 [\$0]	8	\$6,000 [\$0]
TYPE	PERFORMANCE	FY 2020		FY 2020		FY 2021		Current Services Adjustments and FY 2022 Program Changes		FY 2022 Request	
Program Activity		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
	Access to Justice	0	\$0 [\$0]	0	\$0 [\$0]	0	\$0 [\$0]	8	\$6,000 [\$0]	8	\$6,000 [\$0]
Performance Measure:	To Be Determined	N/A	N/A	N/A	N/A	N/A	N/A	TBD	TBD	TBD	TBD
Performance Measure:											
Performance Measure:											

Data Definition, Validation, Verification, and Limitations: INFORMATION REQUIRED: *The Department is still developing the Office for Access to Justice plan and performance metrics.* FY 2022 is a minimum of eight positions, eight FTE, comprised of a minimum of six attorneys and two support positions. Final staffing to be determined by the Attorney General's plan.

2. Performance, Resources, and Strategies

a. Performance Plan and Report for Outcomes

Once the ATJ is re-established as its own office, it will develop a performance plan and performance metrics.

b. Strategies to Accomplish Outcomes

The ATJ looks to employ the following strategies to narrow the current inequality in justice and ensure all Americans have access to adequate justice and legal representation regardless of social and economic factors. These strategies include:

- Advance new statutory, policy, and practice changes that support development of quality indigent defense and civil legal aid delivery systems at the state and federal level;
- Promote less lawyer-intensive and court-intensive solutions to legal problems;
- Expand research on innovative strategies to close the gap between the need for, and the availability of, quality legal assistance; and,
- Advance the mission of the LAIR –
 - Leverage resources to strengthen Federal programs by incorporating legal aid to help the vulnerable and underserved;
 - Develop policy recommendations that improve access to justice in Federal, State, local, tribal, and international jurisdictions;
 - Facilitate strategic partnerships to achieve Federal enforcement and outreach objectives;
 - Assist the United States with implementation of Goal 16 of the United Nation’s 2030 Agenda for Sustainable Development; and,
 - Advance evidence-based research, data collection, and analysis of civil legal aid and indigent defense and publicize best practices.

Once re-established, the ATJ will continue with its previous work and past successes. Details on past activity of the ATJ, before OLP and CRT took over its functions, can be found on the DOJ website at <https://www.justice.gov/archives/atj/accomplishments>.

V. Program Increases by Item

Item Name: Access to Justice Programs

Budget Decision Unit: Access to Justice

Organizational Program: General Legal Activities

Program Increase: Positions⁸ 8 Agt/Atty⁷ 6 (est.) FTE⁷ 8 Dollars \$6,000,000

Description of Item

The Department of Justice is requesting \$6.0 million and a minimum of eight positions (currently estimated to include six attorneys). Final staffing, including distribution of resources between attorney and support positions, will be determined by the Attorney General after the resource review directed by the Attorney General's May 18, 2021 memorandum entitled *Access to Justice* is complete and the Attorney General has submitted the Department's plan for reinvigorating the Access to Justice program to the President.⁹ This funding will also be used to refocus the ATJ and expand the capacity of the program as a whole.

Justification

The ATJ strives to address the access-to-justice crisis in the criminal and civil justice system. According to the 2017 Justice Gap Report¹⁰ by the Legal Services Corporation, 71 percent of low- and middle-income households experienced at least one civil legal problem in the last year, with 86 percent of the civil legal problems reported receiving inadequate or no legal help. The report found that the reasons many do not seek legal assistance are due to concerns about the cost, uncertainty if their issues are legal in nature, and most importantly, not knowing where to look for help. Further, the criminal legal system that "provides indigent defendants with lawyers has been understaffed, underfunded and overwhelmed with cases since the 1980s... because all indigent defense systems are run at the state, county or local levels...it will require a nationwide push for the change that public defenders have requested for decades."¹¹

⁸ ATJ's FY 2022 program increase includes a minimum of eight positions, eight FTE, currently estimated to include six attorneys and two support positions. Final staffing, including distribution of resources between attorney and support positions, will be determined by the Attorney General's plan in accordance with the memoranda issued by the President and the Attorney General on May 18, 2021.

⁹ <https://www.justice.gov/ag/page/file/1395271/download>.

¹⁰ <https://www.lsc.gov/media-center/publications/2017-justice-gap-report>

¹¹ McCausland, Phil. "Public defenders nationwide say they're overworked and underfunded. December 11, 2017. <https://www.nbcnews.com/news/us-news/public-defenders-nationwide-say-they-re-overworked-underfunded-n828111>

Indigent Defense

Indigent defendants - those who cannot afford legal representation on their own - are most likely to experience an inequality in the justice system. As the indigent defense systems and legal aids continue to be under pressure and lack sufficient resources it can negatively impact the outcome of a defendant's case. With legal representation overloaded with cases, it often times leads to delays in the case and bail hearings, causing an incarcerated defendant awaiting trial to stay in jail longer, than someone who can afford counsel. Additionally, it can cause public defenders to not be able to build a proper defense, as they have neither the time to devote to the case nor the resources to, for example, hire experts or investigators to prove a defendant's innocence. Thereby, indigent defendants are essentially being denied a fair and just system even with the aid of a public defender.

Civil Aid

While the right to counsel is guaranteed by the Sixth Amendment to the Constitution and the U.S. Supreme Court held in *Gideon v. Wainwright*, that defendants facing serious criminal charges have a right to counsel at state expense if they cannot afford one, it only applies to the criminal legal system, **not** the civil legal system. Without access to legal advice or aid, many low- and middle- income and vulnerable populations are unaware of their legal rights. Civil legal aid is an important tool that can help Americans, including servicemembers and veterans, obtain civil justice, and assistance in other legal matters, such as child custody, domestic violence, health insurance, and unemployment filing claims. "While there is still a need for further research on the impact of having access to civil legal aid, many studies show that people who get legal help, across a range of problems, receive better outcomes than people who do not. For example, in housing cases, a randomized control trial found that 51 percent of tenants in eviction proceedings without lawyers lost their homes, while only 21 percent of tenants with lawyers lost possession; and, the research of two economists indicates that the only public service that reduces domestic abuse in the long term is women's access to legal assistance"¹².

"If an obscure Florida convict named Clarence Earl Gideon had not sat down in prison with a pencil and paper to write a letter to the Supreme Court, and if the Supreme Court had not taken the trouble to look for merit in that one crude petition among all the bundles of mail it must receive every day, the vast machinery of American law would have gone on functioning undisturbed. But Gideon did write that letter. The Court did look into his case and he was retried with the help of a competent defense counsel, found not guilty, and released from prison after two years of punishment for a crime he did not commit, and the whole course of American legal history has been changed."

Attorney General Robert F. Kennedy
The New England Conference on the Defense of Indigent Persons Accused of Crime Speech
November 11, 1963

The gap in justice is a persistent problem that not only has lasted for decades, but is expected to worsen due to the impact of COVID-19 as more people continue to lose jobs, face evictions, and have health issues. More is needed to not only shrink the divide, but to ensure all Americans regardless of social and economic circumstance have access to properly resourced and quality legal presentation and aid.

¹² Civil Legal Aid 101. <https://www.justice.gov/olp/civil-legal-aid-101>

Today's challenges to accessing justice for all Americans require the Department to revitalize the ATJ program to develop new approaches and best practices to help eradicate this problem and ensure a truly equal justice system. Through the re-establishment of the Office for Access to Justice and expansion of its programs, the ATJ will serve as the Department's legal and policy advisor on all access to justice matters both in the criminal and civil justice systems, including the Constitutional Sixth Amendment rights to counsel. The Office will lead coordination and collaboration efforts among Department components; Federal, state, local and tribal partners; and indigent defense and civil legal aid organizations to identify and develop programs, policies, initiatives, and activities that address and alleviate barriers to access to justice. The ATJ will also expand efforts to file Statements of Interest and amicus briefs in cases that align with the Department's commitment to the constitutionally protected right to counsel.

LAIR

Through the LAIR, the ATJ will improve coordination among Federal programs, and facilitate non-governmental partnerships to promote access to civil legal aid and indigent defense, and further law enforcement and civil rights objectives. It will also develop policy recommendations that improve access to justice internationally and in Federal, state, local, and tribal jurisdictions; and advance evidence-based research, data collection, and analysis on civil legal aid and indigent defense, including the potential of technology innovations and non-traditional legal professionals to improve access to justice.

Impact on Performance

By making the ATJ its own office and reinvigorating the program, the Department will develop new approaches and best practices that solve previous limitations and barriers by promoting inclusive and equal access to justice throughout the criminal and civil legal systems. This includes the areas of criminal indigent defense and civil legal aid. Through integrating civil legal aid into federal programs that support vulnerable and underserved communities, not only is access to justice improved, federal programs that focus on poverty, hunger prevention, health, education, the empowerment of women, employment, inequality, and safety are also strengthened.¹³

¹³ "Efforts to Identify National Indicators on Access to Justice" <https://www.justice.gov/atj/file/926686/download>

Funding

Base Funding

There are no current services for this request.

FY 2020 Enacted				2021 Enacted				FY 2022 Current Services			
Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)
0	0	0	\$0	0	0	0	\$0	0	0	0	\$0

Personnel Increase Cost Summary

This request will be used to re-establish the ATJ as an office. The FY 2022 program increase includes a minimum of eight positions, eight FTE, currently estimated to include six attorneys and two support positions. Final staffing, including distribution of resources between attorney and support positions, will be determined by the Attorney General's plan following the review process directed by the Attorney General's May 18, 2021 Memorandum entitled *Access to Justice*.

Type of Position/Series	Positions Requested	Annual Costs per Position (\$000)			FY 2022 Request (\$000)	Annualizations (\$000)	
		1st Year Full Cost (Modular)	2nd Year Adjusted Cost	3rd Year Adjusted Cost		FY 2023 (net change from 2022)	FY 2024 (net change from 2023)
Attorneys (0905)	6	221	23	0	1,326	139	2
Other Professionals	2	122	14	3	244	27	7
Total Personnel	8				1,570	166	9

Non-Personnel Increase Cost Summary

This request will be used to re-establish the ATJ as an office. Since the Department is still developing the non-personal operating plans for the reinvigorated ATJ, specificity of an itemization of costs cannot be provided at this time.

Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/ Atty	FTE	Personnel	Non-Personnel	Total	FY 2023 (net change from 2022)	FY 2024 (net change from 2023)
Current Services	0	0	0	\$0	\$0	\$0	\$0	\$0
Increases	8	6	8	1,570	4,430	\$6,000	\$166	\$9
Grand Total	8	6	8	1,570	4,430	\$6,000	\$166	\$9

Affected Crosscut
Civil Rights

VI. Program Offsets by Item

Not Applicable

VII. Exhibits

(Exhibits begin on the following page)