

**Arizona Criminal Justice Commission
Minutes
July 18, 2013**

A public meeting of the Arizona Criminal Justice Commission was convened on July 18, 2013 at the Little America Hotel, 2515 E. Butler Avenue, Flagstaff, AZ.

Members Present:

Daniel G. Sharp, Chairperson, Chief, Oro Valley Police Department
Bill Montgomery, Vice Chairperson, Maricopa County Attorney
Joseph Arpaio, Maricopa County Sheriff, David Trombi representing
Joseph Brugman, Chief, Coolidge Police Department
David Byers, Director, Administrative Office of the Courts
Timothy Dorn, Chief, Gilbert Police Department
Clarence Dupnik, Pima County Sheriff, Paul Wilson representing
Chris Gibbs, Mayor, City of Safford
Robert Halliday, Director, Department of Public Safety, Jeff Raynor representing
Jesse Hernandez, Chairperson, Board of Executive Clemency
Tom Horne, Attorney General, Andrew Pacheco representing
Barbara LaWall, Pima County Attorney, Kathleen Mayer representing
William Pribil, Coconino County Sheriff, Cathy Allen representing
Sheila Polk, Yavapai County Attorney
Charles Ryan, Director, Department of Corrections
David Sanders, Pima County Chief Probation Officer by conference call
Steven Sheldon, Former Judge by conference call

Members Absent:

Mark Spencer, Law Enforcement Leader

Staff Participating:

John A. Blackburn, Jr., Executive Director
Karen Ziegler, Deputy Director
George Diaz, Public Information Officer
Pat Nelson, Program Manager
Wendy Boyle, Executive Secretary

Guests Participating:

Marianne Sullivan, Contract Attorney

I. Call to Order and Roll Call

The meeting was called to order by Chairperson Daniel Sharp at 2:00 p.m. Roll was taken and a quorum was declared present.

II. Minutes of the May 23, 2013 Meeting

Chairperson Sharp called for a motion on the minutes. Commissioner Chris Gibbs entered a motion to approve the minutes of the May 23, 2013 meeting. The motion was seconded by Commissioner Joseph Brugman and was unanimously approved by the Commission.

III. Executive Director's Report

A. Budget Update

Executive Director Blackburn reported ACJC was unsuccessful in gaining the support needed in the legislative budget process and as a result did not fare well during this session. ACJC will continue to look at other funding sources for the updated Project Investment Justification (PIJ) by working with stakeholders, the new public safety advisor from the Governor's office, and with the Arizona Strategic Enterprise Technology (ASET) division of the Department of Administration (DOA) for the criminal justice state records improvement project and possibly support for other budget issues.

Executive Director Blackburn gave a recap on the other grant funded programs. The Victims Compensation and Assistance Program was successful in receiving an increase in the final budget. La Paz County Taskforce was unable to provide documentation on their ability to effectively carry out the project as outlined in the taskforce grant application for the Drug, Gang and Violent Crime Control Cycle 27 grant awards; therefore, \$46,750 was allocated to the Department of Public Safety (DPS) per the instructions of the Commission during the May meeting. La Paz Sheriff Drum and Lt. Bagby were notified of the decision and were assured that we will continue to work with them to fund an effective taskforce in La Paz, as the needs are great in that county. Debby Finkel retired in June but has returned to work part time to complete the grants she worked on prior to retirement. At this time it is unknown if those grants will be funded again so we currently have no plans to permanently fill this position. The Governor's office is currently funding two of our positions that are working on the Prescription Drug Initiative, we are looking for a stable funding source that would support those positions and allow them to be funded through ACJC.

Karen Ziegler, Deputy Director presented the ACJC budget summary for FY13-14 and a handout was given that showed the operating budget/pass through accounts for FY13 Actual and FY14 Approved Budget. ACJC was able to hold down costs by leaving vacant positions open and with the support of the Governor's office to fund two positions in the agency.

Ms. Ziegler discussed how the agency has been successful in managing revenue and not having a funding shortage through the federal grants received. Some grants are coming to a close in FY14; namely, the DNA Backlog Reduction and Project Safe Neighborhood (PSN) grants. In addition, several larger grants that have sustained the overall agency operations such as the Byrne/JAG and the Residential Substance Abuse Treatment (RSAT) funding have been reduced over the last several years. For example, in FY10 the funding levels were \$6.1M for Byrne/JAG and \$748,000 for RSAT. Currently, the funding is \$3.7M for Byrne/JAG and \$288,000 for RSAT. The funding decline not only affects the programs but the reductions represent a loss in administrative dollars to support the agency; in addition, there has also been a decline in state revenues that support the agency.

Ms. Ziegler presented the five year revenue summary that showed declines for the Criminal Justice Enhancement Fund (CJEF); this account has shown a second year of decline. In FY13, revenues declined by 5% over the previous year. CJEF supports programs such as the state aid to county attorneys and state aid to indigent defense, and full service crime labs. The Drug Enforcement Account (DEA) was down 4% in FY13. Although other state fund programs have rebounded, the law enforcement funds have not followed this trend. The reduction in federal and state funds has resulted in a \$1M decline in FY14 for the Drug Program and we expect another \$1M decline in FY15; this will significantly impact the drug taskforce programs. The only increase in revenues was to the Victim Assistance and Victim Compensation program funds; the victim assistance funds saw an increase of 14% and compensation saw an increase as well. This allowed ACJC to successfully obtain an increased appropriation because our revenues were able to support the spending proposal.

Ms. Ziegler also talked about the success Pat Nelson's Criminal Justice Systems Improvement Program has had in securing new federal funding through the NICS grants; and hopefully we will receive funding through the BJA grant recently submitted. These grants are project specific and cannot be used for the general operations of the agency. Staff will continue to work with the legislature, DOA and the Governor's Office of Strategic Planning and Budgeting to gain support for using the Arizona Prevention Resource Center revenue that the agency receives to stabilize the agency operations and look for additional funding sources to support the agency.

B. Legislative Update

Executive Director Blackburn stated Arizona was the recipient of an outstanding criminal justice program award representing the western region from the National Criminal Justice Association (NCJA) for the Prescription Drug Misuse and Abuse Initiative. The initiative featured collaboration between ACJC, the Governor's Office, Board of Pharmacy, Department of Health Services, Drug Free AZ, local coalitions and law enforcement agencies, as key contributors to the program.

Executive Director Blackburn then gave a recap on the federal legislative update where there are conflicting budgets in Congress. The House is working under the guidelines of the sequestration by cutting more funding from non-defense programs; however, there is an increase for the Byrne/JAG program from \$352M to \$368M. The NICS background check program was recommended an increase from \$11M to \$55M; the National Criminal History Program is included in this program and we expect to get some funding for this program as well. The overall cuts to the Department of Justice agencies includes Juvenile Justice from \$266M to \$196M, removing the COPS hiring program, eliminating the bullet proof vests program, State Criminal Alien Assistance Program (SCAAP) reduction from \$242M to \$165M, and RSAT reduction from \$12M to \$6M. The Senate budget does not consider the cuts by the House and is suggesting an increase of \$385M to the Byrne/JAG program, restoring COPS, and keeping the Office of Justice Programs (OJP) level.

George Diaz, Public Information Officer reported on the state legislative session. The session lasted 151 days, 1,100 bills introduced, 182 passed through the process and 31 bills were vetoed. The passed bills will have an effective date of September 13, 2013. ACJC had five priorities for this legislative session. The successes were SB 1234 Victim Compensation Fund that passed and gave the program flexibility to utilize the funds and an increase in the appropriation to the Victim Compensation and Assistance fund. The other priorities were the appropriations for the state aid to indigent defense fund and criminal justice records improvement, which were not successful; however, the foundation was laid for establishing the need for funding these programs.

C. Drug Enforcement Account (DEA) Audit

Karen Ziegler, Deputy Director presented the summary of the Drug and Gang Enforcement Account (DEA) audit conducted by Heinfeld, Meech & Co., a contracted auditor. The summary contains distributions from the DEA account and the federal funds that are dispensed for the drug taskforces through the Byrne/JAG grant and the Records Improvement Program. Again, this year there were no findings in the audit.

The Executive Director's report was presented for informational purposes and did not require Commission action.

IV. National Instant Criminal Background Check System (NICS) Task Force Update

Pat Nelson, Program Manager gave an overview of the recommendations from the NICS Taskforce for the proposed legislative changes; primarily the indicators to law enforcement selected to be implemented and restoring second amendment rights.

Ms. Nelson explained the taskforce continues to work on the action items for each category and the implementation of the mental health repository scheduled for rollout in March 2014 on the capturing of information from Title 36 ruling to send to NICS. Ms. Nelson pointed out this is the beginning stages for the legislation and the taskforce recommendations are for the automation and the infrastructure to capture the elements for transmitting the criminal history and NICS records. Ms. Nelson also identified key contributors to this process review and thanked them for their input and participation.

Marianne Sullivan, Contract Attorney presented the Mental Health Legislation that includes the Category Five Mental Health under federal NICS reporting requirements, state prohibited possessor law, and the processes the taskforce went through in evaluating the proposed changes. Ms. Sullivan reviewed the federal requirements under Category Five that prohibits three groups of people from purchasing or possessing a firearm that consists of 1) persons who have been adjudicated mentally defective as a danger to themselves or others or they lack the ability to contract or manage affairs, 2) persons found incompetent to stand trial or found insane by a court in a criminal case, or 3) persons who have been formally and involuntarily committed to a mental institution. The

Category Five Mental Health legislation was compared to Arizona state law; under Title 36 are persons ordered into treatment because they are a danger to themselves or others or are disabled, Title 14 guardianship statute where people can be placed under guardianship due to mental illness and lacks the ability to manage their affairs, and Rule 11 incompetency under the criminal rules.

Ms. Sullivan then explained under federal Law, persons ordered into treatment under Title 36 are those found incompetent under Rule 11 and those placed under a guardianship under Title 14 are all prohibited from purchasing or possessing a gun; whereas under Arizona State law, a person is only a prohibited possessor based upon mental health issues if a person is ordered into treatment under Title 36, but not found incompetent under Rule 11 or placed under guardianship under Title 14. The Taskforce is addressing the differences between the requirements under the federal Category Five prohibited possessor law and Arizona state requirements to bring the state more in line with federal law. The plan is to create a Mental Health Repository to transmit the information to NICS and to provide the information to law enforcement; the Administrative Office of the Courts (AOC) has been working on this issue. The Mental Health Repository would also serve as a resource for law enforcement to access and to determine if a person was a prohibited possessor under NICS especially when returning seized property to an individual or making roadside stops; law enforcement currently does not have access to the NICS database.

Ms. Sullivan reviewed the proposed changes in the process for evaluation of A.R.S § 13-925-Restoration of Right to Possess a Firearm. A person can apply to have federal rights restored and the state of Arizona has a process. The person must petition the court, may be filed by the prohibited person, their guardian or attorney with a copy to the state, and the court sets a hearing. The proposed changes include whether a person is currently under a guardianship pursuant to Title 14; and whether the person has been found to be incompetent and that there is no substantial probability that the defendant will become competent within 21 months of the date found incompetent or who has been restored to competency.

Ms. Sullivan also conveyed there was discussion among the NICS taskforce on Category Two active information, indictments and verified complaints. Under federal law, persons under active indictments, information or criminal complaint issued or verified by a prosecutor for a felony offense is a prohibited possessor; whereas, there is no prohibition under state law for a person under the circumstances to be a prohibited possessor.

Ms. Sullivan examined all the proposed changes to the mental health legislation, specifically to Title 13 and Title 14. They include 13-3101(A) (7) state prohibited possessor statute; 13-925(H) process to restore civil rights for mentally ill persons statute; 13-3112 concealed weapons permit statute; and 14-5304 findings, order of appointment and filings statute. Additionally, there were proposed amendments to Title 32-2612 security guard licensures (qualifications of applicant for agency license); Title 36-540 court options; Rule 11 (b) incompetency and mental examinations; Rule 12.11 transmission of indictment; and Rule 13.1 definitions; timeliness.

The Commission discussed that within NICS policy there is a need for concrete information that states when state records are transmitted and the indictment has been dropped. There was also discussion on the two track process where all states are to provide information to NICS and to comply with federal law via court rule. Staff will present specific NICS policies to the Commission at the September meeting namely with indictments so there is clarity when presenting to the legislators.

This item was presented for informational purposes and did not require Commission action.

V. Gerald Hardt Memorial Criminal Justice Records Improvement Plan

Pat Nelson, Program Manager explained that each year the Commission has set-aside 5% of the Byrne/Justice Assistance Grant (JAG) funding to focus on criminal history records improvement and information sharing. The funding continues to support the Gerald Hardt Criminal Justice Records Improvement Program.

Ms. Nelson reported that in the past, ACJC has directed support of individual agency projects that impact the state's effort in improving criminal justice records such as the ADRS development and the eWarrant study. Ms. Nelson presented to the Commission the consideration of utilizing the funding in the amount of \$225,585 to support the development of an updated assessment for the Arizona Criminal Records Improvement and Information Sharing Strategy.

Ms. Nelson provided background on the program noting that in 2002 a high level IBM study was done that focused on the criminal justice records and disposition reporting. In 2004 the funding continued for the conceptual design document to implement the system that would automate disposition reporting; the system was estimated to cost \$34M. After the information was gathered to estimate the cost to automate the system, ACJC continued its appeal to the legislature and Governor's office through a budget request to secure funding for the statewide infrastructure for information sharing. In 2005, the legislature provided funding in the amount of \$1.6M to begin the project; however, in 2007 due to the budget crisis the funding was swept. Progress is being made although critical funding is still needed to implement automated systems focused on criminal history records reporting, warrants, and NICS reporting.

Ms. Nelson also referred to the 2012-2017 strategy that was approved by the Commission. In order to go forward in seeking funding from the legislature and federal sources, an updated Project Investment Justification (PIJ) is a requirement to assess the current cost of updating the automated system. ACJC will partner with NCJA, SEARCH and with the Arizona Strategic Enterprise Technology (ASET) division of the DOA which oversees the PIJ process, and hopefully have the representative from the Governor's Office at the table as well.

Commissioner David Byers entered a motion to approve directing the FY2014 Byrne/JAG 5% set-aside funding in the amount of \$225,585 to support the contractual services to develop an updated assessment and Project Investment Justification (PIJ) for the Arizona Criminal Records Improvement and Information Sharing Strategy. The motion was seconded by Designee Kathleen Mayer and was unanimously approved by the Commission.

VI. Full Service Forensic Crime Laboratory Grant Program

Pat Nelson, Program Manager reported on the Full Service Forensic Laboratory Grant Program and the allocation of funds in the amount of \$800,000 for FY14.

Ms. Nelson stated that A.R.S. § 41-2421 directs 14.29 percent of the court surcharges to be placed in a fund for distribution to the state, county and municipal law enforcement full service crime laboratories by the Arizona Criminal Justice Commission. In 2007, the lab directors and chiefs agreed to establish an equitable distribution formula as outlined on page 15 of the agenda. The

distribution method includes a base allocation of \$100,000 in grant funds for each full service accredited crime laboratory with the remaining funds distributed by formula based on population. .

Commissioner David Byers entered a motion to approve the Full Service Forensic Crime Laboratory grant allocations for the cycle of July 1, 2013 through June 30, 2014. The motion was seconded by Commissioner Sheila Polk and was unanimously approved by the Commission.

VII. Call to the Public

Chairperson Sharp made a call to the public. No members of the public addressed the Commission. Executive Director Blackburn acknowledged ACJC staff Susan Preston and Wendy Boyle on the administrative operations that are conducted for the Commission meetings and the Law Enforcement POW WOW.

VIII. Date, Time, and Location of Next Meeting

The next Arizona Criminal Justice Commission meeting will be held on **Thursday, September 19, 2013** at the Arizona Criminal Justice Commission, 1110 W. Washington, Suite 250, Phoenix, Arizona 85007.

IX. Adjournment

The meeting was adjourned at 3:10 p.m.

Respectfully submitted,



John A. Blackburn, Jr.
Executive Director

Audio recording is available upon request.