

**NOTICE OF PUBLIC MEETING
OF THE
ARIZONA CRIMINAL JUSTICE COMMISSION
AND
AGENDA**

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the **Arizona Criminal Justice Commission** and to the general public that the **Arizona Criminal Justice Commission** will hold a meeting open to the public on **Thursday, January 23, 2014** beginning at **1:30 p.m.** at the **Arizona Criminal Justice Commission Office, 1110 W. Washington, Suite 250, Phoenix, Arizona 85007.**

Pursuant to the Americans with Disabilities Act (ADA), the Arizona Criminal Justice Commission endeavors to ensure the accessibility of its meetings to all persons with disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Commission Office at (602) 364-1146. Requests should be made as early as possible to allow time to arrange the accommodation.

The Commission may go into Executive Session on any of the following agenda items for the purposes of receiving legal advice pursuant to A.R.S. § 38-431.03(A)(3).

Agenda for the meeting is as follows:

- I. Call to Order and Roll Call** **Chairperson Daniel Sharp**

- II. Minutes**
 - A. Approval of Minutes from the November 5, 2013 Meeting** **P-F-T**
 - B. Approval of Minutes from the November 14, 2013 Meeting** **P-F-T**

- III. Election of a Chairperson and Vice Chairperson** **John A. Blackburn, Jr.**
 - Review, discussion, consideration and possible action on the election of a Chairperson and Vice Chairperson for the Arizona Criminal Justice Commission. **P-F-T**

- IV. Executive Director's Report** **John A. Blackburn, Jr.**
 - A. Staff and Program Updates** **Info**
 - B. Budget Update** **Info**
 - C. Legislative Update** **Info**

- V. Crime Victim Assistance Grant Program** **Larry Grubbs**
- Review, discussion, consideration and possible action on the following:
 - A. FY 2015 Grant Program Funding Level** **P-F-T**
 - B. Grant Program Emerging Issue Funding Priority** **P-F-T**
- VI. FY 2015 Match Requirement for Drug, Gang and Violent Crime Control Grant** **Tony Vidale**
- Review, discussion, consideration and possible action on setting a match requirement for the FY 2015 Drug, Gang and Violent Crime Control Grant. **P-F-T**
- VII. Program Income Policy - Drug, Gang and Violent Crime Control Funding** **Tony Vidale**
- Review, discussion, consideration and possible action on changing program income policy for Drug, Gang and Violent Crime Control funding. **P-F-T**
- VIII. Fine Structure - Drug, Gang and Violent Crime Control Funding** **Tony Vidale**
- Review, discussion, consideration and possible action on changing the fine structure for Drug, Gang and Violent Crime Control funding. **P-F-T**
- IX. Call to the Public**
- Those wishing to address the Commission need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.
- X. Date, Time, and Location of Next Meeting**
- The next Commission meeting will be held on **Thursday, March 20, 2014** at **1:30 p.m.** at 1110 W. Washington, Suite 250, Phoenix, Arizona 85007.
- XI. Adjournment**

A copy of the agenda background material provided to Commission members is available for public inspection at the Arizona Criminal Justice Commission Office, 1110 West Washington, Suite 230, Phoenix, Arizona 85007, (602) 364-1146. This document is available in alternative formats by contacting the Commission Office.

ARIZONA CRIMINAL JUSTICE COMMISSION

Request for Commission Action

| Action Requested: | Type of Action Requested: | Subject: |
|-------------------|---|---|
| January 23, 2014 | <input checked="" type="checkbox"/> Formal Action/Motion <input type="checkbox"/> Information Only <input type="checkbox"/> Other | Minutes of the November 5, 2013 Meeting |

TO: Chairperson and Commission Members

FROM: John A. Blackburn, Jr.
Executive Director

RECOMMENDATION:

The Commission approve the minutes of the Arizona Criminal Justice Commission meeting held on November 5, 2013.

DISCUSSION:

N/A

FISCAL IMPACT:

N/A

ALTERNATIVES:

Not Approve - Modify - Table

**Arizona Criminal Justice Commission
Minutes
November 5, 2013**

A public meeting of the Arizona Criminal Justice Commission was convened on November 5, 2013 at the Arizona Criminal Justice Commission, 1110 W. Washington, Suite 250, Phoenix, AZ 85007.

Members Present:

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

Members Absent:

Joseph Arpaio, Maricopa County Sheriff

Staff Participating:

John A. Blackburn, Jr., Executive Director
Pat Nelson, Program Manager
Amanda Zibell, Grants Coordinator
Wendy Boyle, Executive Secretary

Guests Participating:

Tony Colson, NICS Task Force
Aaron Gorrell, NICS Task Force

I. Call to Order and Roll Call

The meeting was called to order by Chairperson Daniel Sharp at 1:30 p.m. Roll was taken and a quorum was declared present.

II. National Instant Criminal Background Check System (NICS) Legislation

Executive Director Blackburn explained the mission of NICS is to enhance national security and public safety by providing the timely and accurate determination of a person's eligibility to possess firearms in accordance with federal law. It is about saving lives and protecting people from harm by not letting guns fall into the wrong hands and is used by Federal Firearms Licensees (FFLs) to instantly determine whether a prospective buyer is eligible to buy firearms. The proposed NICS legislation is based on the recommendations of the NICS Task Force to work on Arizona's reporting challenges. The Task Force is made up of over 45 members representing criminal justice, mental health system, and public members. The Task Force has also recommended funding for various state projects using federal grant funds by updating Arizona statute to implement an improved criminal background check system. The legislative proposal began with the help of a contract attorney through the Attorney General's office and with help from other stakeholders including Jerry Landau, Administrative Office of the Courts.

Executive Director Blackburn stated the legislation deals with the mental health reporting of prohibited possessors, alerts for law enforcement on the prohibited possessor being available to the officer on the street, and provides a mechanism for seizure of a weapon from a prohibited possessor.

Commissioner David Byers, Chairperson of the Information, Technology and Systems Improvement Committee and Commissioner David Sanders, Chairperson of the Legislative Committee facilitated the discussion on the legislation. The Commission reviewed the policy issue document, had discussion on each category, then voted or agreed on each item so staff could modify the NICS legislation for review at the Commission meeting on November 14, 2013.

Policy 1 - Persons under Indictment or Information.

Under **Category A**, Commissioner David Byers presented for discussion, the proposal that should a person under indictment or information be entered into the NICS database and if so, a provision must be included in the legislation or

the Commission would need to file a petition to amend the applicable criminal rules. Discussion included opposing and supporting views for sending notifications to NICS on individuals under indictment in Arizona. The Commission discussed including a provision that references conditions of release prohibiting possession of a firearm. The Commission also discussed adding the proposed language on page 4, at the end of line 26, and conditions of release prohibit possession of a firearm or a reference to an individual who are released from custody for a felony offense and conditions of release prohibit possession of a firearm to permit some additional review. The Commission asked if there was a penalty or consequence if states do not comply with NICS reporting; there is a threat of another five percent penalty to the Byrne/JAG funding for non-compliance; however, this is not currently in place.

The Commission discussed reporting indictments either all or nothing, or to include subsets. Aaron Gorrell, NICS Task Force explained law enforcement will always want to know the condition of release and that sending names where there is an order would be technically difficult to capture with programming and data.

Commissioner David Byers entered a motion to report all cases in which there is an indictment or information. The motion was seconded by Commissioner David Sanders for purpose of discussion. Commissioner Bill Montgomery amended the motion to state Arizona report to NICS, persons under indictment or information whose conditions of release prohibit possession of a firearm. The motion was seconded by Designee Kathleen Mayer. Commissioner David Byers withdrew the first motion on the table and restated the motion to say that we would only send to NICS the names of those people who are indicted or have information where a judge orders the weapon to be prohibited on condition of release. Commissioner Bill Montgomery read the bill on page 4 line 25, paragraph (e) with the amendment: (e) who is under an indictment or information for an offense listed in Section 13-706 (F), and condition of release prohibits the possession of a firearm. The Commission had more discussion and Commissioner Bill Montgomery amended the motion to have the policy language to read: whose condition of release prohibit the possession of a firearm.

Commissioner David Byers stated the proposal on the table is in those cases where a judge ordered no weapons as a condition of release. The motion passed with a vote of 15-2. Commissioner David Byers also stated that we will send to NICS, people who the judge orders a condition of release for any offense, that they do not possess a weapon.

Commissioner Brian Livingston added a subsequent motion to indicate we tie the judge's order or Section 13-706 offenses as automatic by operation of law. The motion was seconded by Designee Kathleen Mayer. The motion passed with a vote of 11-6.

Under **Category B**, Commissioner David Byers proposed the policy of modifying state law to make it a criminal offense to possess a weapon to the two categories adopted.

Commissioner Bill Montgomery entered a motion to report someone who is under an indictment or information for an offense whose condition of release prohibits possession of a firearm. The motion was seconded by Designee Kathleen Mayer. Commissioner Steven Sheldon amended the motion to not exclude those individuals charged for example, Class I misdemeanors, domestic violence assault that included a release condition that precluded them from possessing weapons. The motion passed with a vote of 14-3.

Under **Category C**, Commissioner David Byers asked for discussion surrounding the manner in which a person should be removed from NICS; affirmative action by the person pursuant to Section 13-925 where a hearing is held or by operation of law after the indictment or information is dismissed.

After discussion, Designee Ken Buckland entered a motion to have the process be automatic by operation of law. The motion was seconded by Commissioner David Sanders and was unanimously approved by the Commission.

Policy 2 - Persons who are found to be incompetent to stand trial (Criminal Rule 11 in Arizona).

Under **Category A**, Commissioner David Byers requested discussion on two issues: 1. Should a person found to be incompetent to stand trial be entered into NICS and the Mental Health Database? 2. If yes, to #1, should all persons found to be incompetent or only those found to be non-restorable be entered into NICS and the Mental Health Database? Commissioner David Byers stated the two categories include rights restored through treatment; rights not restored and asked if the Commission would like to include both or only those where they are not restored.

Designee Kathleen Mayer entered a motion to include both those that have been restored and those that have not. The motion was seconded by Commissioner David Sanders and passed unanimously.

Under **Category B**, Commissioner David Byers asked for discussion on whether a person found to be incompetent to stand trial pursuant to Rule 11, Rules of Criminal Procedure be classified as a Prohibited Possessor in the Criminal Code in Arizona.

Commissioner David Byers entered a motion to make a person found incompetent to stand trial a prohibited possessor in the state of Arizona. The motion was seconded by Commissioner David Sanders. Commissioner David Byers stated the motion on the table is to report anyone determined to be incompetent under Rule 11 to NICS would be designated as a prohibited possessor in Arizona. The motion passed with a vote of 15-2.

Under **Category C**, Commissioner David Byers asked for discussion on the manner of how the person should be removed from NICS and the mental health database, through affirmative action by the person pursuant to Section 13-925 where a hearing is held or by operation of law after the person is found competent to stand trial.

Designee Kathleen Mayer entered a motion to have the process be automatic by operation of law. The motion was seconded by Designee Ken Buckland. The motion passed with a vote of 11-6.

Policy 3 - Persons under a guardianship for mental incapacity.

Under **Category A**, Commissioner David Byers stated there is no differentiation in statute (Title 14) between mental and physical incapacity and asked for discussion on whether Arizona statute should be amended to provide for this distinction permitting only those persons under a guardianship for mental incapacity to be entered into NICS and the Mental Health Database.

Pat Nelson, Program Manager stated the definition under A.R.S. 14-5101 reads: "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drug, chronic intoxication or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person. The Task Force looked specifically at the underlined portion of the definition to find an example.

Designee Andrew Pacheco entered a motion to report only those persons who are ruled by a judge to have a mental incapacity requiring a guardianship be prohibited possessors. The motion was seconded by Commissioner Sheila Polk and was unanimously approved by the Commission.

Under **Category B**, Commissioner David Byers facilitated discussion on whether the policy under a guardianship be classified as a prohibited possessor in the criminal code.

Commissioner David Sanders entered a motion to support having the weapon confiscated but not criminalized. Further discussion was on writing the statute to authorize a law enforcement officer to seize the weapon if the person is on a mental health database or if they are prohibited possessors. There was more discussion to consider tabling due to the challenges in defining incapacitation. Designee Andrew Pacheco entered a motion to postpone discussion. The motion was seconded by Chairperson Daniel Sharp and passed unanimously.

Under **Category C**, Commissioner David Byers proposed discussion around the question if the guardianship were to be lifted or dismissed, should the restoration of the ability to come out of NICS be automatic by operation of law.

Designee Kathleen Mayor entered a motion to have the process be automatic by operation of law. The motion was seconded by Commissioner David Sanders.

Policy 4 - The draft legislation requires these persons be entered into NICS and the Mental Health Database. Discussion was made to include the Title 36 individuals as prohibited possessors and to report to the mental health database and NICS. The Commission agreed in favor of this policy.

Policy 5 - Draft legislation contains a seizure and confiscation of firearm provision. There was discussion on the officer safety issue pertaining to weapons seizure. Further discussion revealed that there is already a mechanism to handle if the person is being convicted and seeks to have the property returned, and how it can be returned after it is confiscated to the rightful owner. The Commission was directed to the draft legislation on page 17 that reads: **D.** A law enforcement officer may seize a firearm in the possession of a person who is entered in the mental health database pursuant to Section 36-540, (0) or is a prohibited possessor. **E.** If a firearm is seized pursuant to subsection D of this section. The officer shall give the person or the person's guardian a detailed receipt for the firearm and forward a copy of the receipt to the county attorney in the county where the firearm was seized. **F.** Upon notification from law enforcement of the seizure of the firearm, the county attorney shall file a notice of seizure in the superior court located in the county where the firearm was seized and serve notice by certified mail of the right to request a hearing on return of the firearm. The Commission was in agreement to remove the draft provision since it is not necessary and already exists in statute.

Policy 6 - Draft proposal to include a delayed effective date to after December 31, 2014. The Commission was in agreement to the delayed effective date.

III. Call to the Public

Chairperson Sharp made a call to the public. No members of the public addressed the Commission.

IV. Date, Time, and Location of Next Meeting

The next Arizona Criminal Justice Commission meeting will be held on **Thursday, November 14, 2013** at the Arizona Criminal Justice Commission, 1110 W. Washington, Suite 250, Phoenix, Arizona 85007.

V. Adjournment

The meeting was adjourned at 3:55 p.m.

Respectfully submitted,



John A. Blackburn, Jr.
Executive Director

Audio recording is available upon request.

ARIZONA CRIMINAL JUSTICE COMMISSION

Request for Commission Action

| Action Requested: | Type of Action Requested: | Subject: |
|--------------------------|---|--|
| January 23, 2014 | <input checked="" type="checkbox"/> Formal Action/Motion <input type="checkbox"/> Information Only <input type="checkbox"/> Other | Minutes of the November 14, 2013 Meeting |

TO: Chairperson and Commission Members

FROM: John A. Blackburn, Jr.
Executive Director

RECOMMENDATION:

The Commission approve the minutes of the Arizona Criminal Justice Commission meeting held on November 14, 2013.

DISCUSSION:

N/A

FISCAL IMPACT:

N/A

ALTERNATIVES:

Not Approve - Modify - Table

**Arizona Criminal Justice Commission
Minutes
November 14, 2013**

A public meeting of the Arizona Criminal Justice Commission was convened on November 14, 2013 at the Arizona Criminal Justice Commission, 1110 W. Washington, Suite 250, Phoenix, Arizona 85007.

Members Present:

Daniel G. Sharp, Chairperson, Chief, Oro Valley Police Department
Bill Montgomery, Vice Chairperson, Maricopa County Attorney
Joe Brugman, Chief, Coolidge Police Department
David Byers, Director, Administrative Office of the Courts
Timothy Dorn, Chief, Gilbert Police Department, Ken Buckland representing
Clarence Dupnik, Pima County Sheriff, Paul Wilson representing
Chris Gibbs, Mayor, City of Safford, by conference call
Robert Halliday, Director, Department of Public Safety
Barbara LaWall, Pima County Attorney, Amelia Cramer representing by conference call
Sheila Polk, Yavapai County Attorney
William Pribil, Coconino County Sheriff
Charles Ryan, Director, Department of Corrections
David Sanders, Pima County Chief Probation Officer
Steven Sheldon, Former Judge

Members Absent:

Joseph Arpaio, Maricopa County Sheriff
Tom Horne, Attorney General
Brian Livingston, Chairperson, Board of Executive Clemency
Mark Spencer, Law Enforcement Leader

Staff Participating:

John A. Blackburn, Jr., Executive Director
Pat Nelson, Program Manager
Amanda Zibell, Grants Coordinator
Wendy Boyle, Executive Secretary

Guests Participating:

Jerry Landau, Administrative Office of the Courts

I. Call to Order and Roll Call

The meeting was called to order by Chairperson Daniel Sharp at 1:30 p.m. Roll was taken and a quorum was declared present.

II. Minutes of the September 19, 2013 Meeting

Chairperson Sharp called for a motion on the minutes. Commissioner Joe Brugman entered a motion to approve of the minutes of the September 19, 2013 meeting. The motion was seconded by Commissioner David Sanders and was unanimously approved by the Commission.

III. Election of a Chairperson and a Vice Chairperson

Executive Director Blackburn stated the current terms of the Chairperson and Vice Chairperson will expire January 2014. According to ACJC policy, the process to nominate members for these positions needs to be announced in open public meeting. Current Vice-Chairperson Bill Montgomery has expressed an interest in succeeding to the Chairperson position; he may succeed the position unless a commission member opposes and asks for a waiver on the policy. Executive Director Blackburn asked if there was a motion to waive the policy and there were none. Vice Chairperson Montgomery may be voted in as Chairperson at the January 23, 2014 meeting. An explanation of the nominating process for the position of Vice Chairperson was explained and nominations will remain open until January 3, 2014. Interested commission members should call or email the Executive Director with the nominations; the names of the nominees would be announced at the Commission meeting on January 23, 2014 and the Vice Chairperson position would be elected by vote.

Chairperson Sharp called for a motion on the nominating process. Commissioner Bill Montgomery entered a motion to approve the nominating process for the position of Vice Chairperson. The motion was seconded by Commissioner David Byers and was unanimously approved by the Commission.

IV. Executive Director's Report

A. Staff and Program Update

Executive Director Blackburn reported on the personnel activities at ACJC. Jon Moreno was promoted from Program Project Specialist in the Victims Services program to Grant Coordinator for the Criminal Justice Systems Improvement Program reporting to Pat Nelson. New staff include Jon Gake, Program Compliance Auditor II in Finance, Irene Griffin, Research Analyst I and Megan Armstrong, AZDHS Fellow both reporting to the Statistical Analysis Center.

The Public Information Officer job posting has been closed and staff is looking to fill the position in December.

B. 2014 Meeting Schedule

Executive Director Blackburn presented the ACJC 2014 public meeting schedule and asked the Commission members to review and contact staff if there are any significant conflicts with the meeting dates.

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

V. National Instant Criminal Background Check System (NICS) Legislation

Executive Director Blackburn introduced the draft National Instant Criminal Background Check System (NICS) legislation that reflected the policy decisions made at the last Commission meeting on November 5, 2013 and thanked Jerry Landau, Administrative Office of the Courts; Paul Wilson, Pima County Sheriff's Office; Kim MacKachern, Arizona Prosecuting Attorneys' Advisory Council; Tony Coulson and Aaron Gorrell, NICS Task Force; and Pat Nelson, ACJC for their efforts with this proposed legislation.

Chairperson Sharp asked if Commissioner David Byers, Chairperson of the Information, Technology and Systems Improvement Committee and Commissioner David Sanders, Chairperson of the Legislative Committee would follow the same process where they would facilitate discussion on the draft legislation.

Commissioner David Byers reviewed the legislative item that was tabled from the Commission meeting on November 5, 2013. The first policy decision focused on guardianships and whether Arizona should report persons under guardianships to NICS. The Commission was in agreement that guardianships should be reported to NICS. The Commission had further discussion on making persons under guardianships a prohibited possessor in state statute. At the November 5, 2013 meeting the Commission motioned to postpone this policy decision for further discussion. Commissioner David Byers posed a question for clarification, did the Commission postpone the discussion of the entire category pertaining to guardianships for mental incapacity including reporting to NICS, or report to NICS and not make any changes to prohibited possessors. Executive Director Blackburn clarified that the Commission approved under Item 3, Category A to report entry into NICS only those persons who are ruled by a judge to have a mental incapacity requiring a guardianship to be prohibited possessors; Category B was held for further discussion; and Category C was approved to have the process automatic by operation of law.

Commissioner David Byers also asked about the separate distinction between guardianship for mental health reasons or physical reasons in Arizona. Jerry Landau, Administrative Office of the Courts, referred the Commission to

page 13, line 36, Section 5. 14-5303 Procedure for court appointment of a guardian of an alleged incapacitated person, page 14, line 25 (8.) Whether the appointment of a guardian is necessary due solely to the physical incapacity of the alleged incapacitated person, page 16, line 32, C. The court shall make a specific finding as to whether the appointment of a guardian is solely due to a physical incapacity, and page 17, line 22, Section 7. 14-5306 Substitution or resignation of guardian; termination of incapacity. Mr. Landau summarized it as a four step process: petition, finding, transmitting to NICS and removal from NICS, so it implicates four separate guardianship statutes.

Commissioner Montgomery agreed the overall steps in place for the distinction of the guardianship for mental health reason and a physical reason had been captured. Mr. Montgomery also recapped how in the different steps over the course of discussion, the Commission wanted to have it reported to NICS and how to distinguish between whether it is a criminal offense for purposes of arrest or a civil matter for purposes of seizure and how an officer on the street would distinguish between the two. No further action was taken to make it a criminal offense in Arizona.

Commissioner David Byers asked about any other revisions or changes to the legislation.

Commissioner Sheila Polk referenced the topic of "covered offense", on page 2, line 10. The definition of "covered offense" for purposes of transmitting to NICS is (a) defined as an indictment or information for an offense where either the judicial officer imposes as a condition of release that the person not possess a firearm or the offense charged is one listed in Section 13-706, subsection f or (b) a misdemeanor complaint for an offense where the judicial officer imposes as a condition of release that the person not possess a firearm. Also on page 5, line 1 "Prohibited Possessor", and 7 (d), line 14, who is charged with a covered offense for the purposes of this subparagraph "covered offense", has the same meaning as in Section 13-611, Subsection E. There was concern about the consistency with both definitions. Jerry Landau explained that instead of writing out the complete statute, it is referenced to the definition of "covered offense".

Commissioner Bill Montgomery brought a point to consider, would we want the prohibited possessor statute to distinguish the penalty if you are a prohibited possessor because you committed a felony and you have a

condition of release that says no weapons, or in position of having committing a misdemeanor, it is a class 4 felony prohibited possessor, do we want to have a misdemeanor penalty if you are a prohibited possessor because of conditions of release for a misdemeanor. The Commission discussed several scenarios surrounding the misdemeanor issue and agreed that they would like to be advised if the misdemeanor issue becomes a stumbling block for legislators in moving this legislation forward.

Executive Director Blackburn stated ACJC is taking the lead on this bill, and any substantive change a legislator would want to add to the section to make it a misdemeanor, ACJC would work with them to change if the Commission would take the position now; otherwise, it would come back for a vote at another Commission meeting.

Commissioner David Byer brought two points to consider that this legislation is an ACJC bill which we would put forth, obtain sponsors and have control along with other stakeholders. The second is to consider having a small sub-committee to work with staff on the legislation for reasonable changes.

Commissioner Steve Sheldon made comments on defining a prohibited possessor with a misdemeanor conviction, the release condition that prohibits possession of a weapon and turns it into a Class IV felony is going beyond just the NICS reporting and towards adopting a public policy that separates out a certain class of release violators for significant punishment which would be up to the prosecutor's discretion if we are going to prosecute. The separation of a class of criminal offenses for example, indictments and information is where someone is prohibited from possessing a weapon because of significant increase of harm to society and potentially the victim. It would require changing the release conditions, to bring notice to the person being released, and to the substantial criminal penalties that could be involved. It could also increase the load on the prosecutor's office. Is the additional tracking and reporting necessary, for the protection of society and the victim?

Commissioner Sheila Polk followed up with noting it is already a misdemeanor if a defendant has already been ordered by the court not to possess a weapon while on release and violates the court order therefore, we do not need to do anything in terms of prohibited possessor if we are going to make it the same level of misdemeanor as a violation of a court order. It would make sense to make it a felony because of a public safety issue.

Commissioner David Byers asked for a motion on this issue. The Commission decided for the purpose of future legislative discussions; to keep proposed language as it is. Pat Nelson, Program Manager stated one of the recommendations from the Task Force includes providing indicators to law enforcement on individuals that are considered prohibited possessor under an information/indictment or mental health ruling.

Commissioner Bill Montgomery directed the Commission to page 8, line 36, Section 4. 13-3112, the applicant is not a prohibited possessor, under state or federal law, suggesting striking out the language "federal law". The Commission also discussed striking out the language "under state". Commissioner David Byers entertained a motion for the change. Commissioner Bill Montgomery motioned to strike out the language "under state or federal law" to read: The applicant is not a prohibited possessor. The motion was seconded by Commissioner Sheila Polk. Commissioner Sheila Polk amended the motion to say: The applicant is not a prohibited possessor pursuant to 13-3101 (A) (7). The amended motion was seconded by Commissioner Bill Montgomery and was unanimously approved by the Commission.

Designee Paul Wilson referenced a change on page 17, line 22, Section 7. 14-5306, should be 14-5307.

The Commission discussed proceeding with getting a sponsor to introduce the bill, as amended, at the upcoming legislative session. Commissioner Joe Brugman motioned to support legislation to improve the reporting of Arizona's mental health and criminal justice records to the National Instant Criminal Background Check (NICS) System as amended. Chairperson Sharp accepted the motion on the table. The motion was seconded by Designee Paul Wilson. Chairperson Sharp asked if there was any further discussion and there was none. The motion was unanimously approved by the Commission. Commissioner David Byers also addressed the effective date of January, 2015; how changes required for computer systems potentially for Department of Public Safety and the Courts would require a delayed effective date.

VI. CY 2014 Residential Substance Abuse Treatment Program (RSAT)

Tony Vidale, Program Manager explained the Residential Substance Abuse Treatment (RSAT) Program is a federal grant that funds substance abuse treatment for incarcerated offenders as well as post release substance abuse treatment. ACJC applies for the federal funding on an annual basis that includes a 25% match that grantees are required to supply. A funding breakdown was provided for the Commissioners on page 17 of the agenda that included \$224,351 in unexpended funds from FFY 2011 and FFY 2012, \$259,985 in FFY 2013 federal funding and \$161,445 in required matching funds for a total of \$645,781. Mr. Vidale explained that with a proposed CY 2014 program size of \$597,305, the RSAT program would have \$48,476 available for CY 2015. Four applications were submitted by the Department of Corrections, Department of Juvenile Corrections, Chicanos Por La Causa, and the Coconino County Sheriff's Office for funding. The recommendation for funding the four agencies was shown on Table DC2 on page 19 of the agenda.

After review and discussion, Commissioner Sheila Polk entered a motion to award of \$597,305 in federal and local match funds for the 2014 RSAT grant program beginning January 1, 2014 and ending December 31, 2014. The motion was seconded by Commissioner Charles Ryan and was unanimously approved by the Commission.

VII. Enhanced Drug & Gang Enforcement (EDGE) Report

Tony Vidale, Program Manager introduced the 2013 Enhanced Drug and Gang Enforcement (EDGE) Report that is statutorily required for reporting on law enforcement activities funded by the Drug and Gang Enforcement Account. The report includes expenditures of federal monies through the Byrne/Justice Assistance Grant (JAG) program as well as the state monies through the Drug Enforcement Account (DEA) fund.

Mr. Vidale explained the purpose of the report is to explain how the money is spent and applied to the problem of illicit drug and drug related gang activity. The contents of the report include a summary section that explains the funding and awards made by purpose area. It also contains a summary of activities and details of each agency's funded project. The report also contains a highlight section and reported performance measures for each agency.

Mr. Vidale reviewed the highlights of the report. In 2013, there were over 4,800 drug arrests by the funded task forces, seizures of 120,000 pounds of marijuana, 588,000 grams of methamphetamine and 597 kilos of cocaine. The street values of all the illicit drugs seized by the funded task forces were in excess of \$173M. There were 547 weapons seized, and 274 drug trafficking organizations disrupted or dismantled. On the prosecution side, there were 26,000 drug prosecutions, 19,000 convictions reported, 13,000 felony convictions of which most were related to possession or concealment of drugs. Mr. Vidale reported that 17,000 offenders received sentences, the most common sentence was probation, followed by a prison sentence. The drug prosecution forfeitures totaled approximately \$25.8M. The civil forfeiture project under the Attorney General's office reported there was \$11.5M forfeited in assets. The forensic support project performed over 28,000 analyses on various types of drugs with an average of 53 days to produce reports. Forensic staff testified 154 times in court and the project trained 447 officers on drug field testing. The adjudication project had 12 drug courts that served 1,900 participants, 24,000 probationers served, about 16,000 drug tests were given with over 15,000 testing negative, and 3,700 indigent defendants were provided services.

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

VIII. Call to the Public

Chairperson Sharp made a call to the public.

IX. Date, Time, and Location of Next Meeting

The next Arizona Criminal Justice Commission meeting will be held on **Thursday, January 23, 2014** at the Arizona Criminal Justice Commission, 1110 W. Washington, Suite 250, Phoenix, Arizona 85007.

X. Adjournment

The meeting was adjourned at 3:55 p.m.

Respectfully submitted,



John A. Blackburn, Jr.
Executive Director

Audio recording is available upon request.



ARIZONA CRIMINAL JUSTICE COMMISSION

Request for Commission Action

| Action Requested: | Type of Action Requested: | Subject: |
|--------------------------|---|--|
| January 23, 2014 | <input checked="" type="checkbox"/> Formal Action/Motion <input type="checkbox"/> Information Only <input type="checkbox"/> Other | Election of a Chairperson and Vice Chairperson for the Commission |

TO: Chairperson and Commission Members

FROM: John A. Blackburn, Jr.
Executive Director

RECOMMENDATION:

The Commission select a Chairperson and Vice Chairperson to fulfill the regular term through January 2016.

DISCUSSION:

The names of the nominees will be announced and recommended to the full Commission. The Commission will then vote to fill the positions.

FISCAL IMPACT:

N/A

ALTERNATIVES:

Not Approve - Modify - Table



ARIZONA CRIMINAL JUSTICE COMMISSION Policy and Procedure

Subject
**SELECTION OF CHAIRPERSON & VICE
CHAIRPERSON**

Policy Number
CJC-115

Effective Date
01/20/2011

Supersedes: 11/19/09

INTRODUCTION

This policy establishes the procedures for the formal selection of a Chairperson and Vice Chairperson from within the ranks of the appointed and ex-officio members of the Arizona Criminal Justice Commission (as outlined in ARS §41-2404). These procedures allow for smooth transition of leadership and insure orderly succession. This policy may be waived, as deemed appropriate by a vote of the Commission as a standing body.

POLICY AND PROCEDURES

1. Definitions: The following terms used in this policy may also be found in CJC 101 of the Arizona Criminal Justice Commission policy manual and, where appropriate, in ARS §41-2404.
 - A. "Chairman" (Chair or Chairperson) is the person selected by the members of the Commission (as outlined in ARS §41-2404) to provide general oversight and consultation to the Executive Director, assure that the Commission meets as required by mission and statute, chair and conduct Commission regular and special meetings, approve meeting agendas and any and all other functions deemed appropriate by the Commission as a body or outlined in ARS §41-2404.
 - B. "Vice Chairman" (Vice Chairperson) is the person who, in the absence of the Chairperson (or when asked by the Chairperson), exercises the authority of the Chair on behalf of the Commission and its members as outlined in ARS §41-2404.
 - C. "Term of Chairperson and Vice Chairperson" is the term of office in which members selected from within the ranks of the appointed and ex-officio members of the Arizona Criminal Justice Commission hold these two positions. Terms shall run from the first regular meeting of the Commission in a calendar year for a period not to exceed 24 months. The Vice Chair may normally succeed the outgoing Chairperson, unless this policy is waived by vote of the Commission or other circumstances dictate.
 - D. "Nominations for Chair and/or Vice Chair" shall be announced in open, public meeting(s), seconded and voted upon by the entire Commission. Those members interested in being considered for either of these two positions will notify the Executive Director during the period of time deemed necessary by the Commission or announce their interest during the open, public meeting and shall follow the normal selection process.

Procedure:

2. Normal Selection

A. Calls for nominations for Chairperson and Vice Chairperson.

- 1.** During the remaining 90 days of a currently seated Chairperson's term in their position, the Commission shall formally announce the time frame for the formal nomination process during an open, public meeting of the Commission.
- 2.** The Commission may accept nominations at the time of the vote if deemed necessary during an open public meeting. Commission members are reminded that pursuant to the Open meeting Law, they may not communicate in any manner with other commission members regarding the nomination or election process.
- 3.** All names of those members nominated shall be read in the next open, public meeting of the Commission.
- 4.** A vote on the nominees shall be taken at an open, public meeting of the Commission and a new Chair/Vice Chair shall be elected.

Procedure:

3. Special Selection

A. Requests to waive the policy/nominations from the floor.

- 1.** In the event that a seated Chair and/or Vice Chair cannot fulfill the term of these positions or in the event the Commission as a body wishes to waive this policy for a specific election, the following procedures will take place:

- a.** If both the Chairperson and Vice Chairperson are unable to fulfill their positions, the most senior Commissioner shall assume the role of Chair pro tem. The Chair pro tem shall instruct the Executive Director to post on either a special or regularly scheduled Commission meeting agenda a notice for open floor nominations for the Chairperson and Vice Chair. The Chair pro tem shall preside over all duties, as outlined in ARS §41-2404 until replaced by popular vote of the Commission in an open meeting.

- 2.** The Chair, for reason of excused absence, may ask any seated member of the Commission to act as Chair for a meeting (in the event of conflict or absence of the Vice Chair). During these meetings the Acting Chair has the full authority of the Chair or Vice Chair.

B. If a member of the Commission wishes to petition this body to waive this policy for a specific election, he/she shall notify the Chairperson in writing no later than 36 hours before the time and date of the posted meeting.

- 1.** The Chairperson shall instruct the Executive Director to publish and post an amended agenda with an action item for consideration by the Commission as a body, first to waive the process and then to formally accept nominations with a popular vote.

- 2.** As in all Commission business, Robert's Rules of Order shall provide guidance as to procedure.

ARIZONA CRIMINAL JUSTICE COMMISSION

Request for Commission Action

| Action Requested: | Type of Action Requested: | Subject: |
|--------------------------|---|-----------------------------|
| January 23, 2014 | <input type="checkbox"/> Formal Action/Motion <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other | Executive Director's Report |

TO: Chairperson and Commission Members

FROM: John A. Blackburn, Jr.
Executive Director

RECOMMENDATION:

Information Only

DISCUSSION:

Executive Director Blackburn will discuss staff and program updates.

FISCAL IMPACT:

N/A

ALTERNATIVES:

N/A

ARIZONA CRIMINAL JUSTICE COMMISSION

Request for Commission Action

| Action Requested: | Type of Action Requested: | Subject: |
|--------------------------|---|-----------------------------|
| January 23, 2014 | <input type="checkbox"/> Formal Action/Motion <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other | Executive Director's Report |

TO: Chairperson and Commission Members

FROM: John A. Blackburn, Jr.
Executive Director

RECOMMENDATION:

Information Only

DISCUSSION:

Executive Director Blackburn will update the Commission on the Commission budget and the legislative budget hearings.

FISCAL IMPACT:

N/A

ALTERNATIVES:

N/A

ARIZONA CRIMINAL JUSTICE COMMISSION

Request for Commission Action

| Action Requested: | Type of Action Requested: | Subject: |
|--------------------------|---|-----------------------------|
| January 23, 2014 | <input type="checkbox"/> Formal Action/Motion <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other | Executive Director's Report |

TO: Chairperson and Commission Members

FROM: John A. Blackburn, Jr.
Executive Director

RECOMMENDATION:

Information Only

DISCUSSION:

Executive Director Blackburn will update the Commission on the 2014 legislative session.

FISCAL IMPACT:

N/A

ALTERNATIVES:

N/A

ARIZONA CRIMINAL JUSTICE COMMISSION

Request for Commission Action

| Action Requested: | Type of Action Requested: | Subject: |
|-------------------|---|--|
| January 23, 2014 | <input checked="" type="checkbox"/> Formal Action/Motion <input type="checkbox"/> Information Only <input type="checkbox"/> Other | Crime Victim Assistance FY 2015 Grant Program Funding Level |

TO: Chairperson and Commission Members

FROM: Larry Grubbs, Program Manager
Crime Victims Services

RECOMMENDATION:

The Commission approve the funding level for the Crime Victim Assistance Grant Program for FY 2015 be set at \$1,250,000.

DISCUSSION:

The Crime Victim Assistance Program funding level in FY 2014 was \$1,250,000. Based on revenue projections and contingent on legislative approval, staff proposes maintaining the current program funding level at \$1,250,000 for FY 2015. Table VS1 on the following page shows revenue and expenditures estimates associated with the program for FY 2014 and FY 2015.

The Crime Victims Committee will meet and make a recommendation to the Commission.

FISCAL IMPACT:

The program size will determine the amount of funding available for ACJC funded victim assistance projects in FY 2015. The potential impact is significant for recipient agencies.

ALTERNATIVES:

Not Approve - Modify - Table

TABLE VS1

| CRIME VICTIM ASSISTANCE PROGRAM | |
|--|--------------|
| FY 2015 PROGRAM BUDGET | |
| FY14 BEGINNING BALANCE | \$ 1,003,991 |
| FY14 PROJECTED REVENUE | |
| Community Supervision Fees | \$ 1,446,800 |
| REVERSIONS RECEIVED (AS OF 12/17/13) | \$ 36,151 |
| FY14 TOTAL AVAILABLE | \$ 2,486,942 |
| FY14 PROGRAM SIZE | \$ 1,250,000 |
| PROJECTED AVAILABLE PROGRAM FUNDS FOR FY15 | \$ 1,236,942 |
| FY15 PROJECTED REVENUE | |
| Community Supervision Fees | \$ 1,461,268 |
| FY15 ESTIMATED AVAILABLE | \$ 2,698,210 |
| FY15 PROPOSED PROGRAM SIZE | \$ 1,250,000 |
| <i>Pending Legislative Appropriation</i> | |
| FY15 ESTIMATED ENDING BALANCE | \$ 1,448,210 |

ARIZONA CRIMINAL JUSTICE COMMISSION

Request for Commission Action

| Action Requested: | Type of Action Requested: | Subject: |
|--------------------------|---|--|
| January 23, 2014 | <input checked="" type="checkbox"/> Formal Action/Motion <input type="checkbox"/> Information Only <input type="checkbox"/> Other | Crime Victim Assistance Grant Program – Emerging Issue Funding Priority |

TO: Chairperson and Commission Members

FROM: Larry Grubbs, Program Manager
Crime Victims Services

RECOMMENDATION:

The Commission approve that an emerging victim issue or underserved victim population not be designated as a funding priority for the FY 2015 grant period.

DISCUSSION:

At the November 2011 meeting, the Commission approved the option of annually designating an emerging victim issue, or an underserved victim population as a funding priority for the upcoming grant period. Staff recommends not designating an emerging victim issue or underserved victim population for FY 2015, instead allowing grantees to identify needs in their respective communities through the regular grant process.

The Crime Victims Committee will meet and make a recommendation to the Commission.

FISCAL IMPACT:

If the Commission designates an emerging issue, or underserved population as a funding priority for FY 2015 there could be a significant financial impact to all grant applicants and grant awards for the upcoming grant period.

ALTERNATIVES:

Not Approve - Modify - Table

ARIZONA CRIMINAL JUSTICE COMMISSION

Request for Commission Action

| Action Requested: | Type of Action Requested: | Subject: |
|-------------------|---|---|
| January 23, 2014 | <input checked="" type="checkbox"/> Formal Action/Motion <input type="checkbox"/> Information Only <input type="checkbox"/> Other | FY 2015 Match Requirement for Drug, Gang and Violent Crime Control Grant |

TO: Chairperson and Commission Members

FROM: Tony Vidale, Program Manager
Drug, Gang and Violent Crime Control

RECOMMENDATION:

The Commission approve a 25 percent match requirement for the FY 2015 grant year.

DISCUSSION:

Per program rule, the Commission cannot require a match that exceeds 25 percent of the total project budget. In FY 2014, the Commission approved a match requirement of 20 percent. Due to declining grant resources, staff is recommending a match set at 25 percent.

See attached for additional information.

The Drug, Gang and Violent Crime Committee will meet and make a recommendation to the Commission.

FISCAL IMPACT:

Significant to recipient agencies

ALTERNATIVES:

Not Approve - Modify - Table

Program Background

The Drug, Gang, and Violent Crime Control Program (DC) allows state, county, local and tribal governments to support activities that combat drugs, gangs, and violent crime. The DC program provides funding to support the components of a statewide, system-wide enhanced drug, gang, and violent crime control program as stated in the *2012-2015 Arizona Drug, Gang, and Violent Crime Control Strategy*.

Several funding streams support the program to carry out the statewide strategy successfully. The Edward Byrne Memorial Justice Assistance Grant (Byrne/JAG) funds awarded to Arizona by the U.S. Department of Justice, Bureau of Justice Assistance (DOJ/BJA) continue to support program activities along with state Drug and Gang Enforcement Account (DEA) funds established under A.R.S. § 41-2402, and matching funds when approved by the Commission.

Issue

Due to declining grant resources from the federal Byrne/JAG grant, staff is recommending a match requirement of 25 percent for the FY 2015 grant year. With a 25 percent match, the total program size for the FY 2015 grant program would be \$9,908,106, consisting of \$7,456,284 in grant funds and \$2,451,822 in match funds. This program size represents a 10 percent reduction from the FY 2014 grant program. Per program rule, the Commission cannot require a match that exceeds 25 percent of the total project budget. In FY 2014, the Commission approved a match requirement of 20 percent.

Issue Background

A match is essentially a cost sharing between the ACJC and the funded project. An agency provides funding equal to a set percentage based on the amount of grant funds allocated. The entire project size is comprised of the grant funds and match funds. With the Drug Program grant, agencies must provide a cash match (also called a 'hard' match) because this is a reimbursement grant. Agencies submit the project's total cost for the month and ACJC reimburses the remaining portion after deducting the match amount.

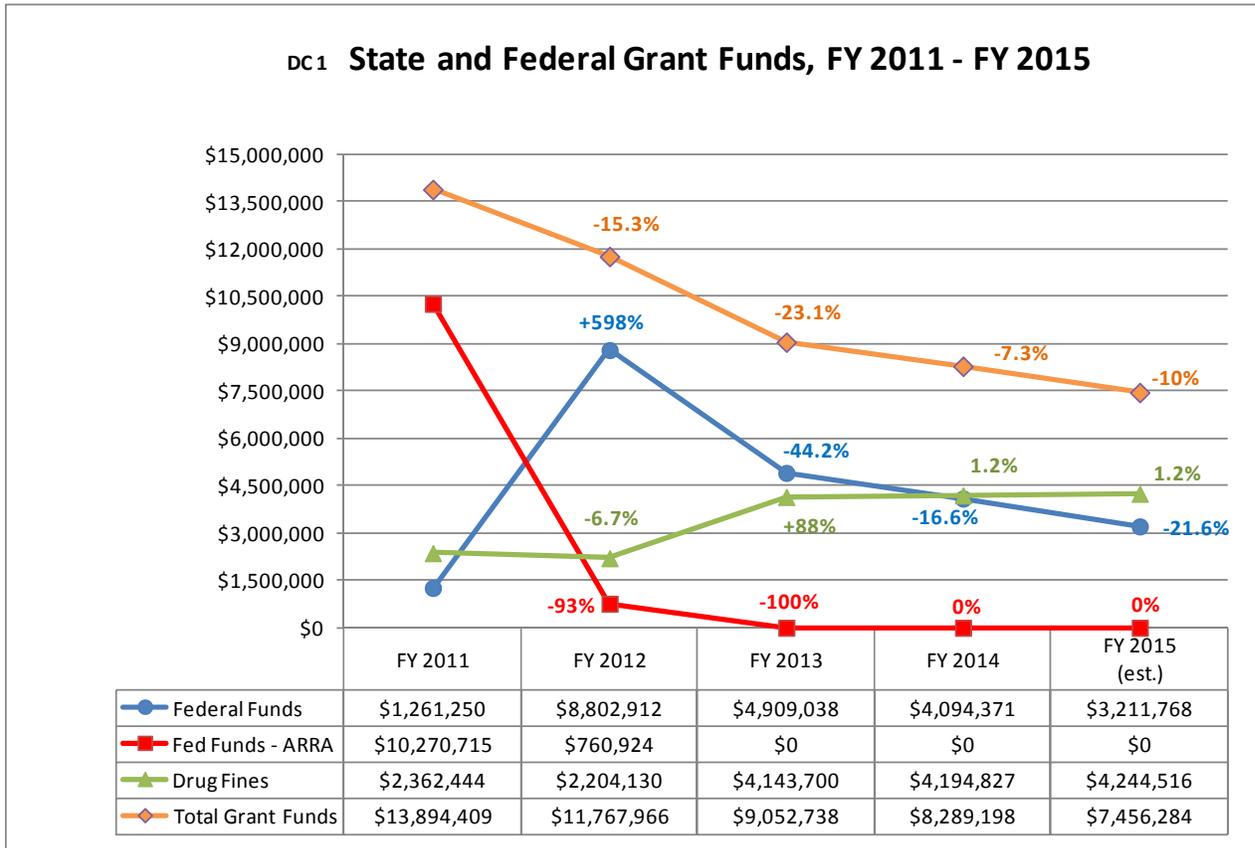
A match may serve many purposes for the overall program. Aside from the previously mentioned cost sharing, these resources help maintain a level of effort dedicated to addressing the drug problem in their communities. Grant recipients would have a stake in knowing they are helping themselves by contributing resources to combat drug-related crime. In addition, some agencies may use the match requirement to secure or protect a funding set-aside for the project from the county or city appropriation authority.

A match can also be problematic for some agencies. Because agencies would be required to come up with a "hard" cash match, they could not utilize non-grant funded project expenses or other in-kind expenditures toward meeting the match. Some agencies may only have the ACJC grant funds and RICO funds earned from seized assets and forfeitures to support the entire project. Others may not be able to secure funding support for projects from their appropriators. In these instances, these agencies may not have any discretionary funds to cover a match requirement and face refusing grant awards or dealing with project reductions.

Unlike other federal grants, DOJ does not mandate a match for the Byrne/JAG program so the Commission is not obligated to require grantees provide match funds. The Commission set the match requirement at zero for FY 2010 through FY 2012 in response to the fiscal crisis most agencies faced which provided the flexibility to use agency funds on the project or in other areas experiencing cuts. The match was set at 20 percent in FY 2013 and FY 2014 to support projects and partially address declining revenues in grant resources.

Grant Funding

In FY 2014, the grant funds available for the program totaled just over \$8 million. Agencies provided about \$2 million in funds under a 20 percent match requirement. In FY 2015, staff is estimating grant funds available for the program at \$7.4 million, representing a reduction of about \$832,914. This reduction is due to a drop in Byrne/JAG grant funds. This estimate also assumes that available DEA funding at a minimum, will slightly increase from the previous fiscal year. *Graph DC 1* shows the level of federal and state funding for FY 2011 through FY 2015 (estimated), broken out by grant fund source, and the year-to-year percentage change.



Match Options

Staff is recommending a 25 percent match. It is important to note that under any match scenario, there will be some agencies awarded less grant funding than in FY 2015, due to the drop in Byrne/JAG funding. *Table DC 2* compares match options for FY 2015, showing the estimated match amount for the program and the program totals for a zero match, a 20 percent, and a 25 percent match. Also, included in the table are the approved amounts for the FY 2014 grant year.

| DC 2 Match Allocation Options for FY 2015 DGVCC Grant | | | | |
|--|-------------------------|-------------------------|--------------------------|--------------------------|
| Fund Source | FY 2014 Approved | FY 2015 No Match | FY 2015 20% Match | FY 2015 25% Match |
| <i>Federal Funds</i> | \$4,094,371 | \$3,211,768 | \$3,211,768 | \$3,211,768 |
| <i>State Funds</i> | \$4,194,827 | \$4,244,516 | \$4,244,516 | \$4,244,516 |
| <i>Local Match*</i> | \$2,047,094 | \$0 | \$1,838,867 | \$2,451,822 |
| Program Totals | \$10,336,292 | \$7,456,284 | \$9,295,151 | \$9,908,106 |
| <i>*Match amount calculation excludes AG Medicaid Fraud project. This project uses state grant funds to match a federal grant.</i> | | | | |

- A zero match: Projects would be awarded the \$7.5 million in funds available and grantees would not be obligated to commit any additional funds to the project. Overall, the total program size would be reduced by 28 percent. Assuming the same pool of grantees, most would see a reduction in grant funds. However, it is unknown what decisions agencies would make with the monies previously dedicated as match funding. The appropriation authority or agency could continue using these monies on the project or divert them elsewhere to other projects or expenditures.
- Institute a 20 percent match: Programs provide a 20 percent match that would equate to about \$1.8 million and set the program size at \$9.3 million. Overall, the total program size would be reduced by 10 percent. The 20 percent match represents the same percentage grantees were required to produce for the FY 2014 grant. The total match amount in dollars; however, would drop from FY 2014 by \$208,227 due to a lower level of grant funding applied to the match percentage. Assuming the same pool of grantees, most would see a drop in grant funds and a corresponding drop in the match amount from FY 2013.
- Institute a 25 percent match: Programs provide a 25 percent match that would equate to about \$2.5 million and set the program size at \$9.9 million. Overall, the total program size would be reduced by 4 percent. This represents the maximum match percentage the Commission may require under program rule. The total match amount in dollars would increase by \$404,728. Assuming the same pool of grantees, most would see a drop in grant funds and an increase in the match amount from FY 2014.

ARIZONA CRIMINAL JUSTICE COMMISSION

Request for Commission Action

| Action Requested: | Type of Action Requested: | Subject: |
|--------------------------|---|---|
| January 23, 2014 | <input checked="" type="checkbox"/> Formal Action/Motion <input type="checkbox"/> Information Only <input type="checkbox"/> Other | Program Income Policy - Drug, Gang and Violent Crime Control Funding |

TO: Chairperson and Commission Members

FROM: Tony Vidale, Program Manager
Drug, Gang and Violent Crime Control

RECOMMENDATION:

Staff is recommending a change to the program income policy to require grantees to reinvest program income earned during the grant year on the funded grant project.

DISCUSSION:

The current program income policy allows grantees to utilize program income for any purpose that furthers the broad objectives of the legislation under which it was made. Staff is seeking a change that would require program income be reinvested in the funded grant project. The current program income policy was approved by the Commission in 2005.

See attached for additional information.

The Drug, Gang and Violent Crime Committee will meet and make a recommendation to the Commission.

FISCAL IMPACT:

Significant to recipient agencies

ALTERNATIVES:

Not Approve - Modify - Table

Program Income

Program income is defined as any income received or earned by the grantee as a result of grant-supported activity. Examples of program income include revenue from asset seizures and forfeitures, interest earned on federal grant funds, or proceeds from the sale of property or equipment purchased with grant funds. Fines resulting from law enforcement activities are not considered program income. Program income is calculated based on a formula that factors in the percentage of federal dollars provided to the funded project. Grantees report to ACJC program income earned and expended in monthly financial reports.

The federal government allows for three options in dealing with program income. A grantee earning program income can return the funds to the federal government, use program income to reduce project costs, or supplement the project.

Current Policy

Program income is expended under the "Addition Method" with the Drug, Gang, and Violent Crime Control Program. This method, approved by the Commission in 2005, requires grantees to supplement the grant and allows program income to be used "for any purpose that further the broad objectives of the legislation under which the award was made." This means grantees can expend program income on any type of expenditure that the federal Byrne/JAG grant program allows.

Byrne/JAG currently allows grant expenditures on state and local initiative, technical assistance, strategic planning, research and evaluation, data collection, training, personnel, equipment, forensic laboratories, supplies, contractual support, and criminal justice information systems. These expenditures are not approved by the ACJC and may be outside of activities directly related to the funded projects.

Proposed Policy

Staff is recommending that the "Addition Method" remain as the preferred option but that program income earned be reinvested on activities directly related to the funded projects.

Many grantees already reinvest program income on the funded project by covering match costs or expenditures not covered by the grant. However, in instances where this is not the case, the policy change will ensure all possible available resources are expended on the project to further the goals outlined in the Statewide Strategy. A review of FY 2013 program income found that 18 grantees earned program income. Of these, five agencies earned program income above the match amount. However, it is unknown what types of criminal justice expenditures were made with program income funds as agencies are not required to report that level of detail.

ARIZONA CRIMINAL JUSTICE COMMISSION

Request for Commission Action

| Action Requested: | Type of Action Requested: | Subject: |
|--------------------------|---|---|
| January 23, 2014 | <input checked="" type="checkbox"/> Formal Action/Motion <input type="checkbox"/> Information Only <input type="checkbox"/> Other | Fine Structure - Drug, Gang and Violent Crime Control Funding |

TO: Chairperson and Commission Members

FROM: Tony Vidale, Program Manager
Drug, Gang and Violent Crime Control

RECOMMENDATION:

Staff is recommending changes to Arizona Revised Statutes that would make application of drug fines more consistent with sentencing.

DISCUSSION:

Staff is seeking to simplify the fine structure in statute for drug crime convictions to make the level of the fine more consistent with sentencing by implementing a fine schedule based on the class of offense.

See attached for additional information.

The Drug, Gang and Violent Crime Committee will meet and make a recommendation to the Commission.

FISCAL IMPACT:

Significant to recipient agencies

ALTERNATIVES:

Not Approve - Modify - Table

Fine Structure in Statute

At the November meeting, the Drug Control Committee discussed the decline in resources available to the Drug, Gang, and Violent Crime Control program. One option discussed was increasing fines for drug crimes or implementing an assessment for drug convictions. The Committee focused discussion on two specific issues related to drug fines in statute:

1. Not all violations in Title 13, Chapter 34 or associated preparatory offenses have mandatory fines.
2. The fine schedule in statute is not consistent with sentencing (e.g. same class offense involving different drugs may have the same sentence but different fine amounts.)

Staff was directed to explore any improvements to the current fine structure for drug crime convictions. As a result, staff is recommending two main changes to drug crime statutes in Title 13, Chapter 34:

1. Include statutes that do not have a mandatory fine (e.g. paraphernalia) and preparatory offenses.
2. Make fine schedule more consistent with sentencing by basing the fine on the class offense rather than the type of drug involved.

Staff is recommending changes in Title 13, Chapter 34 that would establish the mandatory fine schedule displayed in table DC 1 based on the class offense and include preparatory offenses. The schedule would maintain the option that allows convictions for marijuana, dangerous drugs, narcotic drugs, offenses involving or using minors, or offenses in drug-free school zones to be fined at three times the value of the drug. Staff would also recommend language in statute that the court shall not waive the fine or assessment or any surcharge imposed by A.R.S. § 12-116.01 or § 12-116.02.

| DC1 Fine Schedule Based on Class Offense | |
|---|-----------------------|
| Class of Offense | Fine Amount |
| Class 3 misdemeanor | Not less than \$500 |
| Class 2 misdemeanor | Not less than \$750 |
| Class 1 misdemeanor | Not less than \$1,000 |
| Class 6 felony | Not less than \$1,000 |
| Class 5 felony | Not less than \$1,500 |
| Class 4 felony | Not less than \$2,000 |
| Class 3 felony | Not less than \$2,500 |
| Class 2 felony | Not less than \$3,000 |

Staff did not consider adding an assessment to drug offenses because A.R.S. § 13-811 directs all fines collected in any court for offenses included in chapter 34 to be deposited into the DEA account. If there is a desire to increase funding to the DEA account, the best solution would be to increase the fine amounts in chapter 34.