

Arizona Criminal Justice Commission
Minutes
March 21, 2013

A public meeting of the Arizona Criminal Justice Commission was convened on March 21, 2013 at 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 Arpaio, Maricopa County Sheriff, Jack MacIntyre 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, Warren Alter representing
Chris Gibbs, Mayor, City of Safford
Robert Halliday, Director, Department of Public Safety
Jesse Hernandez, Chairperson, Board of Executive Clemency
Tom Horne, Attorney General, Paula Alleman representing
Barbara LaWall, Pima County Attorney, David Smutzer representing by conference call
William Pribil, Coconino County Sheriff, Cathy Allen representing
Sheila Polk, Yavapai County Attorney
Charles Ryan, Director, Department of Corrections, Jeff Hood representing
David Sanders, Pima County Chief Probation Officer
Mark Spencer, Law Enforcement Leader

Members Absent:

Steven Sheldon, Former Judge

Staff Participating:

John A. Blackburn, Jr., Executive Director
George Diaz, Public Information Officer
Tony Vidale, Program Manager
Larry Grubbs, Program Manager
Pat Nelson, Program Manager
Wendy Boyle, Executive Secretary

Guests Participating:

Tony Coulson, 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 2:00 p.m. Roll was taken and a quorum was declared present.

II. Minutes of the January 24, 2013 Meeting

Chairperson Sharp called for a motion on the minutes. Commissioner Sheila Polk entered a motion to approve the minutes of the January 24, 2013 meeting. The motion was seconded by Commissioner Robert Halliday and was unanimously approved by the Commission.

III. Executive Director's Report

A. Staff and Program Update

Executive Director Blackburn addressed the staff and program update.

On the staff report, ACJC will await the results of the budget process to determine when to fill the vacant auditor position. Executive Director Blackburn announced that each of the program areas are fully engaged in activity as will be evident by the program reports presented during the Commission meeting.

B. Budget Update

Executive Director Blackburn noted since the critical issue requests from ACJC were not recommended for funding in the Governor's proposal, staff is actively working with the legislature to find funding. Executive Director Blackburn explained that there are concerns with the budget and the limited funds from the Governor's office. What ACJC is asking for from the legislature also brings up concerns with some Commission members and we understand that they may not support what we are requesting in our agency budget.

Executive Director Blackburn reported a 5 percent cut to all federal programs due to the federal sequestration. According to the rules established by Congress, agencies will not be allowed to move more than 5 percent of their reductions to programs. Executive Director Blackburn pointed out that there will be no more than a 10 percent reduction and with the SORNA penalty for non-compliance since 2008; there has been a 60 percent reduction in federal funds to criminal justice programs in Arizona through ACJC.

C. Legislative Update

George Diaz, Public Information Officer discussed the last of the committee hearings to hear bills were held at the state legislature. Mr. Diaz commented about recent press coverage on the prescription drug misuse and abuse initiative and stated most of the stories are coming out of the smaller communities. Also, articles were written on the effects of the budget cuts as a result of the federal sequester and the use of the database for criminal history background checks.

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

IV. Consideration of Match Requirement for FY 2014 Drug, Gang and Violent Crime Control Grant

Tony Vidale, Program Manager presented the recommendation of the Drug, Gang and Violent Crime Committee that the Commission approve setting a match requirement of 20 percent for the FY 2014 Drug, Gang and Violent Crime Control Grant. The Commission was referred to Table DC1 on page 13 of the agenda showing actual and estimated state and federal funding from FY 2011 through FY 2015 by grant fund source and year to year percentage change.

Mr. Vidale provided additional information on the purpose of the match requirement for the overall program. The benefits of the match program are that these resources help maintain a level of effort dedicated to addressing the drug problem in communities, grant recipients have a stake in knowing they are helping themselves by contributing resources to combat drug-related crime, and in some instances the match requirement helps to secure or protect a funding set-aside for the project from the county or city appropriating authority.

Mr. Vidale also discussed how the match could represent a challenge for some agencies because they may not have any discretionary funds to cover a match requirement and therefore refuse grant awards or experience project reductions. The same benefits and challenges were present in FY2013 as well but all agencies were able to meet the match requirements and none reported any issues in meeting the match.

Mr. Vidale briefly reviewed a question from the Drug, Gang and Violent Crime Committee meeting. A question was asked if a match could provide a higher level of funding to projects and the answer is no because the match does not allow us to shift funds to give a project more funding than in the previous year.

Commissioner Sheila Polk entered a motion to approve a required match of 20 percent for the FY 2014 grant year. The motion was seconded by Commissioner Robert Halliday and was unanimously approved by the Commission.

V. Funding Priorities for the Drug, Gang and Violent Crime Control Grant

Tony Vidale, Program Manager presented the recommendation of the Drug, Gang and Violent Crime Committee that the Commission approve the use of a tiered system to establish funding priorities for the FY 2014 Drug, Gang and Violent Crime Control Grant. The Commission was referred to Table DC3 on page 17 of the agenda that described the purpose areas established and defined in the Arizona 2012-2015 Drug, Gang and Violent Crime Control Strategy. They include apprehension, prosecution, adjudication and sentencing, corrections and community corrections, forensic support services, prevention and education, and substance abuse treatment for corrections-involved individuals.

Mr. Vidale explained instead of approving the tiers on an annual basis the Drug, Gang and Violent Crime Committee is recommending the approval of the tier structure for the grant program. If in the future the Commission decides to shift priorities, this could be addressed in the January 2014 meeting before the grant solicitation is released. Also, the statewide strategy is reviewed and/or revised every four years so the tiered system would also be reviewed at that time.

After discussion, Commissioner Timothy Dorn entered a motion to approve the use of a tiered system to establish funding priorities for the Drug, Gang and Violent Crime Control grant as listed in Table DC3 on page 17 of the agenda. The motion was seconded by Commissioner Chris Gibbs and was unanimously approved by the Commission.

VI. Victim Compensation FY13 Funding Reallocation

Larry Grubbs, Program Manager presented the recommendation of the Crime Victims Committee that the Commission approve the available crime victim compensation funds for the current FY13 be reallocated to operational units in accordance with Table VS1 of the agenda. Mr. Grubbs explained ACJC compensation staff examines county victim compensation expenditures throughout the fiscal year. Adjustments are made to the original allocation when necessary to meet the demand for compensation benefits statewide, and to ensure compensation funds are expended by the end of the fiscal year.

Mr. Grubbs directed the Commission to Table VS1 on page 19 of the agenda and reported that three counties submitted requests for reallocation in the amount of \$36,500. Of the three, only Pima County qualified by meeting the expenditure requirements and the restitution availability. Maricopa County agreed to have their allocation reduced by \$25,000 to accommodate the reallocation request of \$25,000 to Pima County.

Commissioner Bill Montgomery entered a motion to approve the available compensation funds for the current FY13 year be reallocated to operational units in accordance with Table VS1 of the agenda. The motion was seconded by Commissioner Jesse Hernandez and was unanimously approved by the Commission.

VII. ACJC Victim Services Administrative Funds

Larry Grubbs, Program Manager presented the recommendation of the Crime Victims Committee that the Commission approve \$99,645 from the Crime Victim Compensation and Assistance Fund be allocated annually to ACJC to fund the Crime Victim Services Program Manager position and employee related expenses. Mr. Grubbs stated that currently the position is paid from the Criminal Justice Enhancement Fund (CJEF). The cost shift to the Crime Victim Compensation and Assistance Fund will open up CJEF funds in FY14 and mitigate the loss of federal funds used to provide funding for other ACJC positions. The Commission was directed to Table VS2 on page 21 of the agenda that shows the overall impact to the Crime Victim Compensation and Assistance Fund is minimal at 2.9 percent of the estimated annual revenue.

Commissioner Bill Montgomery entered a motion to approve the amount of \$99,645 from the Crime Victim Compensation and Assistance Fund be allocated annually to ACJC to fund the Crime Victim Services Program Manager position and employee related expenses. The motion was seconded by Commissioner Jesse Hernandez and was unanimously approved by the Commission.

VIII. Victim Compensation Funding Allocation Formula

Larry Grubbs, Program Manager presented the recommendation of the Crime Victims Committee that the Commission approve the FY14 Crime Victim Compensation Funding Allocation Formula. Mr. Grubbs explained that the funding allocation formula used in past years does not accurately reflect annual average compensation program expenditures at the operational unit level, resulting in the need for significant adjustments to the original allocation throughout the fiscal year. The proposed changes to the victim compensation allocation formula should result in compliance with the requirements of recently revised program rules; fairly consider the influence of variable program criteria; and bring county compensation allocation amounts closer to the actual county expenditure rates. This should also reduce the demand for reallocation of compensation funds mid-year and reduce the dollar amount reallocated annually. The Commission was directed to the Crime Victim Compensation Program Funding Allocation Formula outlined on page 23 of the agenda. Mr. Grubbs clarified that the Commission would be voting to approve the formula only and that the actual allocation of funds would occur at the May meeting.

Commissioner Robert Halliday entered a motion to approve the FY14 crime victim compensation program funding allocation formula. The motion was seconded by Commissioner David Byers and was unanimously approved by the Commission.

IX. Arizona National Instant Criminal Background Check System (NICS) Initiative

Pat Nelson, Program Manager provided background information on the task force recommendations for the AZ NICS Records Improvement Plan. Ms. Nelson gave special recognition to the stakeholders, NICS contractors Tony Coulson and Aaron Gorrell, Executive Director John A. Blackburn, Jr., Statistical Analysis Center Director Phillip Stevenson and Deputy Director Karen Ziegler who have been supportive and had a part in the development of the plan and recommendations for the past year and a half.

The task force recommendations support the Records Improvement Information Sharing Strategy Plan that was approved in May 2012. The strategy spans the years 2012 -2017 and focuses on two goals; improving criminal records quality by increasing the timeliness, accuracy, completeness and accessibility of record information and enhance information sharing across jurisdictional boundaries.

Ms. Nelson explained that criminal history records are critical to our processes and are used in completing background and employment checks, foster care, adoption, firearm purchases and information that is used at significant points during the criminal justice process.

Ms. Nelson summarized how work started in 2011 after receiving a grant through the Department of Justice (DOJ) NICS Records Improvement Program. The grant program required the formation of a task force and to create a plan to improve reporting to NICS. Arizona was one of the few states that had legislation in place that allowed relief for persons with mental health adjudications; this allowed ACJC to apply for the funds.

Arizona included an additional goal to provide awards to agencies that could address missing dispositions in the criminal history repository for the NICS categories; namely the felonies, misdemeanors for domestic violence, and drug offenses by working on disposition backlogs and rejects. In 2012 further funding was awarded; Arizona has been successful in securing over \$1.5M to address the missing records in NICS reporting.

Ms. Nelson stated the recommendations are the beginning steps for further analysis, review of statutes, rules and policies that will be necessary to fully determine the viability of each proposal; she further stressed there was no budget assigned to each request. Since there were over thirty recommendations by the task force, Mr. Coulson will address only a few for your consideration today. The Commission was encouraged to ask questions and to provide feedback.

Tony Coulson presented the short term category recommendations for the Arizona NICS Record Improvement Plan. Mr. Coulson highlighted the recommendations for seven categories that included the following prohibited possessors: **Felony Convictions, Active Indictments/Informations/Verified Complaints** (a person under indictment on information), **Active Wants/Warrants** (fugitive on an active felony or misdemeanor warrant), **Unlawful Drug Use** (unlawful drug user-arrest within last year or multiple arrests in 5 years or drug test in last year or medical marijuana cardholder), **Mental Health Adjudications or Commitments** (a person adjudicated to be mentally defective or involuntarily committed or incompetent to manage own affairs), **Orders of Protection** (the subject of a protection order after being provided notice and opportunity to attend a hearing) and **Convictions for Potential Misdemeanor Crimes of Domestic Violence**.

A brief summary of category one recommendation was given that included conducting a study of non-dispose charges and analyzing the reasons for the open dispositions. Part of the proposal asks to consider a Department of Public Safety (DPS) policy change in transmitting qualifying non-matching disposition records to NICS. Another area is to identify the data flow for the process control number (PCN) to make sure data is transmitted to all justice agencies. Mr. Coulson touched on a major point that calls for the requirement of the fingerprints captured in the criminal history before the sentencing hearing. Also, because there is a lack of fingerprints in the system, this could be done by the placement of a fingerprint device in each superior court building and to conduct the necessary training for personnel. This would require collaboration with law enforcement, judges and county attorneys. The other recommendation includes ADRS being utilized but would require training be provided for all counties in Arizona.

Mr. Coulson discussed under category two, the task force found that Arizona does not report active indictments. As a short term fix, the task force recommended developing a means for superior courts and prosecutors offices to report charges indicated on the indictment or the information. A second recommendation would be to make use of the DPS message switch to forward the information from the prosecutor into NICS.

Mr. Coulson discussed category three, Active Warrants. In this group, the end solution is to capture and forward all active misdemeanors and felony warrants to NICS. The recommendations are to create and implement standardized e-Warrant system; this is a current project being done by the Administrative Office of the Courts to support the creation and implementation of a warrant repository that would be used to report information to NICS.

The fourth category is unlawful drug use. Part of the NICS description for unlawful drug use calls for a person found through a drug test, to use a controlled substance unlawfully provided the test was administered within the past year. Under this category, a medical marijuana cardholder is considered a prohibited possessor. The issue is to prevent the acquisition of a firearm under unlawful drug use. The short term recommendation is to determine whether through legislation, all medical marijuana cardholders would be reported to NICS aligning with federal law.

Mr. Coulson explained category five-Mental Health as one of the important groups in the NICS act. Arizona reports only Title 36 involuntary commitments to mental health treatment. The task force found a gap in mental health reporting which included no coverage of Title 14 or Rule 11 adjudications. The first recommendation is to require NICS reporting for adjudication from a judge on findings that a person is "incapacitated" under Title 14. The second recommendation is a criminal proceeding under Rule 11 whereby a judge rules someone "not competent". Under the listed variations, it would be a requirement to capture the data and report to NICS. The third recommendation is to implement a system tracking relief/restoration on NICS-based denials.

Category Six covers Orders of Protection and the recommendation from the task force is to support the ongoing efforts by AOC for development of CPOR so all orders of protection are in on a timely basis, recorded and removed when expired.

Mr. Coulson covered category seven, Misdemeanor Crimes of Domestic Violence. Mr. Coulson explained when there is a conviction of misdemeanor crimes of domestic violence and no arrest record is found, there would need to be an expeditious way for NICS to receive the information instead of creating an arrest record. ADRS could forward a domestic violence guilty disposition into NICS as a short term fix.

Aaron Gorrell, reviewed the high level programmatic recommendations; focusing on the system wide development, modifications and/or enhancements that impact data collection and quality.

Recommendation one establishes specific stewardship guidelines making each stakeholder accountable for maintaining the reliability of only those charges established and/or adjudicated by the stakeholder.

Recommendation two modifies the Arizona Disposition Reporting System (ADRS) to support the stewardship guidelines established above and capture charges, as they exist during each segment of the case lifecycle.

Recommendation three modifies the Arizona rap sheet to display the charges captured during each segment.

Mr. Gorrell discussed recommendation four that requires evaluating and providing a performance matrix on the effectiveness of reporting into the criminal history repository. The approach is to have ACJC and DPS work together and develop countywide score cards across various NICS categories to indicate what percentages of charges have been disposed. Once the issues and challenges are found, a follow up can be done through technical assistance and guidance training.

Mr. Gorrell addressed recommendation five; this includes the second phase of the e-Warrant project that is identifying functional and non-functional requirements. The second piece focuses on the mental health repository that would be built upon the centralized case index. Mr. Gorrell explained it takes information from the case management systems in Arizona and places in a centralized location allowing NICS to review court clerk entries, identify cases in Title 32, and other qualifying cases in mental health. The third piece relates to the enhancements of the CPOR repository currently in place and continuing the expansion of the requirements and refining the system.

Recommendation six is conducting process mapping within the criminal justice agencies and understanding the different business procedures for each jurisdiction. This can be done through documentation so improvements can be made in the collection/reporting of criminal justice and mental health data.

Pat Nelson, Program Manager reviewed recommendation seven. This is to continue providing technical assistance to the criminal justice agencies along with process mapping; follow up with the DPS audits to implement the scorecards, flowchart on the jurisdictional process and apply the technical solutions by resolving the reporting problems.

There were discussions on several items. The first item addressed the funding forecast for the NICS Plan. Mr. Byers stated that the NICS Plan did not include a recommendation for funding and the plan did not include a budget. Ms. Nelson noted staff would continue with the collaboration of the local initiatives; apply for additional funding at the next grant cycle under the Department of Justice (DOJ)/Bureau of Justice Statistics (BJS) for NICS, and search for other grant solicitations. The second point directed at the NICS reporting requirements on mental health. The discussion centered on how the information that is to be shared with NICS is available through regulation from the federal government; however, it prohibits the sharing of the information with state and local law enforcement. Another issue refers to the conflict of state law on the restrictions of what mental health issues fall under being a prohibited possessor and what is identified under federal law.

After further discussion, Commissioner David Byers entered a motion to support the AZ NICS Task Force report and recommendations on improving the completeness, automation and transmittal of records and mental health information to the NICS; proposing staff to conduct further research on what Arizona laws would have to be changed to make mental health information available to local law enforcement, and to consider for the legislature next year. The motion was seconded by Commissioner David Sanders and was unanimously approved by the Commission.

X. Call to the Public

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

XI. Date, Time, and Location of Next Meeting

The next Arizona Criminal Justice Commission meeting will be held on **Thursday, May 23, 2013 at 1:30 p.m.** at the Arizona Criminal Justice Commission, 1110 W. Washington, Suite 250, Phoenix, Arizona 85007.

XII. Adjournment

The meeting was adjourned at 3:54 p.m.

Respectfully submitted,



John A. Blackburn, Jr.
Executive Director