

ARIZONA CRIMINAL JUSTICE  
COMMISSION

DRUG AND GANG ENFORCEMENT ACCOUNT  
GRANTS

10 A.A.C. 4, Article 4

December 2013

## INTRODUCTION

The Drug and Gang Enforcement Account was established in 1987 by A.R.S. § 41-2402. Funds in the Account are used to enhance efforts to deter, investigate, prosecute, adjudicate, and punish drug offenders and members of criminal street gangs. The funds are from the following sources:

- Federal monies made available to states by grants under the Edward Byrne Memorial Justice Assistance Grant Program;
- Mandatory fines collected for felony drug offense convictions under A.R.S. Title 13, Chapter 34;
- Appropriations from the legislature; and
- Local matching funds furnished by grant recipients.

Statute that generally authorizes the agency to make rules:      A.R.S. § 41-2405(A)(8)

1. Specific statute authorizing the rules:

R19-4-401 through R19-4-406 are specifically authorized by A.R.S. §§ 41-2402 and 41-2405(A)(8).

2. Objective of the rule including the purpose for the existence of the rule:

R19-4-401. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition. The definitions are designed to facilitate understanding by those who use the rules.

R19-4-402. General Information Regarding Grants: The objective of the rule is to explain the role of the Commission in facilitating grant applications. This is to ensure that all potential applicants know what can be expected from the Commission.

R19-4-403. Grant Applications: The objective of the rule is to specify who may apply for a grant from the Account, the kinds of projects eligible for funding, and the information required to be submitted with a grant application. This is to maximize efficient operation of the grant program by ensuring that only eligible applicants make application, only eligible projects are submitted, and all applicants have complete information regarding the application procedure.

R19-4-404. Application Evaluation; Standards for Award: The objective of the rule is to describe the process used by the Commission to evaluate a grant application including the standards used in making the evaluation. This is to enable an applicant to submit an application that the applicant believes meets the evaluation standards and to anticipate steps in the evaluation process.

R19-4-405. Request for Modification of Recommended Allocation Plan: The objective of the rule is to inform a grant applicant of the two opportunities to request that a recommended allocation plan be modified. This is to ensure fairness to applicants by providing an opportunity to request that the recommended allocation plan be modified.

R19-4-406. Required Reports: The objective of the rule is to inform grant recipients that reports regarding grant activities and expenditures are required, when the reports are due, and the consequences of failing to submit reports. This is to ensure that data regarding use of grant funds are available as required by law.

3. Effectiveness of the rules in achieving the objective including a summary of any available data supporting the conclusion:

The Commission concluded that the current rules are effective in achieving their objectives.

The Commission used a number of measures to determine whether the rules are effective.

First, the rules allow an applicant that disagrees with a staff recommendation based on the rules, to request a modification of the recommendation. The applicant has two opportunities to request a modification of the recommendation. During the period these rules have been in effect, no applicant has requested a modification for any reason.

Second, the Commission conducts an annual customer satisfaction survey. One of the survey questions asks whether grant-funding solicitations are well advertised. In 2012, the last year for which data are available, 97 percent of potential applicants were satisfied with advertising of the opportunity to submit an application.

Third, the Commission tracks performance regarding program activities for the Governor's Office. The two performance measures applicable to the program rules are: "Grant agreements executed in a timely manner" and "Complaints received by Commissioners regarding actions taken by the Commission staff in the administration of grant." During the period these rules have been in effect, all grant agreements were executed in a timely manner and the Commission received no complaints regarding actions taken by staff in the administration of grants.

Fourth, Commission staff conducts on-site program reviews with each grant recipient. As part of the program reviews, staff covers issues or problems related to the application process or grant management. During the period these rules have been in effect, grant recipients did not report any issues or problems related to the application process or grant management.

Finally, the Commission provides any person the opportunity to offer feedback or ask questions through a feedback link on its web site. During the period these rules have been in effect, no one offered feedback or asked questions related to the application process or grant management.

4. Consistency of the rules with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:

The Commission determined that the rules are consistent with state and federal statutes. The applicable state statutes are A.R.S. §§ 41-2402 and 41-2405(A)(8). The applicable federal statute is 42 U.S.C. 3751(a). None of the Commission's other rules relate to the Drug and Gang Enforcement Account.

5. Agency enforcement policy including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement:

The Commission enforces the rules as written without problem. For FY2010 through FY21012, the Commission did not require grant recipients to provide local matching funds.

The amount of matching funds specified in the request for grant applications was set at zero. The decision not to require matching funds resulted from an appreciation of the economic difficulties that units of state, county, local, and tribal government were experiencing. In FY2013, with an improved economy and in response to declining federal grant funds and state fine revenue, the Commission set the match amount at 20 percent.

R10-4-402(G) indicates that a grant recipient will be required to provide matching funds in the amount specified in the request for grant applications. For FY2010-FY2012, the amount of matching funds specified in the request for grant applications was been zero. For 2013, the amount of matching funds specified in the request for grant applications was 20 percent. The Commission is enforcing the rule.

6. Clarity, conciseness, and understandability of the rules:

The rules are generally clear, concise, and understandable and consistent with current rule writing standards.

The internal citation in R10-4-404(C) should be A.R.S. § 41-2402(E) rather than A.R.S. § 41-2402(F).

7. Summary of written criticisms of the rules received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:

The Commission received no written criticisms of the rules during the last five years, including analyses regarding whether the rules are based on valid scientific or reliable principles or methods. No rule has been at issue in litigation or an administrative proceeding.

8. A comparison of the estimated economic, small business, and consumer impact of the rules with the economic, small business, and consumer impact statement prepared on the last

making of the rules or, if no economic, small business, and consumer impact statement was prepared on the last making of the rules, an assessment of the actual economic, small business, and consumer impact of the rules:

When these rules were made or substantially amended in 2008, the Commission correctly estimated that they would have minimal economic impact. The Drug and Gang Enforcement Account has a substantial economic impact in Arizona but these rules, which simply provide procedures for obtaining a grant from the Account and required reports, have minimal economic impact. Units of state, county, local, and tribal government that apply for a grant from the Account did so voluntarily because they believe the benefits of receiving a grant outweigh the costs of making application and providing reports.

In FY 2012, the Commission made grants for 38 programs. The amount awarded was \$12,102,161. Eighty-two percent of the funds were provided by the federal government. The remainder was provided by fines imposed on those convicted of felony drug offenses. Ninety-eight percent of the monies were used by the grant recipients for direct personnel costs.

Programs were authorized in seven areas: apprehension, prosecution, forensic support services, adjudication and sentencing, corrections, substance abuse treatment, and prevention and education. Grants were awarded to multi-jurisdiction, multi-agency task forces in all 15 counties. Grants were also awarded to the Attorney General's Office, Department of Public Safety, Tucson Police Department, and Administrative Office of the Courts. During the last five years, the Commission has had to deny an award to a few applicants because of lack of funding or because the application was for a project ineligible for funding. No applicant has appealed a denial.

9. Any analysis submitted to the agency by another person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:

No analysis has been submitted. The Drug and Gang Enforcement Account program has no direct effect on businesses.

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

The rules were newly made or substantially amended in a rulemaking that was effective on January 31, 2009. These rules have not been previously reviewed.

11. A determination after analysis that the probable benefits of the rules outweigh within this state the probable costs of the rules and the rules imposes the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The benefits of the rules greatly outweigh their minimal costs. No person is regulated by these rules. Any entity that applies under the rules for a grant of monies from the Drug and Gang Enforcement Account does so voluntarily after determining that the benefit of receiving grant monies outweighs the cost of making application and submitting required reports. An application is necessary to enable the Commission to evaluate proposed projects and ensure that all potential grant recipients are treated fairly. Reports are necessary to ensure that Account monies are properly spent and to enable the Commission to submit reports required of it.

12. A determination after analysis that the rules are not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:

The rules are not more stringent than federal law. The applicable federal law simply authorizes the U.S. Attorney General to make grants to states regarding a variety of programs related to criminal justice. In FY 2012, the Commission allocated \$9,898,031 in federal funds from the Drug and Gang Enforcement Account.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

The rules were made before July 29, 2010. They do not require issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:

The Commission does not intend to take action regarding the rules. If it becomes necessary to amend any of the rules, the Commission will correct the internal citation in R10-4-404(C).

# ARIZONA CRIMINAL JUSTICE COMMISSION

Five-year-review Report: A.A.C. Title 10, Chapter 4, Articles 3  
(Criminal Justice Enhancement Fund) and 5 (Full-service Forensic  
Crime Laboratory Account)

October 2016

# **Five-year-review Report**

## **A.A.C. Title 10. Law**

### **Chapter 4. Arizona Criminal Justice Commission**

#### **INTRODUCTION**

The Arizona Criminal Justice Commission was established in 1982 to carry out various coordinating, monitoring, and reporting functions regarding the administration and management of criminal justice programs in Arizona. This report focuses on rules developed for two of the programs.

The Criminal Justice Enhancement Fund provides funding for the various Arizona county attorneys to improve processing of criminal cases. Under A.R.S. § 41-2421(J)(5), the Fund receives a 14.29 percent allocation of a seven percent penalty assessment on fines, penalties, and forfeitures imposed by the courts for criminal and civil motor vehicle violations and a portion of the monies collected by the Supreme Court and Court of Appeals. The Arizona Criminal Justice Commission is required to distribute Fund monies to the Arizona Department of Public Safety, Attorney General, Administrative Office of the Courts, and the sheriff in each county. The distribution to each county is based on a composite index formula using Superior Court felony filings and county population.

The goal of the Arizona Criminal Justice Commission Full-service Forensic Crime Laboratory Program is to improve the efficiency and effectiveness of the state's various full-service crime laboratories. To achieve this, the Commission seeks to have laboratory results posted on an automated site for prosecutors and law enforcement. Although not required by rule, the Commission requests laboratories that receive monies from the Full-service Forensic Crime Laboratory Account support that goal.

Statute that generally authorizes the agency to make rules: A.R.S. §§ 41-2405(A)(8) and 41-2421(J)(5)

1. Specific statute authorizing the rule:

- R10-4-301: A.R.S. § 41-2401(G)
- R10-4-302: A.R.S. § 41-2401(G)
- R10-4-303: A.R.S. § 41-2401(G)
- R10-4-304: A.R.S. § 41-2401(G)
- R10-4-305: A.R.S. § 41-2401(G)
- R10-4-501: A.R.S. § 41-2421(J)(5)
- R10-4-502: A.R.S. § 41-2421(J)(5)
- R10-4-503: A.R.S. § 41-2421(J)(5)
- R10-4-504: A.R.S. § 41-2421(J)(5)

2. Objective of the rule including the purpose for the existence of the rule:

R10-4-301. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition. This facilitates understanding by those who use the rules.

R10-4-302. Contact Information Required: The objective of the rule is to ensure the Commission has accurate information regarding the head of recipient agencies. This facilitates timely communication with the agencies.

R10-4-303. Fund Guidelines Required: The objective of the rule is to specify the guidelines a recipient agency must have regarding handling, allocating, expending, and assessing the impact of Fund monies. This ensures monies received by the agencies are protected from misuse and expended as required by law.

R10-4-304. Records Required: The objective of the rule is to specify the records a recipient agency is required to maintain. The records enable the Commission and Arizona Auditor General to assess that Fund monies are expended as required by law.

R10-4-305. Complaints: The objective of the rule is to provide the procedure for complaining to the Commission that Fund monies are being expended in a manner

inconsistent with statute. The complaint procedure protects the public and ensures Fund monies are expended as required by law.

R10-4-501. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition. This facilitates understanding by those who use the rules.

R10-4-502. Grant Solicitation Process: The objective of the rule is to establish the procedure the Commission will use to inform potential grant applicants when funds are available for distribution and to specify the information the Commission will make available to potential applicants. This facilitates the grant application process.

R10-4-503. Grant Application Evaluation; Decision of the Commission: The objective of the rule is to describe the procedure the Commission uses to evaluate a grant application and list the factors on which a grant decision is based. This facilitates the grant application process by enabling an applicant to prepare an application that addresses important factors.

R10-4-504. Reports: The objective of the rule is to inform grant recipients when reports are due and the information required in a report. This enables grantees to comply timely with reporting requirements.

3. Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion:

The Commission believes the rules are effective in achieving their objectives. The Commission is able to distribute monies as required by law. No recipient of monies from either the Fund or Account has suggested rule changes. In a recent report, the Arizona Auditor General commented that the Commission has established effective grant-awarding and monitoring processes. No complaints have been received regarding misspent monies or challenging the awards made.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:

No federal law is applicable to distribution of the monies in either the Criminal Justice Enhancement Fund or the Full-service Forensic Crime Laboratory Account.

5. Agency enforcement policy including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement:

The Commission enforces the rules as written without difficulty.

6. Clarity, conciseness, and understandability of the rule:

The rules are clear, concise, and understandable except R10-4-502(A) contains an incorrect web site address for the Commission. The correct address is [www.azcjc.gov](http://www.azcjc.gov).

7. Summary of written criticisms of the rule received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:

The Commission received no written criticism of the rules during the last five years.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule:

#### 2006 EIS (Full-service Forensic Crime Laboratory Account)

The EIS prepared when the rules were made in 2006 was available. The Commission believes the economic, small business, and consumer impact statement prepared was accurate.

There are still seven full-service forensic crime laboratories in Arizona, all of which are accredited. During FY2016, the Arizona Department of Public Safety, which operates three of the full-service forensic crime laboratories, used Account monies to combat immigration violence, gang violence, human smuggling, and drug trafficking. Some of the monies were used to assist county attorneys' offices. The Phoenix Police Department used Account

monies to purchase equipment and supplies, provide training, and fund overtime in an effort to increase trained staff. The Mesa Police Department used Account monies to convert old casework records to an electronic format and increase safety in the forensic laboratory building. The Scottsdale Police Department used Account monies to fund a Forensic Scientist Supervisor for the forensic laboratory and the Tucson Police Department used the monies to fund a DNA Criminalist position and pay overtime.

During FY2016, the Commission distributed \$800,000 to the full-service forensic crime laboratories. This is less than was distributed in 2006 because the Account contained fewer monies. The Commission believes this is because there are fewer peace officers writing tickets resulting in less money. The Commission received no appeals of its decisions regarding the manner in which Account monies are distributed.

#### 2011 EIS (Criminal Justice Enhancement Fund)

The EIS prepared when the rules were made in 2011 was available. The Commission believes the economic, small business, and consumer impact statement prepared was accurate. Recipients of monies from the Fund receive substantial economic benefit as a result of receiving the monies and incur minimal costs to develop guidelines regarding handling, allocating, and use of the monies and to maintain records regarding expenditure and impact of the monies.

The Commission is responsible for distributing only part of the monies in the Fund (See A.R.S. § 41-2401(G)). Recipients of Fund monies distributed by the Commission include the Arizona Departments of Public Safety and Law, the Supreme Court, and county sheriffs. The Department of Law passes the monies received to the fifteen county attorneys for use in enhancing prosecutions. During FY2015, the Commission distributed almost \$3 million to the Arizona Department of Public Safety, \$3,598,505 to the Department of Law, \$2,108,988 to the Supreme Court, and \$4,500,567 to the county sheriffs for jail enhancement.

During 2015, the Commission received no complaints alleging Fund monies were expended in a manner inconsistent with A.R.S. § 41-2401(D).

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:

No analysis has been submitted.

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

The rules in Article 3 were newly made in a rulemaking that went into effect on September 10, 2011. This is the first review of the Article 3 rules. In a 5YRR approved by the Council on August 2, 2011, the Commission indicated it had no plan to amend or repeal any of the rules in Article 5.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The only persons regulated by the Full-service Forensic Crime Laboratory Account rules are Arizona's seven full-service forensic crime laboratories. To obtain Account monies, they must submit a grant application. If grant funds are awarded, they must submit quarterly reports regarding use of the funds. The Commission believes these requirements, which are necessary to ensure that Account monies are used in the manner intended by the legislature, impose minimal burden and costs on the full-service forensic crime laboratories. A laboratory that believes the burden and cost exceed the benefits does not have to apply for funding.

The only persons regulated by the Criminal Justice Enhancement Fund rules are the four entities to which the Commission distributes monies. These are the Arizona Departments of Public Safety and Law, the Supreme Court, and the fifteen county sheriffs. Those that obtain Fund monies are required to develop guidelines regarding handling, allocating, and use of the monies and to maintain records regarding expenditure and impact of the monies. The Commission believes these requirements, which are necessary to ensure Fund monies are used in the manner intended by the legislature, impose minimal burden and costs.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:

No federal law is applicable to the subject matter of the rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

The rules in Article 3 were made after July 29, 2010. None of the rules requires issuance of a regulatory permit, license, or other agency authorization.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:

The Commission does not intend to amend or repeal any of the existing rules or make a new rule. The incorrect web site address in R10-4-502(A) will be corrected when it is necessary to amend the rule for a substantive reason.