ARIZONA BOARD OF FINGERPRINTING

Mail Code 185 • Post Office Box 6129 • Phoenix, Arizona 85005-6129
Telephone (602) 322-8590 • Fax (602) 322-8594

Notice of Public Meeting

December 1, 2006, at 8:30 a.m.
2222 West Encanto Blvd., Suite 350, Phoenix, Arizona

Board Members
Mike LeHew, Department of Economic Security, Chair
Kim Pipersburgh, Department of Health Services, Vice Chair
Rand Rosenbaum, Administrative Office of the Courts
Charles Easaw, Department of Education
Arthur W. Baker, Department of Juvenile Corrections

Executive Director
Dennis Seavers

Pursuant to Arizona Revised Statutes ("A.R.S.") § 38–431.02, notice is hereby given to the members of the Arizona Board of Fingerprinting ("board") and to the general public that the board will hold a meeting open to the public as specified below. The board reserves the right to change the order of the agenda.

As indicated in the following agenda, the board may vote to go into executive session, which will not be open to the public, to discuss certain matters.

Individuals who wish to acquire background material provided to board members (with the exception of material relating to possible or previous executive sessions) may request them by contacting Dennis Seavers at (602) 322-8593.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter by contacting Dennis Seavers at (602) 322-8593. Requests should be made as early as possible to allow time to arrange the accommodation.

DATED AND POSTED THIS 22nd day of November 2006 at 6:00 p.m.

Arizona Board of Fingerprinting

By _____
Dennis Seavers, Executive Director

AGENDA

I. CALL TO ORDER AND ROLL CALL Mr. LeHew

II. CALL TO THE PUBLIC Mr. LeHew

At this portion of the meeting, the public is invited to make comments. Arizona law prohibits board members from discussing items that are not on the agenda. Therefore, action taken as a result of public comment will be limited to scheduling the matter for further consideration and decision at a later date.

III. APPROVAL OF MINUTES Mr. LeHew

Minutes from October 20, 2006, meeting

IV. LEGISLATION Mr. LeHew

At this portion of the meeting, the board will discuss possible legislative initiatives for the next session of the Arizona State Legislature. Specifically, the board will address legislative issues that it previously addressed at its October 20, 2006, meeting.

V. RULEMAKING Mr. LeHew

At this portion of the meeting, the board may adopt rules that it initially proposed at its September 22, 2006, meeting. The board will consider any public comments that were submitted on the proposed rules. The proposed rules appear in the "Notice of Proposed Exempt Rulemaking," *Arizona Administrative Register*, Volume 12, Issue 43 (October 27, 2006), pp. 4020–4022.

VI. AUDIT REPORT Mr. Seavers

At this portion of the meeting, the board will consider an upcoming performance-audit report by the Office of the Auditor General. The board may vote to discuss this matter in executive session pursuant to A.R.S. § 38–431.03(A)(2).

VII. EXECUTIVE DIRECTOR'S REPORT Mr. Seavers

At this portion of the meeting, the board's executive director will present plans to resolve current, open cases that have had an administrative hearing and to reduce the wait time for hearings to be decided.

VIII. ADJOURNMENT Mr. LeHew

DRAFT

ARIZONA BOARD OF FINGERPRINTING

Mail Code 185 • Post Office Box 6129 • Phoenix, Arizona 85005-6129
Telephone (602) 322-8590 • Fax (602) 322-8594

Draft Minutes for Public Meeting

Held October 20, 2006, at 8:30 a.m.
2222 West Encanto Blvd., Suite 350, Phoenix, Arizona

Board Members
Mike LeHew, Department of Economic Security, Chair
Kim Pipersburgh, Department of Health Services, Vice Chair
Alvin Vasicek, Administrative Office of the Courts
Rachell Tucker, Department of Education
Arthur W. Baker, Department of Juvenile Corrections

Executive Director
Dennis Seavers

CALL TO ORDER AND ROLL CALL

Mr. LeHew called the meeting to order at 9:10 a.m. The following Board members were present: Mike LeHew, Kim Pipersburgh, Alvin Vasicek, Rachell Tucker, and Arthur W. Baker. No Board members were absent.

CALL TO THE PUBLIC

Mr. LeHew made a call to the public. The following members of the public were present: Amber O'Dell, Arizona State Senate; Mike Timmerman, Arizona Department of Public Safety; Rand Rosenbaum, Administrative Office of the Courts; and Alice Finn Gartell, Arizona Education Association ("AEA") Legal Services Program.

Mr. LeHew allowed Ms. Gartell to speak about the Board's proposed legislation. She explained that her comments were based largely on feedback about the proposal from attorneys that provide legal services to AEA members. Ms. Gartell said that AEA understood the need for the

majority of the Board's proposed changes; but AEA felt that certain proposed changes would be problematic.

The first issue Ms. Gartell identified was the Board's proposal to move the offense of child neglect from the nonappealable to the appealable list of offenses.[1] Although she believed that child neglect was a serious crime, she thought that particular examples of child neglect might not be sufficiently serious to warrant an absolute prohibition on a fingerprint clearance card. She also claimed that child neglect is, in some instances, designated a misdemeanor. She added that crimes such as endangerment could be more serious offenses, but these crimes are on the appealable list.

The second issue Ms. Gartell mentioned was the inclusion of certain offenses in the Board's proposal that she did not think were sufficiently serious to cause the denial or suspension of a fingerprint clearance card. Specifically, she believed that possession of burglary tools and possession of drug paraphernalia should not be added.

The third issue pertained to time limits on precluding offenses. She provided examples of teachers who had to request a good cause exception from the Board because of minor offenses that the teachers committed many years ago or in a different cultural climate. She suggested that these teachers were not individuals who could pose a threat to vulnerable populations. Ms. Gartell said that a time limit would prevent applicants from having to go through a burdensome process that, in her opinion, would waste the Board's time. She tentatively suggested a time limit of 20 years.

The final issue Ms. Gartell presented had to do with offenses involving domestic violence. Under current law, the category of offenses involving domestic violence appears on the list of appealable offenses. She argued that isolated incidences of domestic violence should not prohibit a teacher from working. She compared isolated incidents of domestic violence to single cases of driving under the influence, where the person who commits the crime normally is a law-abiding citizen who otherwise poses no threat to vulnerable citizens.

APPROVAL OF MINUTES

Ms. Pipersburgh moved that the Board adopt the minutes from its meeting on September 22, 2006, and Mr. Vasicek seconded. The motion passed, 5-0.

[1] The term "appealable offenses" is a shorthand reference to the crimes that appear in A.R.S. § 41–1758.03(C). These are offenses where the applicant's fingerprint clearance card is denied or suspended, but where the applicant is eligible to request a good cause exception from the Board. The term "nonappealable offenses" is a shorthand reference to the crimes that appear in A.R.S. § 41–1758.03(B). These are offenses where the applicant's fingerprint clearance card is denied or suspended, and the applicant is not eligible to request a good cause exception.

LEGISLATION

Mr. LeHew asked whether each of the Departments represented on the Board had feedback on the proposed legislation. Mr. Baker stated that the Arizona Department of Juvenile Corrections would prefer to see all misdemeanor crimes eliminated from A.R.S. § 41–1758.03. Ms. Pipersburgh, Ms. Tucker, and Mr. Vasicek said that their respective agencies support the legislative proposal.

Mr. Seavers mentioned that there were two changes in the publicized legislative proposal that differed from the proposal that the Board approved. The first change was a minor alteration to one of the Board's statutes, A.R.S. § 41–619.53. Mr. Seavers explained that this change remedies contradictory language in the Board's statutes.[2] He said that the change would not affect Board operations; the Board would already be introducing legislation, which would provide an opportunity to fix the statute. The second change was to move the offense of negligent homicide from the nonappealable list, as the Board originally proposed, to the appealable list. Mr. Seavers explained that A.R.S. § 13–1102 designates negligent homicide a class four felony. However, A.R.S. § 13–1103 designates manslaughter, currently in the appealable list, a class two felony. At Mr. LeHew's request, Mr. Seavers placed negligent homicide in the appealable list when he published the Board's legislative proposal.

Mr. Baker noted that law enforcement agencies choose between negligent homicide and manslaughter based on the plea agreements they develop. He believed that both offenses should be on the appealable list.

Mr. Seavers referred the Board to public comments submitted by the Arizona Department of Public Safety (see Attachment 1) and a southern Arizona affiliate of the AEA (see Attachment 2).

Mr. Baker requested that Mr. Seavers speak with the Board's assistant attorney general about the legality of holding applicants responsible in administrative proceedings for offenses for which they have already been cleared.

Mr. Seavers asked the Board to approve a draft form of the legislation so that he could pursue sponsorship of the legislation as soon as possible. Mr. Seavers suggested that the Board, in deciding on a draft form, may want to decide whether to make any changes to the initial legislative proposal based on public comments.

Mr. Vasicek said that he would need to clear with his agency any changes that the Board makes to the initial proposal. Mr. Baker concurred and suggested that the Board determine what aspects of the proposal had consensus what aspects required further consultation with members' respective agencies.

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[2] A.R.S. § 41–619.53(A)(2) states, "The board *shall* appoint a hearing officer to determine good cause exceptions" (emphasis added). However, A.R.S. § 41–619.55(A) states, "The board *or* its hearing officer shall determine good cause exceptions" (emphasis added).

Mr. Baker made a motion to authorize the Board's executive director to pursue sponsorship of the legislative proposal in revised form, as represented in Attachment 3, and to ask the executive director to submit in writing a summary of the issues still under consideration—specifically, child neglect; criminal offenses under title 13, chapter 23, of Arizona Revised Statutes; offenses involving domestic violence; possession of burglary tools; possession of drug paraphernalia; and grandfathering previous recipients of a good cause exception—for the members to consider and decide on at a future meeting. Mr. Vasicek seconded the motion, which passed, 5-0.

EXECUTIVE DIRECTOR'S REPORT

Mr. Seavers referred the Board members to the report on the first-quarter expenditures for fiscal year ("FY") 2007 (see Attachment 4).

Mr. Vasicek asked about the status of the plans to move to a new office location. Mr. Seavers said that the real estate broker has provided several possible locations and that he and Mr. LeHew would be looking at the locations in the near future.

Mr. Seavers referred the Board members to the report on the first-quarter data for the Board's FY 2007 strategic plan and performance measures (see Attachment 5).

Mr. Vasicek asked whether hiring the new hearing officer would reduce the average time between an expedited review and a hearing. Mr. Vasicek noted that the average number of days for that part of the application process had increased from FY 2005 to FY 2006. Mr. Seavers replied that there would be some reduction, but the primary reduction in time would be between the hearing and the Board's final decision.

Mr. LeHew asked what could be done to improve the percent of applications complete on initial submission. Mr. Seavers said that he believed the Board's new Web site would provide information that would help applications submit complete applications initially.

Mr. Seavers reported on the Board's rulemaking activity. He said that the Board's recently proposed rules would be published the following week in the *Arizona Administrative Register*. Following the publication, there would be a 30-day period for public comments. Mr. Seavers said he would share the comments with the Board for its consideration, and the Board would decide on the final form of the proposed rules.

CHAIR'S REPORT

Mr. LeHew thanked Mr. Vasicek and Ms. Tucker for their service on the Board. Mr. LeHew announced that Mr. Rosenbaum would be replacing Mr. Vasicek as the Board member representing the Administrative Office of the Courts.

ADJOURNMENT

Mr. Baker made a motion to adjourn the meeting, and Ms. Tucker seconded. The motion passed, 5-0. Mr. LeHew adjourned the meeting at 10:46 a.m.

Minutes approved on _____

_____
Dennis Seavers, Executive Director

LEGISLATIVE PROPOSAL COMMENTS FROM THE AZ DEPARTMENT OF PUBLIC SAFETY

- Precluding offense #55 currently reads "A criminal offense involving organized crime and fraud under title 13, chapter 23'. We suggest that precluding offense #55 be changed to read: "Any offense listed under title 13, chapter 23".

Rationale: Computer systems related offenses were added to this chapter. Examples are "Computer Tampering", "Unauthorized release of proprietary or confidential computer security information" and "Unlawful possession of an access device". Recently Department of Economic Security Information Technology (IT) personnel were added to the list of persons who require a Fingerprint Clearance Card. The way this precluding offense is worded today, DPS could not deny a clearance card for a conviction for any of the examples listed above unless we could prove they involved organized crime or fraud. For example, if a DES IT person gets mad because he was passed over for promotion so he intentionally corrupts a critical DES software application and is arrested under section 13-2316 (computer tampering) DPS could do nothing. DPS has received legal advice that we could not suspend this person's clearance card because it involved neither organized crime nor fraud. By changing the wording of precluding offense #55 we could deny or suspend clearance cards for these computer systems related offenses.

- We suggest that moving section 13-3619, child neglect, from being appealable to nonappealble not be done.

Rationale: Child Abuse is always designated as a felony and is currently on the nonappealble list of offenses. All the other offenses on the nonappealble list of offenses are designated as felonies. Child Neglect is always designated as a misdemeanor. The department's thoughts are that anyone convicted of a misdemeanor offense should have the right to request an administrative hearing by the AZ Board of Fingerprinting.

- The department strongly supports adding Sexual Abuse and Luring a Minor for Sexual Exploitation to the list of precluding offenses.

Rationale: As to Sexual Abuse, today DPS can only deny or suspend a clearance card if the victim was a minor or a person classified as a vulnerable adult as defined in section 13-3623.E.6. DPS has had cases where the person was convicted of sexual abuse but because the victim had reached the age of 18 and was not classified as a vulnerable adult DPS could not use those convictions to either deny or suspend the clearance card. As to Luring a Minor for Sexual Exploitation the same applies. We have seen convictions for this offense but could not use them because this offense is currently not on the precluding offense lists.

- If asked, the department would not oppose setting time limit caps on certain non-violent precluding offenses. The department requests that the board reconsider this issue.

Dennis Seavers

From: Dennis Seavers [dennis.seavers@azbof.gov]
Sent: Monday, October 16, 2006 3:21 PM
To: AMPHI.EA@ARIZONAEA.ORG
Cc: NELL.PEDERSON@ARIZONAEA.ORG
Subject: Re: RE: Notice of meeting - Board of Fingerprinting

Thank you for sharing your comments and concerns. I will be sure to pass them on to the Board.

I wanted to make sure I understood one of your concerns. You are concerned that, if the proposed legislation passes, the following situation could arise. Suppose a fingerprint-clearance-card applicant got a good cause exception from the Board in 2005. The applicant's card originally was denied by DPS because of a shoplifting charge. The applicant also had a drug paraphernalia conviction; but, since possession of drug paraphernalia would not have been a precluding offense in 2005, that charge was not the basis of DPS' denial. You are concerned, as I understand your comments, that in 2011, when the fingerprint clearance card would expire, the applicant's application for a new card would be denied because of the drug paraphernalia offense, which at that time would be a precluding offense. Although the Board may have considered it in the 2005 good cause exception application, you are worried that the applicant would have to get another good cause exception because of the "
new" precluding offense: possession of drug paraphernalia. Do I understand you correctly?

If I understood you correctly, would any provisions to grandfather current cardholders alleviate your concerns? I can't say that the Board would propose a grandfather clause, but I could raise the issue. I would assume that any grandfather clause would NOT apply to a nonappealable offense. For instance, I doubt the Board would support a clause to grandfather applicants who have committed sexual abuse or luring a minor for sexual exploitation--although, again, I would raise the issue with the Board.

Please feel free to write me at this e-mail address with any further comments. In particular, please let me know if I correctly understood some of your concerns. You can also reach me by mobile phone at 480-388-1719.

Dennis

----- Original Message -----
From: AMPHI.EA@ARIZONAEA.ORG
Date: Monday, October 16, 2006 2:50 pm
Subject: RE: Notice of meeting - Board of Fingerprinting
To: dennis.seavers@azbof.gov
Cc: NELL.PEDERSON@ARIZONAEA.ORG

> Dennis,
> Thanks for allowing me the opportunity to offer feedback regarding the
> proposed changes to the fingerprint clearance card process. I want to
> first say that I understand the importance of keeping our children
> safeand also acknowledge that fingerprinting is a way to assure the
> publicthat our children are in good hands. With that said, I must
> express my concern with the length of time the process takes. Now,
> that the list may be expanded, it may be safe to assume that it will
> take even longer.If a person has been granted a good cause exception
> in the past for an appeal able offense and has no other record of
> wrong-doing, it seems very inefficient for them to have to apply for a
> good cause exception over and over again. This is very hard on school
> districts waiting to clear their employees and very hard on our
> students who are waiting fortheir regular teacher. Their class is
> being taught by a substitute that may or may not have any expertise in
> the subject matter. In our district, two of our teachers had to apply
> for a good cause exception and one is still waiting for his appeal
> hearing. Both had offenses thatwere more than 32 years ago. Another

> teacher was new to us from Washington. Washington is one of 19 states
> that share reciprocity
> withAZ. Our district expected him to receive a provisional
> certificate per
> the reciprocity process. He did not and was not able to start his
> employment until after September 18. There has got to be an easier
> andmore efficient way. Thank you for allowing me to comment.
> Rhonda Ball
>
>
> Rhonda Ball President
> 6873 N. Oracle
> Tucson, AZ 85704
> (520) 888-1991
>
> _____
>
> From: Dennis Seavers [mailto:dennis.seavers@azbof.gov]
> Sent: Wednesday, October 11, 2006 8:36 AM
> To: Dennis Seavers
> Subject: Notice of meeting - Board of Fingerprinting
>
> The Board of Fingerprinting will be holding a public meeting on
> Friday,October 20, 2006, at 8:30 a.m. (Please note that the meeting
> will not begin before 8:30 but may begin later.) I have attached the
> agenda, which is also available on the Board's Web site.
>
> REMINDER: October 16, 2006, is the deadline for submitting comments on
> the Board's legislative proposal. For a copy of the proposal, please
> visit the Board's Web site, or download the PDF file directly with the
> following link: http://www.azbof.gov/news/20060926-001/proposal.pdf.
> Comments should be sent to me directly by e-mail, by fax (602-322-
> 8594),or by mail (Mail Code 185, P.O. Box 6129, Phoenix, AZ 85005-
> 6129). If you mail your comments, please send them with enough time
> to arrive by October 16.
>
> A full list of notices of and minutes from Board meetings is available
> at the following link:
> http://www.azbof.gov/meetings.htm
>
> Dennis Seavers
> Executive Director, Arizona Board of Fingerprinting www.azbof.gov
> <http://www.azbof.gov/>
>
> You are on this e-mail list because you have indicated that you would
> like to receive announcements from the Board of Fingerprinting. If
> youwould like to be removed from this list at any time, please reply
> to this e-mail or write to dennis.seavers@azbof.gov, or call 602-322-
> 8593.

41-619.53. Board of fingerprinting; powers and duties; personnel; liability

A. The board of fingerprinting shall:

1. Determine good cause exceptions pursuant to section 41-619.55. The board ~~shall~~ MAY appoint a hearing officer to determine good cause exceptions.

2. Adopt rules to implement this article, including rules to establish good cause exceptions for the issuance of fingerprint clearance cards pursuant to section 41-1758.03. This rule making is exempt from the requirements of chapter 6 of this title.

3. Administer and enforce this article and rules adopted pursuant to this article.

4. Furnish a copy of its rules, on request, to all applicants who petition the board for a good cause exception pursuant to section 41-1758.03 and, on request, to licensees, contract providers and state agencies.

5. Establish fees.

B. If the board or its hearing officer grants a good cause exception, the board shall request in writing that the department of public safety issue a card to the applicant. If the board grants a good cause exception, the board's decision must be unanimous.

C. The board may employ clerical, professional and technical personnel subject to fee monies that are collected and to the budget that is approved by the board members and shall prescribe personnel duties and determine personnel compensation.

D. Members and employees of the board are not liable for acts done or actions taken by any board member or employee if the members or employees act in good faith following the requirements of this article.

41-1758.03. Fingerprint clearance cards; issuance; immunity

A. On receiving the state and federal criminal history record of a person, the division shall compare the record with the list of criminal offenses that preclude the person from receiving a fingerprint clearance card. If the person's criminal history record does not contain any of the offenses listed in subsections B and C of this section, the division shall issue the person a fingerprint clearance card.

B. A person who is subject to registration as a sex offender in this state or any other jurisdiction or who is awaiting trial on or who has been convicted of committing or attempting, SOLICITING, FACILITATING or conspiring to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction is precluded from receiving a fingerprint clearance card:

1. Sexual abuse of a minor.

2. Sexual abuse of a vulnerable adult.

3. Incest.

4. First or second degree murder.

5. Sexual assault.

6. Sexual exploitation of a minor.

7. Sexual exploitation of a vulnerable adult.

8. Commercial sexual exploitation of a minor.

9. Commercial sexual exploitation of a vulnerable adult.

10. Child prostitution as prescribed in section 13-3212.

11. Child abuse.

12. Abuse of a vulnerable adult.

13. Sexual conduct with a minor.

14. Molestation of a child.

15. Molestation of a vulnerable adult.

16. A dangerous crime against children as defined in section 13-604.01.

17. Exploitation of minors involving drug offenses.

18. Taking a child for the purposes of prostitution as prescribed in section 13-3206.

19. Neglect or abuse of a vulnerable adult.

20. SEX TRAFFICKING.

21. SEXUAL ABUSE.

22. PRODUCTION, PUBLICATION, SALE, POSSESSION AND PRESENTATION OF OBSCENE ITEMS.

23. FURNISHING HARMFUL ITEMS TO MINORS.

24. FURNISHING HARMFUL ITEMS TO MINORS BY INTERNET ACTIVITY.

25. OBSCENE OR INDECENT TELEPHONE COMMUNICATION TO MINORS FOR COMMERICAL PURPOSES.

26. LURING A MINOR FOR SEXUAL EXPLOITATION.

C. A person who is awaiting trial on or who has been convicted of committing or attempting, SOLICITING, FACILITATING, or conspiring to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction is precluded from receiving a fingerprint clearance card, except that the person may petition the board of fingerprinting for a good cause exception pursuant to section 41-619.55:

1. Manslaughter.

2. Endangerment.

3. Threatening or intimidating.

4. Assault.

5. Unlawfully administering intoxicating liquors, narcotic drugs or dangerous drugs.

6. Assault by vicious animals.

7. Drive by shooting.

8. Assaults on officers or fire fighters.

9. Discharging a firearm at a structure.

10. Indecent exposure.

11. Public sexual indecency.

12. Aggravated criminal damage.

13. Theft.

14. Theft by extortion.

15. Shoplifting.

16. Forgery.

17. Criminal possession of a forgery device.

18. Obtaining a signature by deception.

19. Criminal impersonation.

20. Theft of a credit card or obtaining a credit card by fraudulent means.

21. Receipt of anything of value obtained by fraudulent use of a credit card.

22. Forgery of a credit card.

23. Fraudulent use of a credit card.

24. Possession of any machinery, plate or other contrivance or incomplete credit card.

25. False statement as to financial condition or identity to obtain a credit card.

26. Fraud by persons authorized to provide goods or services.

27. Credit card transaction record theft.

28. Misconduct involving weapons.

29. Misconduct involving explosives.

30. Depositing explosives.

31. Misconduct involving simulated explosive devices.

32. Concealed weapon violation.

33. Enticement of any persons for purposes of prostitution.

34. Procurement by false pretenses of any person for purposes of prostitution.

35. Procuring or placing persons in a house of prostitution.

36. Receiving earnings of a prostitute.

37. Causing one's spouse to become a prostitute.

38. Detention of persons in a house of prostitution for debt.

39. Keeping or residing in a house of prostitution or employment in prostitution.

40. Pandering.

41. Transporting persons for the purpose of prostitution or other immoral purposes.

42. Possession and sale of peyote.

43. Possession and sale of a vapor-releasing substance containing a toxic substance.

44. Sale of precursor chemicals.

45. Possession, use or sale of marijuana, dangerous drugs or narcotic drugs.

46. Manufacture or distribution of an imitation controlled substance.

47. Manufacture or distribution of an imitation prescription-only drug.

48. Manufacture or distribution of an imitation over-the-counter drug.

49. Possession or possession with intent to use an imitation controlled substance.

50. Possession or possession with intent to use an imitation prescription-only drug.

51. Possession or possession with intent to use an imitation over-the-counter drug.

52. Manufacture of certain substances and drugs by certain means.

53. Adding poison or other harmful substance to food, drink or medicine.

54. A criminal offense involving criminal trespass and burglary under title 13, chapter 15.

55. A criminal offense involving organized crime and fraud under title 13, chapter 23.

56. Child neglect.

56. Misdemeanor offenses involving contributing to the delinquency of a minor.

57. Offenses involving domestic violence.

58. Arson.

59. Kidnapping.

60. Felony offenses involving sale, distribution or transportation of, offer to sell, transport or distribute or conspiracy to sell, transport or distribute marijuana, dangerous drugs or narcotic drugs.

61. Robbery.

62. Aggravated assault.

63. Felony offenses involving contributing to the delinquency of a minor.

64. NEGLIGENT HOMICIDE.

66. CRIMINAL DAMAGE.

67. MISAPPROPRIATION OF CHARTER SCHOOL MONIES.

68. TAKING IDENTITY OF ANOTHER PERSON.

69. AGGRAVATED TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY.

70. TRAFFICKING IN THE IDENTITY OF ANOTHER PERSON OR ENTITY.

71. CRUELTY TO ANIMALS.

72. PROSTITUTION.

74. SALE OR DISTRIBUTION OF MATERIAL HARMFUL TO MINORS THROUGH VENDING MACHINES.

75. PORTRAYING ADULT AS A MINOR.

76. ADMITTING MINORS TO PUBLIC DISPLAYS OF SEXUAL CONDUCT.

77. WELFARE FRAUD.

D. A person who is awaiting trial on or who has been convicted of committing or attempting or conspiring to commit a violation of section 28-1381, 28-1382 or 28-1383 in this state or the same or similar offense in another state or jurisdiction within five years from the date of applying for a fingerprint clearance card is precluded from driving any vehicle to transport employees or clients of the employing agency as part of the person's employment. The division shall place a notation on the fingerprint clearance card that indicates this driving restriction. This subsection does not preclude a person from driving a vehicle alone as part of the person's employment.

E. Notwithstanding subsection C of this section, on receiving written notice from the board of fingerprinting that a good cause exception was granted pursuant to section 41-619.55, the division shall issue a fingerprint clearance card to the person.

F. If the division denies a person's application for a fingerprint clearance card pursuant to subsection C of this section and a good cause exception is requested pursuant to section 41-619.55, the division shall release, on request by the board of fingerprinting, the person's criminal history record to the board of fingerprinting.

G. A person shall be granted a fingerprint clearance card if either of the following applies:

1. An agency granted a good cause exception before August 16, 1999 and no new precluding offense is identified. The fingerprint clearance card shall specify only the program that granted the good cause exception. On the request of the applicant, the agency that granted the prior good cause exception shall notify the division in writing of the date on which the prior good cause exception was granted and the date of the conviction and the name of the offense for which the good cause exception was granted.

2. The board granted a good cause exception and no new precluding offense is identified. The fingerprint clearance card shall specify the programs for which the board granted the good cause exception.

H. The licensee or contract provider shall assume the costs of fingerprint checks and may charge these costs to persons required to be fingerprinted.

I. A person who is under eighteen years of age or who is at least ninety-nine years of age is exempt from the fingerprint clearance card requirements of this section. At all times the person shall be under the direct visual supervision of personnel who have valid fingerprint clearance cards.

J. The division may conduct periodic state criminal history records checks for the purpose of updating the clearance status of current fingerprint clearance card holders and may notify the board of fingerprinting and the agency employing the person of the results of the records check.

K. The division shall revoke a person's fingerprint clearance card on receipt of a written request for revocation from the board of fingerprinting pursuant to section 41-619.55.

L. The division shall not issue a fingerprint clearance card to a person if the division cannot determine, within thirty business days after receipt of the person's state and federal criminal history record information, whether the person is awaiting trial on or has been convicted of committing any of the offenses listed in subsection B or C of this section. If the division is unable to make the determination required by this section and does not issue a fingerprint clearance card to a person, the person may request a good cause exception pursuant to section 41-619.55.

M. If after conducting a state and federal criminal history record check the division determines that it is not authorized to issue a fingerprint clearance card to a person, the division shall notify the agency that licenses or employs the person that the division is not

authorized to issue a fingerprint clearance card. This notice shall include the criminal history information on which the denial was based. This criminal history information is subject to dissemination restrictions pursuant to section 41-1750 and Public Law 92-544.

N. The division is not liable for damages resulting from:

1. The issuance of a fingerprint clearance card to a person who is later found to have been ineligible to receive a fingerprint clearance card at the time the card was issued.

2. The denial of a fingerprint clearance card to a person who is later found to have been eligible to receive a fingerprint clearance card at the time issuance of the card was denied.

O. The issuance of a fingerprint clearance card does not entitle a person to employment.

Arizona Board of Fingerprinting
Budget vs. Actual
Fiscal Year 2006, Quarter 1

Minutes, 10/20/2006
ATTACHMENT 4

	TOTAL			
	Jul - Sep 06	Budget	$ Over Budget	% of Budget
Income				
4900 - Transfers In				
4901 - Operating Transfers In	-	90,000.00	(90,000.00)	0.00%
Total 4900 - Transfers In	-	90,000.00	(90,000.00)	0.00%
FY06 Carryover	561,750.30	561,750.30	-	100.00%
Total Income	561,750.30	651,750.30	(90,000.00)	86.19%
Expense				
6000 - Personal Services				
6010 - Basic Compensation				
6011 - Regular Base Salary	31,801.64	35,602.89	(3,801.25)	89.32%
Total 6010 - Basic Compensation	31,801.64	35,602.89	(3,801.25)	89.32%
6030 - Exception Compensation				
6028 - 2.5% Performance Pay	878.66	890.07	(11.41)	98.72%
Total 6030 - Exception Compensation	878.66	890.07	(11.41)	98.72%
6040 - Leave Compensation				
6041 - Annual Leave	2,266.91			
6042 - Sick Leave	737.28			
6047 - Annual Leave Payout	754.68			
6048 - Holiday Leave Taken	1,080.86			
Total 6040 - Leave Compensation	4,839.73			
Total 6000 - Personal Services	37,520.03	36,492.96	1,027.07	102.81%
6100 - ERE				
6110 - Insurance				
6111 - FICA	2,827.97	2,670.22	157.75	105.91%
6113 - Medical Insurance	2,790.72	5,985.00	(3,194.28)	46.63%
6114 - Basic Life	33.84	32.43	1.41	104.35%
6116 - Long-term Disability	183.78	178.01	5.77	103.24%
6117 - Unemployment Insurance	58.47	53.40	5.07	109.49%
6118 - Dental Insurance	248.65	316.17	(67.52)	78.64%
6119 - Worker's Compensation	183.78	178.01	5.77	103.24%
Total 6110 - Insurance	6,327.21	9,413.24	(3,086.03)	67.22%
6150 - Retirement Plan Payments				
6155 - ASRS	3,054.89	3,061.85	(6.96)	99.77%
Total 6150 - Retirement Plan Payments	3,054.89	3,061.85	(6.96)	99.77%
6180 - Other ERE				
6183 - Personal Services	397.48	356.03	41.45	111.64%
6185 - GITA Charge	49.00	53.40	(4.40)	91.76%
6186 - Atty. Gen. Pro Rate Chg.	238.26	226.08	12.18	105.39%
6189 - Sick Leave Accumulation	150.07	142.41	7.66	105.38%
Total 6180 - Other ERE	834.81	777.92	56.89	107.31%

Arizona Board of Fingerprinting
Budget vs. Actual
Fiscal Year 2006, Quarter 1

Minutes, 10/20/2006
ATTACHMENT 4

	TOTAL			
	Jul - Sep 06	Budget	$ Over Budget	% of Budget
Total 6100 - ERE	10,216.91	13,253.01	(3,036.10)	77.09%
6200 - Prof. & Outside Services				
6210 - Financial Services				
6211 - Bond Issuance Cost	343.75	343.75	-	100.00%
Total 6210 - Financial Services	343.75	343.75	-	100.00%
6270 - Education & Training				
6271 - Education & Training	32.00	32.00	-	100.00%
Total 6270 - Education & Training	32.00	32.00	-	100.00%
6290 - Other Prof. & Out. Svcs.				
6299 - Other Prof. & Out. Svcs.	-	15,000.00	(15,000.00)	0.00%
Total 6290 - Other Prof. & Out. Svcs.	-	15,000.00	(15,000.00)	0.00%
Total 6200 - Prof. & Outside Services	375.75	15,375.75	(15,000.00)	2.44%
7000 - Other Operating				
7150 - IT Services				
7153 - Internal Svc. Data Proc.	1,174.58	1,600.00	(425.42)	73.41%
7172 - External Comm. Long Dist	1,755.90	1,250.00	505.90	140.47%
7179 - Other External Comm.	778.03	1,000.00	(221.97)	77.80%
Total 7150 - IT Services	3,708.51	3,850.00	(141.49)	96.33%
7200 - Rental Expenditures				
7221 - Rental of Land & Bldgs.	-	14,030.04	(14,030.04)	0.00%
7229 - Miscellaneous Rent	-	200.00	(200.00)	0.00%
Total 7200 - Rental Expenditures	-	14,230.04	(14,230.04)	0.00%
7250 - Repair & Maintenance				
7266 - Repair/Maint-Other Equip	-	90.00	(90.00)	0.00%
Total 7250 - Repair & Maintenance	-	90.00	(90.00)	0.00%
7300 - Operating Supplies				
7321 - Office Supplies	1,190.62	1,500.00	(309.38)	79.38%
Total 7300 - Operating Supplies	1,190.62	1,500.00	(309.38)	79.38%
7480 - Postage & Delivery				
7481 - Postage & Delivery	2,539.97	2,500.00	39.97	101.60%
Total 7480 - Postage & Delivery	2,539.97	2,500.00	39.97	101.60%
7500 - Miscellaneous Operating				
7541 - Books, Subscr., & Pubs.	511.51	300.00	211.51	170.50%
Total 7500 - Miscellaneous Operating	511.51	300.00	211.51	170.50%
Total 7000 - Other Operating	7,950.61	22,470.04	(14,519.43)	35.38%
8500 - Non-capital Equipment				

Arizona Board of Fingerprinting

Budget vs. Actual

Fiscal Year 2006, Quarter 1

Minutes, 10/20/2006
ATTACHMENT 4

	TOTAL			
	Jul - Sep 06	**Budget**	**$ Over Budget**	**% of Budget**
8550 - EDP Equip PC/LAN Non-cap				
8551 - EDP Equip. Non-cap Purch	-	2,500.00	(2,500.00)	0.00%
Total 8550 - EDP Equip PC/LAN Non-cap	-	2,500.00	(2,500.00)	0.00%
8570 - Other Equip. - Non-cap.				
8571 - Other Equip. - Non-cap.	805.25			
Total 8570 - Other Equip. - Non-cap.	805.25			
8580 - Non-capitalized Software				
8583 - PC/LAN Software Non-cap.	95.63	1,000.00	(904.37)	9.56%
Total 8580 - Non-capitalized Software	95.63	1,000.00	(904.37)	9.56%
Total 8500 - Non-capital Equipment	900.88	3,500.00	(2,599.12)	25.74%
9100 - Transfers out				
9101 - Operating Transfers Out	10,253.00	10,254.00	(1.00)	99.99%
Total 9100 - Transfers out	10,253.00	10,254.00	(1.00)	99.99%
Total Expense	67,217.18	101,345.76	(34,128.58)	66.33%
Net Income	**494,533.12**	**550,404.54**	**(55,871.42)**	**89.85%**

Arizona Board of Fingerprinting
Fiscal Year 2007 Strategic Plan
July 1 to September 30, 2006

Goal 1. To make fair and consistent determinations on good cause exceptions

Performance measure	FY05 Actual	FY06 Actual	FY07 Estimate	FY07 Actual			
				Q1	Q2	Q3	Q4
Percent of investigator recommendations for expedited reviews accepted	85.80%	97.01%	98.00%	97.07%			
Percent of applications approved	80.71%	65.29%	70.00%	83.53%			
Percent of approvals by expedited review	57.20%	72.85%	70.00%	85.66%			
Percent of approvals by administrative hearing	42.80%	27.15%	30.00%	14.34%			

Goal 2. To provide applicants with timely decisions on their good cause exception applications

Performance measure	FY05 Actual	FY06 Actual	FY07 Estimate	FY07 Actual			
				Q1	Q2	Q3	Q4
Number of applications received	1,531	1,770	2,046	500			
Number of applications disposed	1,492	1,769	2,046	334			
Ratio of cases opened to cases closed	1:.97	1:1	1:1	1:.67			
Average number of days to dispose	79.07	81.89	70.00	79.01			
Average number of days spent processing application	54.37	55.31	47.00	50.10			

Average number of days spent processing application from receipt to expedited review	17.83	43.5	35.00	18.82			
Percent of applications that undergo an expedited review within 20 days (processing time)	73.03%	72.86%	80.00%	63.61%			
Average days from expedited review to hearing	52.59	64.22	55.00	57.33			
Percent of applications heard within 60 days of expedited review	70.99%	42.42%	60.00%	66.67%			
Percent of applications decided within 60 days of hearing	91.08%	67.83%	75.00%	43.59%			

Goal 3. To develop fair and comprehensible rules, policies, and procedures for determining good cause exceptions

Performance measure	FY05 Actual	FY06 Actual	FY07 Estimate	FY07 Actual			
				Q1	Q2	Q3	Q4
Number of requests received	2,844	3,020	3,207	809			
Ratio of requests for good cause exceptions to applications submitted	1:.54	1:.59	1:.64	1:.62			
Percent of applications complete on initial submission	53.35%	37.42%	45.00%	48.80%			

Arizona Board of Fingerprinting

Memo

TO: Board members and alternates

FROM: Dennis Seavers

C: Rand Rosenbaum

DATE: October 23, 2006

SUBJECT: Legislation for 2007 Session

At its October 20, 2006, public meeting, the Board adopted proposed legislation, which is attached. This legislation had unanimous support from the Board members. The Board also left open for a future decision elements of the initial draft of the legislative proposal, as well as suggestions made in public comments. The Board determined that it would decide at a later meeting whether to include these elements in the legislation.

The Board requested that I describe these elements of the proposal and summarize the rationales for including and not including them in the legislative proposal. (Please note that these rationales come from public comments on the proposed legislation and may not represent my own views.)

Although time limits for precluding offenses were discussed at the Board's meeting, this memo does not address them.

1. Child neglect

The Board's initial draft of the legislation proposed to move the crime of child neglect from the appealable to the nonappealable offenses.[1] However, two organizations—the Arizona Education Association ("AEA") and the Arizona Department of Public Safety ("DPS")—requested that the Board not pursue this change.

DPS

DPS commented that child neglect is always designated a misdemeanor. In contrast, child abuse, which is currently on the nonappealable list, is always designated a felony. Furthermore, all other offenses on the nonappealable list are designated felonies. DPS believes that anyone convicted of a misdemeanor offense should have recourse to a good cause exception.

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[1] The term "appealable offenses" is a shorthand reference to the crimes that appear in A.R.S. § 41–1758.03(C). These are offenses where the applicant's fingerprint clearance card is denied or suspended, but where the applicant is eligible to request a good cause exception from the Board. The term "nonappealable offenses" is a shorthand reference to the crimes that appear in A.R.S. § 41–1758.03(B). These are offenses where the applicant's fingerprint clearance card is denied or suspended, and the applicant is not eligible to request a good cause exception.

AEA

The AEA argued that particular examples of child neglect might not be sufficiently serious to warrant an absolute prohibition on a fingerprint clearance card. The AEA also added that crimes such as endangerment could be more serious offenses, but these crimes are on the appealable list.

2. Criminal offenses under Title 13, Chapter 23, of Arizona Revised Statutes

The Board's initial draft of the legislation made no changes to the appealable offense category that appears at A.R.S. § 41–1758.03(C)(55). Under current law, DPS must deny or suspend a fingerprint clearance card because of a conviction (or, in the case of a suspension, an arrest) for a "criminal offense involving organized crime and fraud under [A.R.S.] title 13, chapter 23." DPS proposed changing the language of A.R.S. § 41–1758.03(C)(55) to "Any offense listed under title 13, chapter 23."

DPS' rationale for the change was that offenses related to computer systems have been added to chapter 23. However, DPS may not be able to deny or suspend a fingerprint clearance card based on those offenses, unless DPS could demonstrate that the offenses involved organized crime or fraud. The new offenses include computer tampering (A.R.S. § 13–2316), unlawful possession of an access device (A.R.S. § 13–2316.01), and unauthorized release of proprietary or confidential computer security information (A.R.S. § 13–2316.02).

DPS provided a hypothetical example to demonstrate why the current wording in the statute should be changed. The Arizona Department of Economic Security ("DES") recently added information technology ("IT") personnel to the fingerprint clearance card system. If an IT employee of DES intentionally corrupts a critical DES software application because he is passed over for promotion, he might be charged with computer tampering. However, DPS could not suspend that employee's fingerprint clearance card. Changing the phrasing to "Any offense listed under title 13, chapter 23" would include these computer-systems-related crimes.

3. Offenses involving domestic violence

Under current law, offenses involving domestic violence are on the list of appealable offenses. The Board's legislative proposal does not address that provision. The AEA argued that isolated incidences of domestic violence should not prohibit a teacher from working. The AEA compared isolated incidents of domestic violence to single cases of driving under the influence, where the person who commits the crime normally is a law-abiding citizen who otherwise poses no threat to vulnerable citizens.

4. Possession of burglary tools

The Board's initial draft proposed to add possession of burglary tools (A.R.S. § 13–1505) to the list of appealable offenses. However, the AEA felt that the crime was not sufficiently serious to be added to the list.

5. Possession of drug paraphernalia

The Board's initial draft proposed to add possession of drug paraphernalia (A.R.S. § 13–3415) to the list of appealable offenses. However, the AEA felt that the crime was not sufficiently serious to be added to the list.

6. Grandfathering previous recipients of a good cause exception

The current proposal does not provide for any fingerprint-clearance-card holders to be grandfathered, a concern that the AEA raised. The following example may illustrate the issue. Suppose an individual was denied a fingerprint clearance card in 2005 because he was convicted for a January 1991 shoplifting offense. The person also had a conviction for a March 1989 arrest for welfare fraud. That person applied for a good cause exception. Aware of both offenses, the Board granted the person a good cause exception. In 2011, when the person's fingerprint clearance card expires, he applies for a new fingerprint clearance card. Would DPS have to deny the new application for a fingerprint clearance card because of the March 1989 offense of welfare fraud? Although the Board considered the offense when the person applied for a good cause exception in 2005, the offense may be considered "new" because it is an offense that was not precluding at the time the Board considered it.

Consider another example. An individual is denied a fingerprint clearance card in 2005 because she committed assault in September 1998. She applies for and is granted a good cause exception. In November 2006, she is arrested for and later convicted of possession of drug paraphernalia. Her card is not suspended because, at that time, the offense is not precluded by A.R.S. § 41–1758.03. But in 2011, when she applies for a new fingerprint clearance card, should her application be denied? Although the Board was not aware of the offense (which had not yet been committed) when it granted the good cause exception, perhaps she accepted a plea agreement based on her understanding that the conviction for possession of drug paraphernalia would not affect the status of her fingerprint clearance card.

Theoretically, individuals could have to seek a third good cause exception if this legislation were passed without a grandfathering clause. Many individuals who received a good cause exception for a class two card had to go through the good cause exception process again when those cards expired because the class-two designation no longer existed. This legislation could force them to seek another good cause exception when their current cards expire, if their records include the newly added offenses.

The Board may want to exercise great caution in this area. Although considering this issue is important, imprecise legislative language may cause problems. In particular, the Board may want to consider whether any language it adopts to grandfather current fingerprint-clearance-card holders would also grandfather individuals who committed new, nonappealable offenses, such as luring a minor for sexual exploitation. Furthermore, the Board may want to consider the range of seriousness among appealable offenses. While the Board may be inclined to grandfather current fingerprint-clearance-card holders who committed criminal damage, would the Board have the same inclination for perpetrators of negligent homicide?

41-619.53. Board of fingerprinting; powers and duties; personnel; liability

A. The board of fingerprinting shall:

1. Determine good cause exceptions pursuant to section 41-619.55. The board ~~shall~~ MAY appoint a hearing officer to determine good cause exceptions.

2. Adopt rules to implement this article, including rules to establish good cause exceptions for the issuance of fingerprint clearance cards pursuant to section 41-1758.03. This rule making is exempt from the requirements of chapter 6 of this title.

3. Administer and enforce this article and rules adopted pursuant to this article.

4. Furnish a copy of its rules, on request, to all applicants who petition the board for a good cause exception pursuant to section 41-1758.03 and, on request, to licensees, contract providers and state agencies.

5. Establish fees.

B. If the board or its hearing officer grants a good cause exception, the board shall request in writing that the department of public safety issue a card to the applicant. If the board grants a good cause exception, the board's decision must be unanimous.

C. The board may employ clerical, professional and technical personnel subject to fee monies that are collected and to the budget that is approved by the board members and shall prescribe personnel duties and determine personnel compensation.

D. Members and employees of the board are not liable for acts done or actions taken by any board member or employee if the members or employees act in good faith following the requirements of this article.

41-1758.03. Fingerprint clearance cards; issuance; immunity

A. On receiving the state and federal criminal history record of a person, the division shall compare the record with the list of criminal offenses that preclude the person from receiving a fingerprint clearance card. If the person's criminal history record does not contain any of the offenses listed in subsections B and C of this section, the division shall issue the person a fingerprint clearance card.

B. A person who is subject to registration as a sex offender in this state or any other jurisdiction or who is awaiting trial on or who has been convicted of committing or attempting, SOLICITING, FACILITATING or conspiring to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction is precluded from receiving a fingerprint clearance card:

1. Sexual abuse of a minor.

2. Sexual abuse of a vulnerable adult.

3. Incest.

4. First or second degree murder.

5. Sexual assault.

6. Sexual exploitation of a minor.

7. Sexual exploitation of a vulnerable adult.

8. Commercial sexual exploitation of a minor.

9. Commercial sexual exploitation of a vulnerable adult.

10. Child prostitution as prescribed in section 13-3212.

11. Child abuse.

12. Abuse of a vulnerable adult.

13. Sexual conduct with a minor.

14. Molestation of a child.

15. Molestation of a vulnerable adult.

16. A dangerous crime against children as defined in section 13-604.01.

17. Exploitation of minors involving drug offenses.

18. Taking a child for the purposes of prostitution as prescribed in section 13-3206.

19. Neglect or abuse of a vulnerable adult.

20. SEX TRAFFICKING.

21. SEXUAL ABUSE.

22. PRODUCTION, PUBLICATION, SALE, POSSESSION AND PRESENTATION OF OBSCENE ITEMS.

23. FURNISHING HARMFUL ITEMS TO MINORS.

24. FURNISHING HARMFUL ITEMS TO MINORS BY INTERNET ACTIVITY.

25. OBSCENE OR INDECENT TELEPHONE COMMUNICATION TO MINORS FOR COMMERICAL PURPOSES.

26. LURING A MINOR FOR SEXUAL EXPLOITATION.

C. A person who is awaiting trial on or who has been convicted of committing or attempting, SOLICITING, FACILITATING, or conspiring to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction is precluded from receiving a fingerprint clearance card, except that the person may petition the board of fingerprinting for a good cause exception pursuant to section 41-619.55:

1. Manslaughter.

2. Endangerment.

3. Threatening or intimidating.

4. Assault.

5. Unlawfully administering intoxicating liquors, narcotic drugs or dangerous drugs.

6. Assault by vicious animals.

7. Drive by shooting.

8. Assaults on officers or fire fighters.

9. Discharging a firearm at a structure.

10. Indecent exposure.

11. Public sexual indecency.

12. Aggravated criminal damage.

13. Theft.

14. Theft by extortion.

15. Shoplifting.

16. Forgery.

17. Criminal possession of a forgery device.

18. Obtaining a signature by deception.

19. Criminal impersonation.

20. Theft of a credit card or obtaining a credit card by fraudulent means.

21. Receipt of anything of value obtained by fraudulent use of a credit card.

22. Forgery of a credit card.

23. Fraudulent use of a credit card.

24. Possession of any machinery, plate or other contrivance or incomplete credit card.

25. False statement as to financial condition or identity to obtain a credit card.

26. Fraud by persons authorized to provide goods or services.

27. Credit card transaction record theft.

28. Misconduct involving weapons.

29. Misconduct involving explosives.

30. Depositing explosives.

31. Misconduct involving simulated explosive devices.

32. Concealed weapon violation.

33. Enticement of any persons for purposes of prostitution.

34. Procurement by false pretenses of any person for purposes of prostitution.

35. Procuring or placing persons in a house of prostitution.

36. Receiving earnings of a prostitute.

37. Causing one's spouse to become a prostitute.

38. Detention of persons in a house of prostitution for debt.

39. Keeping or residing in a house of prostitution or employment in prostitution.

40. Pandering.

41. Transporting persons for the purpose of prostitution or other immoral purposes.

42. Possession and sale of peyote.

43. Possession and sale of a vapor-releasing substance containing a toxic substance.

44. Sale of precursor chemicals.

45. Possession, use or sale of marijuana, dangerous drugs or narcotic drugs.

46. Manufacture or distribution of an imitation controlled substance.

47. Manufacture or distribution of an imitation prescription-only drug.

48. Manufacture or distribution of an imitation over-the-counter drug.

49. Possession or possession with intent to use an imitation controlled substance.

50. Possession or possession with intent to use an imitation prescription-only drug.

51. Possession or possession with intent to use an imitation over-the-counter drug.

52. Manufacture of certain substances and drugs by certain means.

53. Adding poison or other harmful substance to food, drink or medicine.

54. A criminal offense involving criminal trespass and burglary under title 13, chapter 15.

55. A criminal offense involving organized crime and fraud under title 13, chapter 23.

56. Child neglect.

56. Misdemeanor offenses involving contributing to the delinquency of a minor.

57. Offenses involving domestic violence.

58. Arson.

59. Kidnapping.

60. Felony offenses involving sale, distribution or transportation of, offer to sell, transport or distribute or conspiracy to sell, transport or distribute marijuana, dangerous drugs or narcotic drugs.

61. Robbery.

62. Aggravated assault.

63. Felony offenses involving contributing to the delinquency of a minor.

64. NEGLIGENT HOMICIDE.

66. CRIMINAL DAMAGE.

67. MISAPPROPRIATION OF CHARTER SCHOOL MONIES.

68. TAKING IDENTITY OF ANOTHER PERSON.

69. AGGRAVATED TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY.

70. TRAFFICKING IN THE IDENTITY OF ANOTHER PERSON OR ENTITY.

71. CRUELTY TO ANIMALS.

72. PROSTITUTION.

74. SALE OR DISTRIBUTION OF MATERIAL HARMFUL TO MINORS THROUGH VENDING MACHINES.

75. PORTRAYING ADULT AS A MINOR.

76. ADMITTING MINORS TO PUBLIC DISPLAYS OF SEXUAL CONDUCT.

77. WELFARE FRAUD.

D. A person who is awaiting trial on or who has been convicted of committing or attempting or conspiring to commit a violation of section 28-1381, 28-1382 or 28-1383 in this state or the same or similar offense in another state or jurisdiction within five years from the date of applying for a fingerprint clearance card is precluded from driving any vehicle to transport employees or clients of the employing agency as part of the person's employment. The division shall place a notation on the fingerprint clearance card that indicates this driving restriction. This subsection does not preclude a person from driving a vehicle alone as part of the person's employment.

E. Notwithstanding subsection C of this section, on receiving written notice from the board of fingerprinting that a good cause exception was granted pursuant to section 41-619.55, the division shall issue a fingerprint clearance card to the person.

F. If the division denies a person's application for a fingerprint clearance card pursuant to subsection C of this section and a good cause exception is requested pursuant to section 41-619.55, the division shall release, on request by the board of fingerprinting, the person's criminal history record to the board of fingerprinting.

G. A person shall be granted a fingerprint clearance card if either of the following applies:

1. An agency granted a good cause exception before August 16, 1999 and no new precluding offense is identified. The fingerprint clearance card shall specify only the program that granted the good cause exception. On the request of the applicant, the agency that granted the prior good cause exception shall notify the division in writing of the date on which the prior good cause exception was granted and the date of the conviction and the name of the offense for which the good cause exception was granted.

2. The board granted a good cause exception and no new precluding offense is identified. The fingerprint clearance card shall specify the programs for which the board granted the good cause exception.

H. The licensee or contract provider shall assume the costs of fingerprint checks and may charge these costs to persons required to be fingerprinted.

I. A person who is under eighteen years of age or who is at least ninety-nine years of age is exempt from the fingerprint clearance card requirements of this section. At all times the person shall be under the direct visual supervision of personnel who have valid fingerprint clearance cards.

J. The division may conduct periodic state criminal history records checks for the purpose of updating the clearance status of current fingerprint clearance card holders and may notify the board of fingerprinting and the agency employing the person of the results of the records check.

K. The division shall revoke a person's fingerprint clearance card on receipt of a written request for revocation from the board of fingerprinting pursuant to section 41-619.55.

L. The division shall not issue a fingerprint clearance card to a person if the division cannot determine, within thirty business days after receipt of the person's state and federal criminal history record information, whether the person is awaiting trial on or has been convicted of committing any of the offenses listed in subsection B or C of this section. If the division is unable to make the determination required by this section and does not issue a fingerprint clearance card to a person, the person may request a good cause exception pursuant to section 41-619.55.

M. If after conducting a state and federal criminal history record check the division determines that it is not authorized to issue a fingerprint clearance card to a person, the division shall notify the agency that licenses or employs the person that the division is not

authorized to issue a fingerprint clearance card. This notice shall include the criminal history information on which the denial was based. This criminal history information is subject to dissemination restrictions pursuant to section 41-1750 and Public Law 92-544.

N. The division is not liable for damages resulting from:

1. The issuance of a fingerprint clearance card to a person who is later found to have been ineligible to receive a fingerprint clearance card at the time the card was issued.

2. The denial of a fingerprint clearance card to a person who is later found to have been eligible to receive a fingerprint clearance card at the time issuance of the card was denied.

O. The issuance of a fingerprint clearance card does not entitle a person to employment.

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF PROPOSED EXEMPT RULEMAKING

TITLE 13. PUBLIC SAFETY

CHAPTER 11. BOARD OF FINGERPRINTING

[R06-385]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R13-11-109	New Section
R13-11-110	New Section
R13-11-111	Renumber
R13-11-112	Renumber
R13-11-113	Renumber

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 41-619.53(A)(2) and 1062(B)

Implementing statute: A.R.S. § 41-619.55

3. The effective date of the rules:

The rules become effective immediately upon filing the Notice of Final Exempt Rulemaking with the Office of the Secretary of State.

4. A list of all previous notices appearing in the Register addressing the exempt rule:

Not applicable

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Dennis Seavers, Executive Director

Address: Arizona Board of Fingerprinting
Mail Code 185
Post Office Box 6129
Phoenix, AZ 85005-6129

E-mail: dennis.seavers@azbof.gov

Telephone: (602) 322-8593

Fax: (602) 322-8594

6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:

The proposed rules make two changes to the current rules.

First, the Board is adopting a rule prohibiting *ex parte* communication relevant to the merits of a good cause exception proceeding. The rule also prescribes a process for placing any prohibited, *ex parte* communications on the record of the proceeding.

Second, the Board is adopting a rule on rehearing or reviewing a decision or order that results from an administrative hearing. This rule, which is required by A.R.S. §§ 41-1062(B), describes the process for an appellant to submit a request for rehearing or review and obliges the Board to grant a request for one of the following reasons materially affecting the rights of the applicant:

1. The findings of fact, conclusions of law, order, or decision are not supported by the evidence or are contrary to law;

2. The appellant was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct by the hearing officer;

3. Newly discovered material evidence exists that could have a bearing on the decision and that, with reasonable diligence, could not have been discovered and produced earlier;

4. Error in admission or rejection of evidence or other errors of law occurring at the hearing.

The rule identifies the options available to the Board for responding to a request for review or rehearing. The rule also explains the parameters for conducting a rehearing or review and requires the Board to specify the basis for its decision.

A.R.S. § 41-619.53(A)(2) exempts the proposed rules from A.R.S. Title 41, Chapter 6. The Board of Fingerprinting will allow time for reasonable public notice and comments on the rules and will file the final rule with the Office of the Secretary of State.

7. A reference to any study relevant to the rule that an agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rules are necessary to promote the statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The preliminary summary of the economic, small business, and consumer impact:

Not applicable (see A.R.S. § 41–619.53(A)(2))

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Not applicable

11. A summary of the comments made regarding the rule and the agency response to them:

The Board of Fingerprinting will wait 30 days to receive public comment before filing the Notice of Final Exempt Rulemaking with the Office of the Secretary of State.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

No

15. The full text of the rules follows:

TITLE 13. PUBLIC SAFETY

CHAPTER 11. BOARD OF FINGERPRINTING

ARTICLE 1. BOARD OF FINGERPRINTING

Section
R13-11-109. Ex Parte Communications
R13-11-110. Rehearing or Review of Decision
~~R13-11-109.~~R13-11-111. Notification of Decision for Good Cause Exception
~~R13-11-110.~~R13-11-112. Confidentiality
~~R13-11-111.~~R13-11-113. Fees

ARTICLE 1. BOARD OF FINGERPRINTING

R13-11-109. Ex Parte Communications

A. In any good cause exception case, except to the extent required for disposition of *ex parte* matters as authorized by law or these rules of procedure:

1. No interested person outside the Board may make or knowingly cause to be made to any Board members, hearing

officer, or other employee or consultant who may reasonably be expected to be involved in the decisional process of the proceeding, an *ex parte* communication relevant to the merits of the proceeding;

2. No Board member, hearing officer, or other employee or consultant who is or may be reasonably expected to be involved in the decisional process of the good cause exception determination, may make or knowingly cause to be made to any interested person outside the Board an *ex parte* communication relevant to the merits of the determination.

B. A Board member, hearing officer, or other employee or consultant who is or may be reasonably expected to be involved in the decisional process of the good cause exception determination, who receives, makes, or knowingly causes to be made a communication prohibited by this rule, must place on the record of the proceeding and serve on all parties to the proceeding:

1. All prohibited written communications;
2. Memoranda stating the substance of all prohibited oral communications; and
3. All written responses, and memoranda stating the substance of all oral responses, to the communications described in (1) and (2) of this subsection.

C. Upon receipt of a communication made or knowingly caused to be made by a party in violation of this section, the Board or its hearing officer, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules, may require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.

D. The provisions of this section apply beginning when the request for a good cause exception is filed in accordance with R13-11-103.

E. For the purposes of this section:

1. "Person outside the Board" means any person other than a Board member, employee or consultant of the Board, or attorney representing the Board in its adjudicatory role.
2. "*Ex parte* communication" means an oral or written communication not on the administrative record and not the subject of reasonable prior notice to all parties.

R13-11-110. Rehearing or Review of Decision

A. An appellant may seek a review or rehearing of a Board decision that results from an administrative hearing by submitting a written request for a review or rehearing to the Board within 30 days from the date of service of the decision. The Board must grant a request for review or rehearing for any of the following reasons materially affecting the rights of the appellant:

1. The findings of fact, conclusions of law, or decision are not supported by the evidence or are contrary to law;
2. The appellant was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct by the hearing officer;
3. Newly discovered material evidence exists that could have a bearing on the decision and that, with reasonable diligence, could not have been discovered and produced earlier; or
4. Error in admission or rejection of evidence or other errors of law occurring at the hearing.

B. The request must specify the grounds for a review or rehearing and must provide reasonable evidence that the appellant's rights were materially affected.

C. The Board may grant a rehearing or review for any of the reasons in subsection (A). The Board or its hearing officer may take additional testimony; amend or make new findings of fact and conclusions of law; and affirm, modify, or reverse the original decision.

D. A rehearing or review, if granted, must be a rehearing or review only of the issue upon which the decision is found erroneous. An order granting or denying a rehearing or review must specify the basis for the order.

~~R13-11-109.~~R13-11-111. Notification of Decision for Good Cause Exception

A. No change
B. No change

~~R13-11-110.~~R13-11-112. Confidentiality

No change

~~R13-11-111.~~R13-11-113. Fees

A. No change
B. No change
C. No change