



ARIZONA BOARD OF FINGERPRINTING

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Final Minutes for Public Meeting

Held February 23, 2007, at 9:00 a.m.
3839 North 3rd Street, Suite 101, 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

CALL TO ORDER AND ROLL CALL

Mr. LeHew called the meeting to order at 10:12 a.m. The following Board members were present: Mike LeHew, Kim Pipersburgh, Rand Rosenbaum, Charles Easaw, and Mr. Baker. There were no members absent.

CALL TO THE PUBLIC

Mr. LeHew made a call to the public. There were no members of the public present.

LEGISLATION

Mr. Seavers referred Board members to a February 21, 2007, memorandum about Senate Bill ("SB") 1045 (see Attachment 1). He also referred members to the Senate Engrossed Version of the bill.

Mr. Seavers suggested that the Board consider certain factors when deciding how to respond to the proposed amendment to SB 1045. He explained that Rep. Jerry Weiers, who proposed the amendment, also was the chairman of the committee where the bill would be heard. Mr. Seavers noted that Rep. Weiers has the authority to hold the bill, preventing it from having a hearing and effectively ending the bill's progress through the Legislature. However, Mr. Seavers also noted that the bill, which had enjoyed wide support, could become a political target. Mr. Seavers referred the Board to a letter from the Arizona Education Association opposing the amendment (see Attachment 2). Finally, he suggested that the amendment might prompt legislators to make nonappealable other offenses they would regard as more serious than pandering-related crimes.

Mr. Baker made a motion to support the proposed amendment, and Ms. Pipersburgh seconded. The motion passed, with three in favor, one opposed, and one abstention. Mr. Easaw opposed the motion, and Mr. Rosenbaum abstained.

Mr. Easaw clarified the Board of Education's position on the amendment. He said that the Board of Education preferred to take a neutral stance on the amendment. Mr. Seavers said that although Sen. Linda Gray and Rep. Weiers probably would not ask what the Board's vote was, he would need to disclose the vote if they asked because the results of the Board meeting would be public information.

Mr. Easaw made a motion that the Board reconsider its position on the amendment, and Ms. Pipersburgh seconded. The motion passed, 5-0.

Mr. Easaw requested a brief recess. Mr. Rosenbaum made a motion for the Board to recess, and Mr. Easaw seconded. The motion passed, 5-0. Mr. LeHew recessed the meeting at 10:34 a.m. The Board reconvened at 10:39 a.m.

Mr. Baker moved to support the proposed amendment, and Ms. Pipersburgh seconded. The motion passed, with four in favor and one opposed. Mr. Easaw stated for the record that although he voted in favor of the motion, the Board of Education preferred to take a neutral stance on the amendment.

ADJOURNMENT

Ms. Pipersburgh made a motion to adjourn the meeting, and Mr. Baker seconded. The motion passed, 5-0. Mr. LeHew adjourned the meeting at 10:37 a.m.

Minutes approved on April 6, 2007

Dennis Seavers, Executive Director

Arizona Board of Fingerprinting

Memo

TO: Board members
FROM: Dennis Seavers
C:
Date: February 21, 2007
SUBJECT: Senate Bill 1045



This memo describes some recent and possibly controversial developments with the legislation that the Board had introduced this year. On February 23, 2007, the Board will be meeting to discuss this bill.

Please note below that legislators have requested feedback from you and your agency regarding possible changes to this bill.

Background

Senate Bill (“SB”) 1045 would add several offenses to the lists of precluding crimes that appear in A.R.S. § 41–1758.03. The Board currently supports this bill and requested that it be introduced.

Recent developments

Today, the Board was scheduled to be heard in the House Committee on Natural Resources and Public Safety. Prior to the hearing, I learned that the committee chairman, Jerry Weiers (not to be confused with the Speaker of the House, Jim Weiers) was considering an amendment to make prostitution a nonappealable offense. That is, the amendment would move prostitution—which the bill proposes to make an appealable offense but which currently is not a precluding offense—from A.R.S. § 41–1758.03(C) to –1758.03(B). Other nonappealable crimes include incest, murder, sexual exploitation of a minor, and rape.

I spoke with Rep. Weiers and Sen. Linda Gray (the bill’s sponsor) before the committee hearing. Rep. Weiers said he would hold the bill until a later committee hearing, and he, Sen. Gray, and I would meet to discuss the changes he was proposing. Later this morning, I had a conference call with them. After discussion, Rep. Weiers agreed not to add prostitution to the list of nonappealable offenses. However, he proposed adding to the nonappealable list several offenses that are currently appealable and two offenses that the bill proposes to add to the appealable list. Sen. Gray agreed.

Below is a list of precluding offenses that are currently appealable and that Rep. Weiers would like to make nonappealable.

- Enticement of any persons for purposes of prostitution
- Procurement by false pretenses of any person for purposes of prostitution
- Procuring or placing persons in a house of prostitution
- Receiving earnings of a prostitute
- Causing one's spouse to become a prostitution
- Detention of persons in a house of prostitution for debt
- Keeping or residing in a house of prostitution or employment in prostitution
- Pandering
- Transporting persons for the purpose of prostitution or other immoral purposes

Below is a list of crimes that are not precluding offenses, that SB 1045 proposes to add to the appealable list, and that Rep. Weiers would like to make nonappealable.

- Portraying adult as minor as prescribed in section 13-3555
- Admitting minors to public displays of sexual conduct as prescribed in section 13-3558

Requested response

Rep. Weiers and Sen. Gray asked that I speak with the Board and representatives from agencies in the fingerprint-clearance-card system to see whether the agencies support this change. They asked that I respond by the end of the week.

I would respectfully ask that Board members, representing their respective agencies, be prepared to take a stance on the proposed changes at the February 23, 2007, meeting. Please feel free to contact me at any time with questions about the proposed changes and the card system.



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February 22, 2007

Via E-Mail (dennis.seavers@azbof.gov) and
Fax (602-322-8594)

Mr. Dennis Seavers
Executive Director
Arizona Board of Fingerprinting

Re: Senate Bill 1045

Dear Dennis:

This letter is to comment on some proposed changes to Senate Bill 1045, which adds certain criminal offenses to the list of precluding crimes set forth in A.R.S. § 41-1758.03. I understand that Representative Jerry Weiers has proposed moving some crimes that currently are listed as appealable pursuant to A.R.S. § 41-1758.03(C) to the list of non-appealable offenses set forth in A.R.S. § 41-1758.03(B). These crimes include A.R.S. §§ 13-3201, -3202, -3203, -3204, -3205, -3207, -3208, -3209, and -3210 (the "prostitution-related offenses"). I also understand that Representative Weiers has proposed making some crimes that would be added to the list of appealable offenses under Senate Bill 1045 non-appealable. These crimes are A.R.S. §§ 13-3555 and -3558, found in the chapter dealing with sexual exploitation of children. As explained below, AEA opposes Representative Weiers' proposed changes.

First, AEA agrees that certain criminal offenses should be absolutely preclusive and non-appealable. Those offenses are the most severe, most egregious crimes, including murder, incest, sexual assault, and, significantly, many crimes involving children.

While there must be a list of non-appealable offenses, the Board of Fingerprinting also must be able to exercise its discretion and determine whether individuals who have committed lesser offenses have shown sufficient rehabilitation and changed circumstances to warrant a good cause exception and issuance of a fingerprint clearance card. Many individuals make mistakes, learn from those mistakes, and become productive, law-abiding adults.

The prostitution-related offenses noted by Representative Weiers should remain appealable offenses. If those offenses involve children, they already are non-appealable. See A.R.S. §§ 41-1758.03(B)(10) and (18).

The two new offenses, portraying an adult as a minor and admitting minors to public displays of sexual conduct, also should be listed as appealable offenses. One is a misdemeanor, and the other is the lowest level felony. Neither rises to the

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ATTACHMENT 2

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level of severity demonstrated by the list of non-appealable offenses. Indeed, the most serious offenses within the scope of sexual exploitation of children are non-appealable. See A.R.S. §§ 41-1758.03(B)(6) and (8). Senate Bill 1045 also proposes that luring a minor for sexual exploitation be listed as a non-appealable offense.

Finally, the State Board of Education rules on immoral and unprofessional conduct prohibit "conduct which would discredit the teaching profession." A.A.C. R7-2-1308(B)(15). Thus, the State Board of Education has the authority to deny a teaching certificate or take disciplinary action against a certificate holder if the circumstances of an appealable prostitution-related offense or an offense dealing with sexual exploitation warrant such action.

In summary, the offenses noted by Representative Weiers do not rise to the level of severity demonstrated by the non-appealable offenses currently listed in A.R.S. § 41-1758.03(B) or as proposed in the current version of Senate Bill 1045. Moreover, the Board of Fingerprinting should retain discretion to review these offenses and determine whether an applicant for a clearance card qualifies for a good cause exception. For these reasons, AEA opposes the changes to Senate Bill 1045 proposed by Representative Weiers.

Thank you for the opportunity to comment on this matter. Please don't hesitate to contact me at 602-264-1774, extension 110, or susan.sendrow@arizonaaea.org if further discussion would be helpful.

Sincerely,



Susan G. Sendrow
Staff Attorney

SGS/ms