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ARIZONA BOARD OF FINGERPRINTING

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Draft Minutes for Public Meeting

Held February 5, 2010, at 9:30 a.m.

3839 North 3rd Street, Suite 107, Phoenix, Arizona

Board Members

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

Executive Director

Dennis Seavers

CALL TO ORDER AND ROLL CALL

Mr. Easaw called the meeting to order at 9:34 a.m. The following Board members were present: Charles Easaw, Kim Pipersburgh, Ellen Kirschbaum, and Arthur W. Baker. The following Board member was absent: Mike LeHew.

Also in attendance was Dennis Seavers, Executive Director.

CALL TO THE PUBLIC

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

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APPROVAL OF MINUTES

Mr. Baker made a motion to approve the draft minutes from the September 25, 2009 meeting; October 2, 2009 meeting; November 30, 2009 meeting (including executive session); and December 11, 2009 meeting (including executive session). Ms. Kirschbaum seconded the motion, which passed 4–0.

FISCAL YEAR 2010 BUDGET

Mr. Easaw referred the Board members to Mr. Seavers's budget report (see Attachment 1). Mr. Seavers noted that although the actual revenues seemed high, compared to revenues projected in the budget, in reality the revenues were on target to meet the year-end goal. He reminded Board members that the budget assumed low revenues early in the year to help the Board plan for possible cash-flow shortages.

Mr. Seavers noted that the Board had recognized in previous meetings that budget reductions might make it necessary to make the good-cause-exception application requirements less stringent to manage the caseload and avoid a backlog. Mr. Easaw wondered whether changes to the application requirements would require legislative changes. Mr. Seavers replied that the Board could change its application requirements without legislative changes, as long as the resulting requirements were consistent with the Board's current statutes. He noted that the Board was prohibited through session laws from changing its administrative rules, which normally would identify the application requirements. However, if the Board lessened its application requirements—such as not requiring the same level of evidence for very old offenses as the Board currently requires—then the risk of litigation would probably be limited. Mr. Seavers noted that the Board should weigh the needs to process applications on a timely basis and to protect vulnerable citizens; in those areas where risk is low, the Board might alter its application requirements.

Mr. Easaw noted that the Board didn't need to make a decision that day but could discuss various options and continue the discussion at a later Board meeting. Mr. Baker offered a proposal for the Board to consider. He suggested that the Board focus on felony offenses and not require the same level of evidence currently required for misdemeanors. He said this proposal could also incorporate time frames, so that the Board would look at misdemeanors of a certain age, such as misdemeanors that occurred fewer than two years ago. Mr. Baker also suggested that the Board consider not requiring applicants to submit documents related to arrests that did not lead to convictions.

The Board decided to continue discussion at a later meeting to give agencies the opportunity to consider the issue.

AUDITOR GENERAL REPORT

Mr. Seavers explained that the Office of the Auditor General (OAG) was still working on the follow-up report that it began in October 2009. He explained that he had been having a dispute with the OAG on its approach to the follow-up report. The issue related to an OAG

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recommendation that the OAG wanted to list as “Not implemented” and that Mr. Seavers believed should be listed as “No longer applicable.” Mr. Seavers provided background for the dispute. The original recommendation dealt with individuals whose fingerprint-clearance-card applications were denied by the Department of Public Safety (DPS) because DPS could not determine the disposition of the precluding charge with the statutorily prescribed time frame. These individuals would apply to the Board and be required to fill out an application that requested, among other things, information about substantiated allegations of child abuse or neglect, such as allegations made to Child Protective Services (CPS). The OAG had argued that applicants who might not have been convicted of crimes—i.e., who demonstrated in the good-cause-exception process that they were not convicted of the precluding charge—were being required to submit evidence of rehabilitation, even though they had committed no crimes to be rehabilitated from. The Board had argued that if the applicants demonstrated that they were not convicted, the Board would grant the good cause exception (or work with DPS to issue the card administratively) regardless of any disclosed CPS contact. The Board had noted that applicants who might later demonstrate that they committed no precluding offenses were required to submit other materials up front related to rehabilitation, such as police reports, reference letters, and personal statements. At the time of the original report, the OAG argued that “statute authorizes the Board to consider the extent of the applicant’s criminal record. It does not authorize use of CPS and professional licensure/certification information, which are [*sic*] not criminal records.” (The Board and the OAG disagreed on whether the law, which was ambiguous, permitted the Board to consider CPS contact.) The Board disagreed with this recommendation for various reasons and did not agree to implement it. Therefore, in the OAG follow-up reports, the status of the recommendation was listed as “Not implemented.” However, following the performance audit, the Board sought to eliminate the ambiguity in statute by making explicit its authority to consider CPS information. Mr. Seavers sent an e-mail to the OAG in November 2009 asking that the status be changed to “No longer applicable” because the argument that statute “does not authorize use of CPS . . . information” was no longer relevant.

The OAG responded in February to say that it regarded the recommendation as “closed” and it was only following on recommendations that were listed as “Implementation in process” or “Not yet implemented.” The OAG said it would not follow up on recommendations where the Board and the OAG had previously disagreed and the Board had decided it would not implement the recommendation. Mr. Seavers expressed his objections to that approach. First, the OAG had decided to follow up on other recommendations that only became relevant when the law changed—in fact, the current follow-up report was taking place only because the law had changed and a recommendation that wasn’t applicable became applicable. Mr. Seavers argued that it wasn’t acceptable for the OAG to follow up on some recommendations because the law had changed, but not to follow up on other recommendations that made the Board appear not to be in compliance with the law, even though the law had changed. He also noted that the follow-up reports explicitly state that the Board has not implemented a recommendation and thus the notion that a recommendation is “closed” is not correct. The OAG said it would consider Mr. Seavers’s comments but did not plan to change the status of the recommendation. Mr. Seavers noted that this disagreement was representative of the sort of difficulties he had with the accuracy of the OAG’s reports, which included other problems, such as faulty data analysis that the OAG eventually had to discard. He said that the issue was important because legislators

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might form a negative impression of the Board based on this misinformation, and that negative impression could affect their policy decisions, even if not on an explicit level.

Mr. Easaw noted that he had participated in meetings with the OAG and expressed concerns about how the OAG had been conducting the follow-up reports and with the accuracy of the information in the reports.

EXECUTIVE DIRECTOR'S REPORT

Mr. Seavers reported that JLBC had published a list of options for reducing expenditures. The options did not include any proposed cuts for the Board for the current fiscal year but included an additional 7.5% in cuts for the following year. Mr. Seavers said that the Board should be able to absorb the fund sweep in the next fiscal year if there was a provision in the budget bill that would allow the Board to delay transferring the money until later in the fiscal year.

Mr. Seavers reported that there were three bills to add additional programs to the fingerprint-clearance-card system. House Bill 2446 would add alarm businesses and agents, Senate Bill 1219 would add real-estate licensees, and House Bill 2696 would add in-home care providers to the card system.

Mr. Seavers said that he would submit a report on the strategic plan at the next Board meeting.

ADJOURNMENT

Ms. Pipersburgh made a motion to adjourn the meeting. The motion passed, 4-0. Mr. Easaw adjourned the meeting at 10:11 a.m.

Minutes approved on _____

Dennis Seavers, Executive Director