

Minutes of Public Meeting
ARIZONA BOARD OF FINGERPRINTING
October 20, 1999

The Arizona Board of Fingerprinting held its first meeting at the Department of Economic Security, 4th Floor, 1789 W. Jefferson, Phoenix, Arizona. The meeting began at approximately 9:05 a.m.

MEMBERS PRESENT

Mike LeHew
Corinne Velasquez
Joe Garcia
Cheryl Gira
Kim Pipersburgh

MEMBERS ABSENT

CALL TO ORDER

ROLL CALL

MINUTES

Ms. Velasquez made the motion that the Board approves the minutes of August 16, 1999 as presented. Motion carried 5-0.

MOTION

Ms. Velasquez made the motion that the Board approves the minutes of September 8, 1999 as corrected. Motion carried 5-0.

MOTION

GENERAL SESSION

Mr. LeHew introduced the item. After discussion, Ms. Velasquez made the motion to adopt the duties and title as presented. Motion carried 5-0.

**CONSIDERATION OF DUTIES AND TITLE
FOR THE FTE ASSIGNED TO THE BOARD**

MOTION

Mr. LeHew introduced the item. After discussion regarding privacy issues, it was decided that application number would be used in lieu of name when directing DPS to issue a card.

**CONSIDERATION OF LEGAL ISSUES
AND PROCEDURES RELATED TO GOOD
CAUSE EXCEPTION HEARINGS**

Mr. LeHew introduced the item. After discussion, Ms. Pipersburgh made the motion to approve the revised bylaws with the changes requested by Ms. Velasquez. Motion carried 5-0.

**CONSIDERATION TO ADOPT REVISED
BOARD BYLAWS**

MOTION

Mr. LeHew introduced the item. After discussion, Ms. Velasquez made the motion that the Board approves the budgets as presented and forward to DPS for submission to the Governor. Motion carried 5-0.

CONSIDERATION OF AMENDED
BUDGET REQUEST FOR FISCAL YEARS
1999/2000 AND 2000/2001

MOTION

Mr. Garcia introduced the item. After a lengthy discussion, it was decided that many of the issues were agency issues that should be lobbied for through the individual agencies. Only issues #one through six and #19 were Board issues. Ms. Velasquez made the motion to accept issues #one through six and #19 as Board issues that either have already been resolved or that the Board should deal with legislatively in the future. Motion carried 5-0.

CONSIDERATION OF LEGISLATIVE
ISSUES FOR THE FY2000 SESSION

MOTION

CALL TO THE PUBLIC

Mr. David Larson addressed the Board to state that he agrees that the Board should not place time limits on specific statutes. If time limitations are developed, they should be developed at the agency level. He further explained that he had been out of work for the last six months before he received a teaching position and now must wait almost as long for a good cause exception hearing. He reminded the Board of how difficult it is to pay bills while waiting for the process to be completed. He asked the Board if it were possible to develop some kind of temporary certificate to allow people in similar situations to work during the appeal process. Mr. LeHew thanked him for his comments and directed the Director to research this matter.

ADJOURNMENT

Mr. LeHew adjourned the meeting at approximately 10:45 a.m.

Approved by the Board on the _____ day of _____, 1999.

Chair

BOARD OF FINGERPRINTING
Quarterly Budget Report
for the quarter ending September 30, 1999

10/12/99

STARTING BALANCE		\$	-
1st Quarter Allotment		\$	19,800.00
	Adjusted Balance =	\$	<u>19,800.00</u>

Personal Services	\$	3,337.40
ERE	\$	579.10
Professional/Outside Services	\$	-
In-State Travel	\$	-
Out-of-State Travel	\$	-
Other Operating	\$	958.60
Capital Equipment	\$	-
	Sub Total =	<u>\$ 4,875.10</u>

REMAINING BALANCE = \$ 14,924.90

AGENDA ITEM NO. III. A.

BOARD OF FINGERPRINTING MEETING DATE: October 20, 1999

SUBJECT: Duties and Title for the FTE Assigned to the Board

SUBMITTED BY: Mike LeHew

BACKGROUND INFORMATION:

The title, span of authority and duties of the FTE assigned to the Board were developed based upon the envisioned role of the employee.

BOARD ACTION REQUESTED: **INFORMATION** **ACTION** (described below)

That the Board approves the duties and title as presented.

ATTACHMENTS: **YES** **NO**

Director of the Arizona Board of Fingerprinting

Title:

Director, Arizona Board of Fingerprinting

Authority:

This employee has the authority to respond, as well as to develop and prepare those responses, to requests for information on behalf of the Board.

This employee has the authority to make changes in the administrative operations of the Board office to ensure that the purpose and operation of the Board are accomplished effectively and efficiently.

This employee has the authority, through the Department of Public Safety, to expend monies appropriated to the Board for the function of the Board.

Duties:

- Supervise the operations of the Arizona Board of Fingerprinting office. Ensure Board compliance with all laws and mandates required of the Board.
- Write policy, legislation, general correspondence, administrative rules, informational materials and documents related to actions of the Board, initiated and in response to requests, and to comply with statutory requirements and mandates.
- Produce reports, legislative agendas, proposed legislation, policies and procedures, and administrative rules for the Board.
- Design and update a data base system to collect and monitor good cause exception applications, hearings, and final results.
- Establish and maintain manual and automated filing systems to update and track information.
- Develop and update processes and procedures related to the operation of the Board.
- Responsible for maintenance of all records of the Board for public inspection and historical reference.
- Conduct research/staff studies to provide information, determine the efficiency of programs and ascertain whether improvements are needed in Board activities.
- Track time-sensitive events to meet deadlines.

- Produce the annual budget for the Board in cooperation with the Arizona Department of Public Safety.
- Monitor and approve expenditures of the Board to ensure proper financial procedures have been followed.
- Reconcile the Board's budget with the Department of Administration USAS system to ensure accurate and effective use of funds.
- Prepare various financial reports to project financial status, monitor spending, report trends and aid financial planning.
- Gather and summarize research data to ensure complete and accurate information for briefs, reports, correspondence, good cause exception hearings and other items considered by the Board.
- Consult with Board members, legislators, state officials and state agencies regarding policy decisions effecting good cause exception hearings and operations of the Board.
- Supervise Board clerical and/or administrative staff support to provide direction and feedback and ensure assigned projects and tasks are completed accurately by the specified due date.
- Evaluate Board employees' work performance to advise of the requirements and expectations of the position and provide feedback.
- Attend meetings of the Board, presenting background and historical information and recommended actions.
- Attend meetings with other state agencies, organizations and entities relating to Board matters and issues.
- Respond to verbal and written inquiries from the public, media, state agency personnel and officials.



ARIZONA BOARD OF FINGERPRINTING

Mail Code 2500 P.O. Box 6638 Phoenix, AZ 85005-6638

Telephone: (602) 223-2800 Fax: (602) 223-2947

Board Members:

Mr. Mike LeHew, Chair

Ms. Corinne Velasquez, Vice Chair

Mr. Joe Garcia

Ms. Cheryl Gira

Ms. Kim Pipersburgh

DATE: October 14, 1999

TO: Mike LeHew, Chair, Board of Fingerprinting

FROM: Sally Loveland *Sel*

SUBJECT: LEGAL ISSUES

FOR: action decision information signature

At your direction, I contacted the Attorney General's Office regarding the following legal issues related to good cause exception hearings. Each issue is followed by the attorney's response.

1. *Are good cause exception hearings except from the Open Meeting Law?*
(per Ms. Eva Bacal, Attorney General's Office)

Good cause exception hearings are exempt from the entire open meeting process. They are classified as "hearings" so they can not be held in Executive Session. However, they are not exempt from the Basic Administrative Hearing procedures.

Hearings can be held at any time. Decisions can be made during the hearings. No mention of the people's names need be made in the open meeting agenda or minutes, but hearing decisions and any directions provided to DPS must be announced in the open meeting.

2. *Is the Board required to prepare notice of hearings, findings of fact, and conclusions of law for good cause exception hearings?*
(per Ms. Eva Bacal, Attorney General's Office)

Yes. It is not necessary to transcribe every hearing if it is taped and the tapes are kept with the package. The Board will need to transcribe the hearing if the case ends up in court.

3. *As it relates to the Board and good cause exception hearings, what is a public record?*
(per Ms. Eva Bacal, Attorney General's Office)

Board meetings are subject to the Open Meeting Law so all minutes are public record. Good cause exception hearings are exempt by statute.

4. *Reference: 41-619.A.*

The following persons shall be present during good cause exception hearings:

1. A representative of any state agency that requires a person to have a valid fingerprint clearance card.

2. The person who requested the good cause exception hearing. The person may be accompanied by a representative at the hearing.

- 4a) ***Does the applicant have to be physically present at the hearing or is a telephonic presence acceptable?***
(per Ms. Bacal and Mr. Jameson, Attorney General's Office)

The Board may establish its own rules on this issue. A telephonic presence is acceptable but the Board needs to revise its rules to reflect this.

- 4b) ***Is the Board member who represents the agency who requires the above applicant to have the fingerprint card the only Board member that needs to be present?***
(per Mr. Jameson, Attorney General's Office)

A representative from each agency on the Board must be represented at each good cause exception hearing.

5. ***Does the Board operate independently of the agencies it represents?***
(per Mr. Jameson, Attorney General's Office)

Absolutely. The Board is an entity separate and apart from the individual agencies whose members compile the Board.

6. ***Where is it authorized that alternates be selected for the Board members?***
(per Mr. Jameson, Attorney General's Office)

Title 38, Section 461, Chapter one provides this authorization. It may also be a good idea to include in the Board's administrative rules that the same party who appointed the representative assign an alternate.

7. ***Can the Board approve good cause exceptions for certain offenses without conducting a hearing? (i.e., maybe for an offense that occurred a long time ago or perhaps for less severe offenses -- have a review process that would either approve or send to hearing; then on hearing cases -- either approve or deny)***
(per Mr. Jameson, Attorney General's Office)

This type of process would need a statutory change.

8. ***When approving good cause exceptions, is the unanimous decision based on the entire Board, on a quorum of Board members, or only the board members who represent agencies serving similar populations?***
(per Mr. Jameson, Attorney General's Office)

All good cause exception hearing decisions must be unanimous with at least a quorum of the Board members present.

AGENDA ITEM NO. III. C.

BOARD OF FINGERPRINTING MEETING DATE: October 20, 1999

SUBJECT: Consideration to Adopt Board Bylaws

SUBMITTED BY: Mike LeHew

BACKGROUND INFORMATION:

The Bylaws have been expanded to better clarify the Board's internal operations and policies. This process is expected to be ongoing. Changes to the current bylaws are underlined.

BOARD ACTION REQUESTED: **INFORMATION** **ACTION** (described below)

That the Board approves the bylaws as written.

ATTACHMENTS: **YES** **NO**

ARIZONA BOARD OF FINGERPRINTING

BYLAWS

ARIZONA BOARD OF FINGERPRINTING

Mail Code 2500

P. O. Box 6638

Phoenix, Arizona 85005-6638

(602) 223-2800

Adopted: _____

BYLAWS

ARTICLE I. PURPOSE

Pursuant to Title 41, Chapter 3, Article 12, Section 41-619.51 through 41.619.56, the purpose of the Arizona Board of Fingerprinting shall be to:

- A. Conduct good cause exception hearings.
- B. Adopt rules to implement the above statutes.
- C. Administer and enforce statutes and rules.

ARTICLE II. BOARD MEMBERSHIP

A. Membership on the Board of Fingerprinting and terms of Board members shall be as specified in applicable state statutes. Membership is comprised of:

1. A representative of the Supreme Court.
2. A representative of the Department of Economic Security.
3. A representative of the Department of Education.
4. A representative of the Department of Health Services.
5. A representative of the Department of Juvenile Corrections.

B. The representative of the Supreme Court is appointed by the Chief Justice of the Supreme Court. The representative of the Department of Education is appointed by the Superintendent of Public Instruction. All other representatives are appointed by the Director of their respective agencies.

C. Each Board member shall have an alternative appointed by the above individuals to serve during any absence of the member. The alternative shall have the right of a proxy vote for the Board member.

D. *Stipulated* Alternates may not assume the office of the Board

ARTICLE III. OFFICERS, DUTIES

A. The Board of Fingerprinting shall elect by majority vote a chair and a vice chair who shall serve for a period of one year commencing with the first regular meeting in August.

B. The chair shall provide overall direction to the activities of the Board as well as preside over regular and special meetings of the Board.

C. The vice chair shall preside over the Board meetings during the absence of the chair.

- D. If a vacancy occurs in either office, the Board shall hold new elections as soon as practicable.

ARTICLE IV. MEETINGS

- A. Meetings shall be conducted in accordance with the Arizona Open Meeting Law and all other applicable State laws.
- B. Board of Fingerprinting business meetings shall be held at least once a quarter and more often if necessary. — *as determined by the chair.*
- C. In the conduct of meetings, any question of procedure not otherwise covered by statute, Board of Fingerprinting rule or this policy manual, shall be governed by the current edition of Robert's Rules of Order.
- D. Adopted rules of procedure of the Board of Fingerprinting may not be suspended except by a two-third vote of the entire Board of Fingerprinting.

ARTICLE V. AGENDA

- A. Development of the agenda for the Board of Fingerprinting is the responsibility of the Board's Chair.
- B. Members of the Board and other interested parties may make requests for items to be placed on the agenda for consideration by the Board. Such requests shall be in writing and directed to the attention of the Director of the Board through the Board of Fingerprinting office.
- C. Items requested by Board members shall be incorporated into the agenda. Other requests may be included, if deemed appropriate by the Board Chair.
- D. Generally, requests for inclusion on an agenda should be submitted 14 days' prior to the meeting of the Board to assist in the preparation and transmittal of the agenda and explanatory materials to Board members in time for proper study.
- E. Additional requests for placement of an item on the agenda must be made in time for the twenty-four (24) hour notice to be posted. Emergency requests that arise shall be handled in conformance with statutory provisions.

ARTICLE VI. MINUTES AND RECORDS

- A. The Director of the Board shall keep a record of minutes of all meetings. The minutes become official and a permanent record of the Board when approved by the Board.
- B. The Director of the Board is designated as the custodian of all Board of Fingerprinting records. The minutes of the meeting of the Board of Fingerprinting shall be open to public inspection three (3) working days after the meeting and during the business hours of the custodian.
- C. Minutes of executive sessions shall be maintained by the Director of the Board and shall be kept confidential and not released except in accordance with applicable statutes. Discussions occurring during an executive session are to be kept confidential and the contents of such discussions shall not be disclosed to or discussed with any individual who was not present at the executive session, with the exception of Board of Fingerprinting members who were absent.

ARTICLE VII. BOARD BUDGET

The Director of the Board shall submit to the Chair a quarterly report regarding the fiscal position of the Board budget.

ARTICLE VIII. GOOD CAUSE EXCEPTION HEARINGS

- A. Good cause exception hearings are exempt from the Arizona Open Meeting Law.
- B. Hearings may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings.
- C. The Board of Fingerprinting shall notify the person who requested the good cause exception hearing at least twenty days prior to the date set for the hearing.
- D. The notice shall include: *Don't include* *The notice, hearing etc shall be conducted according to rule #*
- 1) A statement of the time, place and nature of the hearing.
 - 2) A statement of the legal authority and jurisdiction under which the hearing is to be held.
 - 3) A reference to the specific sections of the statutes and rules involved.
- E. The following persons shall be present during good cause exception hearings:

- 1) A representative of any state agency that requires a person to have a valid fingerprint clearance card.
 - 2) The person who requested the good cause exception hearing. The person may be accompanied by a representative at the hearing.
- F. The applicant for the good cause exception hearing may request that the hearing be conducted telephonically. Conducting a good cause exception hearing telephonically, without the *physical* presence of the applicant, is not encouraged but may be allowed in extreme circumstances and only at the discretion of the chair.
- G. Each Board member shall determine on behalf of the member's respective agency or division whether a person should be granted a good cause exception.
- H. Voting on good cause exceptions shall be unanimous.
- I. If the Board does not make a unanimous decision, a card shall not be issued to the applicant.
- J. If the Board grants a good cause exception to a person, the Board shall request in writing that the Department of Public Safety issue a class one or class two fingerprint clearance card to the person.
- K. When the person applying for a good cause exception would not serve a common population and no common good cause exception standard exists, each Board member shall determine for the purposes of the member's agency alone whether a good cause exception should be granted. If the Board unanimously agrees, only the agency or agencies that approve the good cause exception shall be designated on the fingerprint clearance card. The Board shall request in writing that the department of public safety issues a card with the approving agency(ies) so designated.

ARTICLE IX. ADMINISTRATIVE POLICIES

- A. When a person applies for a good cause exception, the Director of the Board of Fingerprinting shall research each application and when eligible refer it to the Board for a good cause exception hearing.
- B. The Board shall conduct a hearing, and on a case by case basis, either approves the good cause exception or move that the findings of fact and conclusions of law be signed by the Chair. *and the request be denied.*
- C. Approval standards for good cause exceptions for persons who would serve a common population include:

~~ARTICLE X. AMENDMENTS~~

~~Those sections of the bylaws of the Board of Fingerprinting not mandated and prescribed by statute, constitution or rule may be amended by a majority vote of the Board.~~

AGENDA ITEM NO. III. D.

BOARD OF FINGERPRINTING MEETING DATE: October 20, 1999

SUBJECT: Consideration of Amended Budget Request for Fiscal Years 1999/2000, 2000/20001

SUBMITTED BY: Mike LeHew

BACKGROUND INFORMATION:

The Board is authorized two FTE's but the appropriated funding was not sufficient to cover two salaries. Nevertheless, projected workload is expected to exceed the capabilities of one employee. The amended budget request for fiscal year 1999/2000 will allow the Board to hire a second FTE in the last quarter of the year and purchase computer equipment for that employee.

The amended budget request for fiscal year 2000/2001 will provide funding for both FTE's as well as increased other operating funds.

The Board must submit these amended budget requests to the Joint Legislative Budget Council (through the Department of Public Safety) no later than close of business October 20, 1999.

BOARD ACTION REQUESTED: **INFORMATION** **ACTION** (described below)

That the Board approves the amended budget requests.

ATTACHMENTS: **YES** **NO**

BOARD OF FINGERPRINTING
Amended Budget Request for Fiscal Year 1999/2000

10/18/99

Personal Services	\$ 45,200.00
ERE	\$ 9,000.00
Professional/Outside Services	\$ -
In-State Travel	\$ -
Out-of-State Travel	\$ -
Other Operating	\$ 19,100.00
Capital Equipment	\$ -

TOTAL **\$ 73,300.00**

Current Amount Appropriated: \$60,000.00

ADDITIONAL FUNDING REQUESTED: **\$ 13,300.00**

BOARD OF FINGERPRINTING
Amended Budget Request for Fiscal Year 2000/2001
10/18/99

Personal Services	\$ 77,300.00
ERE	\$ 18,500.00
Professional/Outside Services	\$ 11,800.00
In-State Travel	\$ 500.00
Out-of-State Travel	\$ -
Other Operating	\$ 16,400.00
Capital Equipment	<u>\$ -</u>
TOTAL	\$ 124,500.00

Current Amount Appropriated: \$ 60,000.00

ADDITIONAL FUNDING REQUESTED: \$ 64,500.00

AGENDA ITEM NO. III. E.

BOARD OF FINGERPRINTING MEETING DATE: October 20, 1999

SUBJECT: Legislative Issues

SUBMITTED BY: Joe Garcia

BACKGROUND INFORMATION:

Mr. Garcia met with various interested parties regarding "clean up" legislation for the next legislative session. He would like to inform the Board of the issues that were raised and to determine what, if any, position the Board would like to take on them.

BOARD ACTION REQUESTED: INFORMATION ACTION (described below)

ATTACHMENTS: YES NO

Notes from legislation meeting - 10/8/99

ISSUES:

1. Does the Board operate independently of the agencies it represents? (see Legal Issues #5)
2. Who has approval authority over a good cause exception that doesn't apply to their agency?
(see Legal Issues #4b and 8)
3. Are hearings always needed to approve an exception? (see Legal Issues #7)
4. Do all Board members need to be present at a hearing? (see Legal Issues 4b and 8)
5. Shall we include a grandfather clause for those already approved for a good cause exception so they won't have to go through the process again? B
6. Shall we exclude people who have been exonerated by a court? B
7. Shall we include a 5-year limitation on offenses? Develop guidelines for the types of offense this limitation would cover?
8. Shall we change legislation to allow DPS to directly notify individual providers and not just the State agencies?
9. Can an individual work while waiting for a good cause exception?
10. Shall we authorize interim approval to work (under direct supervision) while waiting for a good cause exception ruling?
11. Shall we tie the above authorization in with additional legislation to ^{sanction} ~~suspend~~ the agencies if they continue to employ the person after a negative ruling?
12. Do we need to rewrite the grandfather clause (25.85) to clarify the last page?
13. Shall we change legislation to allow the Board authority to sanction the agency if they do not provide direct supervision when required?
14. Shall we strike the issue of a person having to work in the last six months? Won't the automated telephone update give us the info we need?
15. Shall we strike the DUI offenses from the legislation?
16. Shall we exempt physicians from having to be fingerprinted?

○ 17. Shall we delete the criminal history affidavit requirement that DHS receive and maintain them?

18. Shall we delete 41.1954.21 – the original good cause exception rule for substance abuse?

19. Shall we include a statute authorizing an alternate be appointed? (*see Legal Issues #6*)

20. Shall we include a penalty action to terminate a provider who doesn't fire a person who lies on the form?

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ALIS Online

41-1954.01 Exception for employment in substance abuse treatment services for minors

An applicant for employment with a licensee or contractor working with minors who would otherwise be ineligible for employment because of prior criminal acts may apply for a good cause exception pursuant to section 41- 619.55 in order to be employed with contractors providing substance abuse treatment services for minors.

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DRAFT

State Agency Meeting on 10/8/99
Draft Summary of
Technical Cleanup Fingerprint Legislative Issues

The following is a summary of the state agency meeting held on 10/8/99 regarding the identification of issues pertinent to the operation of the Board of Fingerprinting and to the state agency fingerprint statutes.

A. The Board of Fingerprinting should operate in the following manner and legislation should be written in order to accomplish the following tasks:

1. A hearing is not required by the Board for Good Cause Exception approvals unless requested by either a Board member or the Good Cause applicant.
2. Only the state agencies which are affected by a Good Cause application are the determining group for approval or denial of a Good Cause application. Those affected agencies effectively comprise the "Board" for that specific Good Cause application and action. A hearing which is held in this context would only comprise the "affected" agencies.
3. The Board should have authority to issue interim work approval pending the filing and/or outcome of a Good Cause application.
4. The Board should have authority to take remedial actions against an valid clearance card holder for incidents which allow suspension of a valid fingerprint card.
5. The Board should have the authority to deny a fingerprint clearance card for an applicant who lies on the Criminal History Affidavit form, but who may otherwise not meet the specific criteria for denial of a class one or class two fingerprint clearance card.

DPS statute:

1. A person who has been convicted of a disqualifying crime for either a class one or class two fingerprint clearance card and who has been exonerated by a court of competent jurisdiction shall have a valid clearance card issued.

ADHS statute:

1. Remove the requirement to receive the Criminal History Affidavit Form from applicants.

All state agency statutes:

1. Remove the "Direct Visual Supervision" from all state agency statutes and give to the Board as an option for actions for suspension or pending Good Cause applications.

2. Add the appointment of an Alternate to the Board of Fingerprinting.

DRAFT

In General:

1. Remove the 6 month interrupted employment and re-fingerprint clause.
2. Strike 41-1954.01 which is the alternate Good Cause Exception for DES for substance abuse treatment.
3. Provide clarifying language for the Grandfather clause.
4. One advocacy group wants the DUI crime struck from the legislation or a time limit placed on the crime in order that anything older than "x" years ago would not be considered.
5. Add language allowing DPS to notify the applicant's employing agency of a denial of the applicant's fingerprint clearance card.