EMERGENCY NOTICE OF SPECIAL MEETING

ARIZONA BOARD OF FINGERPRINTING

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

Pursuant to A.R.S. 38-431.01.A.2. and A.3., the Board may vote to go into Executive Session, which will not be open to the public, for legal advice concerning any item on this agenda or to review records exempt by law from public inspection.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter by contacting Sally Loveland at (602) 223-2800. Requests should be made as early as possible to allow time to arrange the accommodation.

DATED AND POSTED this 5 day of September, 2002.

Arizona Board of Fingerprinting

By Sally A. Loveland

Sally A. Loveland, Director
(602) 223-2800

AGENDA

ARIZONA BOARD OF FINGERPRINTING
Friday, September 6, 2002
9:00 a.m.
Arizona Board of Fingerprinting
2222 West Encanto Blvd., #350
Phoenix, Arizona 85005

PERSON RESPONSIBLE

ROLL CALL

I. SPECIAL SESSION

A. Review of possible Board legislation to support in the next legislative session — Mr. LeHew

B. Board Elections for Chair — Mr. LeHew

C. Board Elections for Vice-Chair — Mr. LeHew

II. CALL TO THE PUBLIC

Consideration and discussion of comments and complaints from the public. Those wishing to address the Board need not request permission in advance. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.

III. ADJOURNMENT

BUDGET ISSUE ELEMENTS – FISCAL YEAR 2004

DIVISION: Criminal Justice Support
BUREAU: Fingerprint Identification
SUB-PROGRAM: AZ Board of Fingerprinting
CONTACT PERSON: Sally A. Loveland
TELEPHONE #: extension 2809

Narrative:
The Arizona Board of Fingerprinting has been under-funded since its inception. The department provided additional money to fund the Board in FY 2000, FY 2001 and again in FY 2002. In FY 2000, the Board was authorized two FTEs but operated with only one FTE due to budget constraints. Additional responsibilities were legislated for FY 2001 and a third FTE was authorized, but not the funds to support operations.

The Board received 1,669 appeals in FY 2001 and 2,104 appeals in FY 2002. In spite of the efficiency improvements made by utilizing technology advancements and by lowering the standards for expedited reviews of appeals, it still takes an estimated five hours to process a good cause exception appeal from request to resolution. The current demand for good cause exceptions would require seven employees. However, it is assumed that legislation will be introduced in FY 2003 to place time limits on certain offenses and that this will reduce the number of applicants. No one is exactly sure how many applicants will be eliminated but one guess is that it could be equal to the number of expedited reviews heard last year. At the same time, it is expected that the addition of the Charter School teachers to the program will add at least another 200 appeals. Using these assumptions, (620 expedited divided by 1476 closed files = 42%; 2104 appeals received X 42% = 884; 2104 +200 = 2304 – 884 = 1420 appeals in FY 2003) the Board would still need at least five employees in FY 2003.

The creation of a web site that would provide information regarding the appeal process and allow applicants to download applications would reduce the number of telephone calls to the Board office as well as reduce the turn around time to receive an appeal application. At the same time, upgrading one FTE to an Administrative Services Officer would allow staff to keep up with appeals, comply with the State's Rulemaking procedures, train new employees and Board members, and complete other administrative duties.

The FY 2003 budget funded three of the FTEs for a partial year. The FY 2004 budget request includes full personal services funding for all five FTEs, the upgrade of one FTE to an Administrative Services Officer (maximum $500 increase), increases in leasing and risk management costs, and the costs to develop and maintain a web site.

Budget Line Item Detail: FTE = 5 (1 ASO Sup, 1 ASO, 3 AA)

Personal Services	$207,300	
ERE	48,900	
Prof/Outside Services	22,900	
Travel In-State	500	
Travel Out-of-State	0	
Other Operating Equipment	58,600	
Capital Equipment	0	
TOTAL		**$338,200**

FTE Position Detail:

Classification	Salary	# of FTE	Total Salary
0.0			

AGENDA ITEM NO. I. A.

BOARD OF FINGERPRINTING MEETING DATE: September 6, 2002

SUBJECT: Consideration of Possible Legislation to Support in the Next Legislative Session

SUBMITTED BY: Mr. LeHew

BACKGROUND INFORMATION:

The Board has been under-funded since its inception. With the financial difficulties facing the state, it appears unlikely that the Legislature will be able to adequately fund the Board through appropriations any time in the near future.

Legislation proposed (and not passed) in FY2002 will be reintroduced during the FY2003 session. This legislation authorizes the Board to establish a fee to support Board operations; authorizes the Department of Public Safety to collect the fee during the clearance card application process and deposit the funds into the Board of Fingerprinting fund; and makes the Board of Fingerprinting fund exempt from the provisions of Section 35-190 relating to lapsing appropriations.

Attached are copies of the Board's existing legislation and the proposed changes.

Other legislation that the Board may wish to support includes any limiting time frames that the agencies may place on precluding offenses; the inclusion of all preparatory offenses as precluding offenses; and the denial of any person who is a known sex offender, whether or not they have a corresponding precluding offense on their record.

BOARD ACTION REQUESTED: **INFORMATION [X]** **ACTION [X]** (described below)

Approve as submitted.

ATTACHMENTS: **YES [X]** **NO []**

Proposed Changes to Legislation

41-1750

J. The Director shall establish a fee in an amount necessary to cover the cost of federal noncriminal justice fingerprint processing for criminal history record information checks that are authorized by law for noncriminal justice employment, licensing or other lawful purposes. Additional fees may be charged by the department for state noncriminal justice fingerprint processing. EFFECTIVE JULY 1, 2003, THE DIRECTOR SHALL ADD TO THE ESTABLISHED FEE AN AMOUNT DETERMINED BY THE BOARD OF FINGERPRINTING TO COVER THE OPERATING COSTS OF THE BOARD. Fees submitted to the department for state noncriminal justice fingerprint processing AND THE BOARD are not refundable. THE AMOUNT COLLECTED FOR THE BOARD OF FINGERPRINTING SHALL BE TRANSFERRED INTO THE BOARD OF FINGERPRINTING FUND.

41-619.53

A.5. THE BOARD MAY ESTABLISH A REASONABLE FEE TO COVER THE OPERATING COSTS OF THE BOARD, NOT TO EXCEED $5.00 PER FINGERPRINT CLEARANCE CARD APPLICANT.

41-619.56

A. The Board of Fingerprinting Fund is established consisting of monies appropriated by the legislature AND COLLECTED BY FEES PURSUANT TO 41-1750. ~~The Board shall administer the fund subject to legislative appropriation~~ MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED TO THE BOARD for the purposes provided in this article.

B. ~~Monies deposited in the fingerprinting fund are subject to section 35-190.~~ MONIES DEPOSITED IN THE FUND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS.

G. The board may request in writing that the department of public safety revoke a person's fingerprint clearance card pursuant to section 41-1758.04 if the person received a class one or class two fingerprint clearance card and the person is subsequently convicted of an offense listed in section 41-1758.03, subsection B or F.

H. Pending the outcome of a good cause exception determination, the board may issue interim approval to continue working to a good cause exception applicant.

41-1758.03 Fingerprint clearance cards; issuance

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 class one 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 class one fingerprint clearance card.

B. A person who is awaiting trial on or who has been convicted of committing or attempting 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 class one 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. Kidnapping.

6. Sexual assault.

7. Sexual exploitation of a minor.

8. Sexual exploitation of a vulnerable adult.

9. Commercial sexual exploitation of a minor.

10. Commercial sexual exploitation of a vulnerable adult.

11. 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.

12. Robbery.

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

14. Child abuse.

15. Abuse of a vulnerable adult.

16. Sexual conduct with a minor.

17. Molestation of a child.

18. Molestation of a vulnerable adult.

19. Aggravated assault.

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

21. Exploitation of minors involving drug offenses.

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

23. Taking a child for the purposes of prostitution as defined in section 13-3206.

24. Neglect or abuse of a vulnerable adult.

C. A person who is awaiting trial on or who has been convicted of committing or attempting 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 class one 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.

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

58. A violation of section 28-1381, 28-1382 or 28-1383.

59. Offenses involving domestic violence.

60. Arson.

D. 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 class one fingerprint clearance card to the person.

E. If a person is precluded from receiving a class one fingerprint clearance card pursuant to subsection B or C of this section, the division shall compare the employee's criminal history record with the list of criminal offenses that preclude the person from receiving a class two fingerprint clearance card. If the person's criminal history record does not contain any of the offenses listed in subsections F and G of this section, the division shall issue the person a class two fingerprint clearance card.

F. A person who is awaiting trial on or who has been convicted of committing or attempting to commit

non appealable offenses

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 class two fingerprint clearance card:

1. Sexual abuse of a minor.

2. Incest.

3. First or second degree murder.

4. Sexual assault.

5. Sexual exploitation of a minor.

6. Commercial sexual exploitation of a minor.

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

8. Child abuse.

9. Sexual conduct with a minor.

10. Molestation of a child.

11. Exploitation of minors involving drug offenses.

12. Sexual abuse of a vulnerable adult.

13. Sexual exploitation of a vulnerable adult.

14. Commercial sexual exploitation of a vulnerable adult.

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

16. Abuse of a vulnerable adult.

17. Molestation of a vulnerable adult.

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

19. Neglect of a vulnerable adult.

G. A person who is awaiting trial on or who has been convicted of committing or attempting 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 class two 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. Arson.

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

3. 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.

4. Felony offenses involving the possession or use of marijuana, dangerous drugs or narcotic drugs.

5. Burglary.

6. Aggravated or armed robbery.

7. Robbery.

8. Kidnapping.

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.

2. Adopt rules to implement this article, including rules to establish good cause exceptions for the issuance of class one and class two 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 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.

B. If the board members unanimously agree to grant 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 does not make a unanimous decision, a card shall not be issued to the applicant.

C. 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.

D. If a person is required to be fingerprinted as a condition of employment by more than one agency and the person 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 and shall notify the department of public safety to issue the person a card. The board shall request in writing that the department of public safety designate on the fingerprint clearance card the agency or agencies that approve a good cause exception.

E. The board may employ clerical, professional and technical personnel subject to appropriated monies and shall prescribe their duties and determine their compensation.

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

41-619.54. Confidentiality of criminal record information; exception

A. All criminal history record information that is maintained by the board is confidential, except that criminal history record information may be disclosed pursuant to a determination for a good cause exception pursuant to section 41-619.55.

B. Persons who are present at a good cause exception hearing shall not discuss or share any criminal history record information outside of the good cause exception hearing.

C. Criminal history record information and good cause exception determinations and hearings are exempt from title 39, chapter 1.

41-619.56. Board of fingerprinting fund

A. The board of fingerprinting fund is established consisting of monies appropriated by the legislature. The board shall administer the fund subject to legislative appropriation for the purposes provided in this article.

B. Monies deposited in the fingerprinting fund are subject to section 35-190.

41-619.55. Good cause exceptions; revocation

A. The board shall determine good cause exceptions.

B. The board shall hold a good cause exception hearing if the board determines that it either:

1. Will deny a good cause exception.

2. Does not have enough information to make a final determination.

C. 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.

D. The board may grant a good cause exception if the person shows to the board's satisfaction that the person is not awaiting trial on or has not been convicted of committing any of the offenses listed in section 41-1758.03, subsection B, C, F or G or that the person is successfully rehabilitated and is not a recidivist. Before granting a good cause exception the board shall consider all of the following:

1. The extent of the person's criminal record.

2. The length of time that has elapsed since the offense was committed.

3. The nature of the offense.

4. Any applicable mitigating circumstances.

5. The degree to which the person participated in the offense.

6. The extent of the person's rehabilitation, including:

(a) Completion of probation, parole or community supervision.

(b) Whether the person paid restitution or other compensation for the offense.

(c) Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling.

(d) Personal references attesting to the person's rehabilitation.

E. 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.

F. The board shall review reports it receives of the arrest, charging or conviction of a person for offenses listed in section 41-1758.03 who previously received a fingerprint clearance card.

G. The board may request in writing that the department of public safety revoke a person's fingerprint clearance card pursuant to section 41-1758.04 if the person received a class one or class two fingerprint clearance card and the person is subsequently convicted of an offense listed in section 41-1758.03, subsection B or F.

H. Pending the outcome of a good cause exception determination, the board may issue interim approval to continue working to a good cause exception applicant.

AGENDA ITEM NO. I. B.

BOARD OF FINGERPRINTING MEETING DATE: September 6, 2002

SUBJECT: Consideration of Nominations for Board Chair

SUBMITTED BY: Mr. LeHew

BACKGROUND INFORMATION:

Board officers serve for a period of one year. Mr. LeHew has held the position of Chair for the last three years.

Nominees must be made from the appointed representatives – not the alternates. Furthermore, alternates may not fulfill the obligations of the appointed representative in any elected capacity.

Mr. LeHew has withdrawn his name from consideration for work-related reasons and Ms. Pipersburgh has withdrawn her name for health-related issues.

The following candidates are eligible to be nominated: Ms. Goertz, Mr. Emanuel, and Ms. Dils.

BOARD ACTION REQUESTED: **INFORMATION [X]** **ACTION [X]** (described below)

ATTACHMENTS: **YES []** **NO [X]**

AGENDA ITEM NO. I. C.

BOARD OF FINGERPRINTING MEETING DATE: September 6, 2002

SUBJECT: Consideration of Nominations for Board Vice-Chair

SUBMITTED BY: Mr. LeHew

BACKGROUND INFORMATION:

Board officers serve for a period of one year. Ms. Velasquez held the position of Vice Chair until her resignation from the Board in May 2002.

Nominees must be made from the appointed representatives – not the alternates. Furthermore, alternates may not fulfill the obligations of the appointed representative in any elected capacity.

Mr. LeHew has withdrawn his name from consideration for work-related reasons and Ms. Pipersburgh has withdrawn her name for health-related issues.

The following candidates are eligible to be nominated: Ms. Goertz, Mr. Emanuel, and Ms. Dils.

BOARD ACTION REQUESTED: **INFORMATION [X]** **ACTION [X]** (described below)

ATTACHMENTS: **YES []** **NO [X]**