



ARIZONA BOARD OF FINGERPRINTING

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Final Minutes for Public Meeting

Held 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

CALL TO ORDER AND ROLL CALL

Mr. LeHew called the meeting to order at 9:51 a.m. The following Board members were present: Mike LeHew, Kim Pipersburgh, Rand Rosenbaum, Charles Easaw, and Arthur W. Baker. No Board members were absent.

CALL TO THE PUBLIC

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

APPROVAL OF MINUTES

Mr. Rosenbaum moved that the Board adopt the minutes from its meeting on October 20, 2006, and Mr. Baker seconded. The motion passed, 5-0.

LEGISLATION

Mr. Seavers referred the Board members to his October 23, 2006, memorandum on legislation (see Attachment 1).

Mr. Seavers explained that he had spoken with the Department of Public Safety (“DPS”) about the effect the new offenses might have on individuals who previously were granted a good cause exception. DPS indicated that if an offense that was added by legislation existed at the time the Board granted a good cause exception, the individual would not be denied a fingerprint clearance card when he or she tried to renew the card. For example, suppose a person who had a shoplifting offense in 1990 and a welfare-fraud offense in 1991 receives a good cause exception in 2004. In 2004, welfare fraud was not an offense precluded by A.R.S. § 41–1758.03, but it became a precluding offense through the Board’s legislation. In 2010, if the person applies again for a fingerprint clearance card, the welfare-fraud conviction would not be treated as a new offense, and the person would be granted a fingerprint clearance card.

Mr. LeHew asked the Board members whether they wanted any changes to the legislation—in particular, moving child neglect to the nonappealable offenses; expanding A.R.S. § 41–1758.03(C)(55) to include any offense under A.R.S. Title 13, Chapter 23; removing offenses involving domestic violence; adding possession of burglary tools; and adding possession of drug paraphernalia—but the Board members said that they wanted to proceed with the legislative proposal approved at the October 20, 2006, meeting.

Mr. Baker made a motion for the Board to support the legislative proposal initially adopted at the October 20, 2006, meeting, and Mr. Easaw seconded. The motion passed, 5-0.

RULEMAKING

Mr. Seavers referred the Board members to the Notice of Proposed Exempt Rulemaking that was published in the *Arizona Administrative Register*, Volume 12, Issue 43 (October 27, 2006), pp. 4020-4022 (see Attachment 2). He explained that the Board had allowed a 30-day period for public comments, but no public comments were submitted. Mr. Seavers said that unless the Board wanted to make any changes to the proposed rules, it could adopt the rules as initially published.

Mr. Easaw made a motion to adopt the rules as originally proposed, and Mr. Baker seconded. The motion passed, 5-0. Mr. Seavers said he would file the Notice of Final Exempt Rulemaking the following week, and the rules would be effective upon filing them.

AUDIT REPORT

Mr. Seavers told the Board members that the Office of the Auditor General would be submitting its draft of the sunset review and performance audit to the Board in December or January. He

said that he met with the auditors, who outlined what the audit report would contain. Mr. Seavers said that the Board's assistant attorney general ("AAG") advised the Board that it could meet in executive session to discuss the report. Although the AAG preferred that the Board meet in executive session when it had the report in hand, the AAG believed that an executive session would be legal if the audit team indicated that its briefing to the executive director was a reasonably accurate representation of what would be included in the performance-audit report.

Mr. Baker moved that the Board go into executive session pursuant to A.R.S. § 38-4321.03(A)(2) to discuss the performance-audit report that will be issued by the Office of the Auditor General. Ms. Pipersburgh seconded the motion, which passed, 5-0. The Board entered into executive session at 10:11 a.m.

The Board emerged from executive session at 10:38 a.m.

EXECUTIVE DIRECTOR'S REPORT

Mr. Seavers referred the Board members to his December 1, 2006, memorandum about resolving the Board's backlog of cases (see Attachment 3). He noted that the Board had begun to address the increased caseload by hiring a hearing officer.

Mr. Baker suggested that the Board make use of the Office of Administrative Hearings if the Board was not going to meet the target date of February 23, 2007, for resolving the open cases. Mr. LeHew asked Mr. Seavers to inform the Board members if the Office of Administrative Hearings is used.

ADJOURNMENT

Ms. Pipersburgh made a motion to adjourn the meeting, and Mr. Easaw seconded. The motion passed, 5-0. Mr. LeHew adjourned the meeting at 9:56 a.m.

Minutes approved on January 26, 2007

Dennis Seavers, Executive Director

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.

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 COMMERCIAL 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 Administrative Register / Secretary of State

Notices of Exempt Rulemaking

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**

R13-11-109	<u>Rulemaking Action</u>
R13-11-110	New Section
R13-11-111	New Section
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;

Arizona Administrative Register / Secretary of State
Notices of Exempt Rulemaking

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**

Arizona Administrative Register / Secretary of State
Notices of Exempt Rulemaking

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

Arizona Board of Fingerprinting

Memo

TO: Board members
FROM: Dennis Seavers
C:
Date: December 1, 2006
SUBJECT: Resolving open cases



SUMMARY

There are 278 open cases that represent individuals who have had a hearing but who are awaiting a decision. These cases will be resolved no later than February 23, 2007. There will be no increase to the backlog, and the Board has taken the necessary steps to prevent a future backlog.

BACKGROUND

Earlier this year, the Board identified a growing backlog of cases. These cases represented individuals who had appeared at an administrative hearing but who were waiting for a final decision by the Board. In almost all cases, the Board was waiting for the hearing officer's recommendation.

I identified a few causes of the backlog. Some were temporary bottlenecks, such as the diversion of my time to the performance audit and end-of-the-year reporting requirements. In addition, we were temporarily short-staffed, and I had to spend time training the new employee. Other causes will be ongoing conditions—especially the increase we experienced in our caseload.

I recommended that the Board establish a new position—a hearing officer who would focus full-time on conducting administrative hearings and preparing recommendations for the Board. I filled that position on November 6.

Having the new hearing officer will allow me to focus on the backlogged cases. Below is a timetable for resolving these open cases.

RESOLVING OPEN CASES

There are 278 cases that I am identifying as a backlog. Most of the cases are from August, September, and October, although there are a few cases that had hearings between March and July. (Some of these older cases represent applicants whose applications were incomplete when they appeared at the hearing and who were required to submit additional documents.)

I have developed a schedule to resolve these 278 cases by February 23, 2007, which is 12 weeks away. Since staffing in December will be low, a date earlier than February 23 is unrealistic. According to this schedule, all hearings that took place on or before June 13, 2006, will be resolved by the end of December (i.e., within two Board meetings). All hearings that took place on or before August 30, 2006, will be resolved by the end of January.

CASES AFTER NOVEMBER 1

I conducted the hearings that took place in November, but the new hearing officer is preparing the recommendations. Soon, he will conduct the hearings and submit recommendations to the Board himself, although I will review and approve the recommendations. Any hearings that took place on or after November 1, 2006, will be decided within three to four weeks. Thus, there will not be cases added to the backlog, and new applicants will experience a relatively short turn-around time for decisions after their hearings.

By the end of March 2007, I estimate that the wait time between an expedited review and a hearing will be just over the 20-day period for giving the applicant notice of the hearing. I also estimate that the wait time between a hearing and the Board's decision will be about three weeks—a few days longer than the wait time mandated by law.