



ARIZONA BOARD OF FINGERPRINTING

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Notice of Public Meeting

December 15, 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

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

Individuals who wish to acquire background material provided to board members (with the exception of material relating to possible or previous executive sessions) may request them by contacting Dennis Seavers at (602) 322-8593.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter by contacting Dennis Seavers at (602) 322-8593. Requests should be made as early as possible to allow time to arrange the accommodation.

DATED AND POSTED THIS 13th day of December 2006 at 2:30 p.m.

Arizona Board of Fingerprinting

By _____
Dennis Seavers, Executive Director

AGENDA

I. CALL TO ORDER AND ROLL CALL Mr. LeHew

II. CALL TO THE PUBLIC Mr. LeHew

At this portion of the meeting, the public is invited to make comments. Arizona law prohibits board members from discussing items that are not on the agenda. Therefore, action taken as a result of public comment will be limited to scheduling the matter for further consideration and decision at a later date.

III. LEGISLATION Mr. LeHew

At this portion of the meeting, the board will discuss whether certain changes should be made to the legislative proposal it approved on December 1, 2006. Specifically, the Board will decide whether to change what currently is codified at A.R.S. § 41-1758.03(C)(55) (“A criminal offense involving organized crime and fraud under title 13, chapter 23”) so that it reads “Any criminal offense under title 13, chapter 23.”

IV. ADJOURNMENT Mr. LeHew

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.