



## **ARIZONA BOARD OF FINGERPRINTING**

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### **Final Minutes for Public Meeting**

Held October 29, 2010, at 9:15 a.m.

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

#### **Board Members**

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

#### **Executive Director**

Dennis Seavers

### **CALL TO ORDER AND ROLL CALL**

Mr. Easaw called the meeting to order at 9:26 a.m. The following Board members were present: Charles Easaw, Arthur W. Baker, Ellen Kirschbaum, Mike LeHew, and Kim Pipersburgh. No Board members were absent.

Also in attendance was Dennis Seavers, Executive Director.

### **CALL TO THE PUBLIC**

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

## **APPROVAL OF MINUTES**

Mr. Baker made a motion to approve the draft minutes from September 16, 2010, and Mr. LeHew seconded the motion, which passed 5-0.

## **EXPEDITED REVIEWS**

Mr. Easaw referred Board members to Mr. Seavers's October 25, 2010 memo on investigator summaries for expedited reviews (see Attachment 1).

Mr. Baker made a motion to adopt the proposed change outlined in the October 25, 2010 memo and to otherwise leave the March 11, 2010 policy for expedited reviews intact. Ms. Kirschbaum seconded the motion, which passed 5-0.

## **ADJOURNMENT**

Mr. LeHew moved to adjourn the meeting, and Ms. Kirschbaum seconded the motion, which passed 5-0. Mr. Easaw adjourned the meeting at 9:30 a.m.

Minutes approved on March 4, 2011

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Dennis Seavers, Executive Director



# Arizona Board of Fingerprinting Memo

TO: Board members  
FROM: Dennis Seavers  
C:  
Date: October 25, 2010  
**SUBJECT Investigator summaries for expedited reviews**

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On March 11, 2010, the Board adopted a policy that altered the sort of information an investigator would include in the expedited-review summaries. At the time, the Board decided that it would reevaluate its policy in a few months. On October 29, 2010, the Board will revisit the policy, primarily because of some unexpected but easily remedied issues that the policy has caused.

## **Summary of policy**

Under the policy adopted on March 11, the application requirements in A.A.C. R13-11-104 would remain the same. However, the investigator would provide less information to the Board. Specifically, the investigator would not report on sentencing requirements (or completion of those requirements) and would not provide a narrative summary for the following:

- Misdemeanor offenses more than two years old;
- Misdemeanor charges that did not yield a conviction within the past two years, but not including pending charges.

Therefore, the investigator would only report those items for felony charges, misdemeanor convictions within the past two years, or pending misdemeanor charges. However, if there were any red flags that would cause the investigator concern (and which would be subject to the investigator's judgment), the investigator would report that information, even if that information normally wouldn't be required under the new guidelines.

If the applicant failed to provide information that would not have to be reported by the investigator (e.g., if the applicant didn't provide an explanation of or sentencing documents for a misdemeanor conviction from 10 years ago), the investigator would still

present the case to the Board (rather than send a deficiency notice to the applicant) but would note the deficiency.

### **Effect of policy on timeliness**

The policy change had a significant and positive effect on the Board's ability to meet the 20-day time frame. In FY 2010, quarter 3 (January 1 to March 30, 2010), which was the quarter in which the Board conducted a reduction in force, the time-frame compliance dropped to 77.49% (compared with 100% in quarter 1 and 99.45% in quarter 2). In quarter 4 (April 1 to June 30, 2010), which was the first full quarter with the reduced staffing levels, the compliance dropped to 18.46%. It took a few months for the effect to be visible in the Board's performance measure on compliance because the investigator was eliminating a backlog of cases. But in FY 2011, quarter 1 (July 1 to September 30, 2010), the compliance jumped up to 82.02%, demonstrating the effect of the policy on improving timeliness. Although the Board cannot achieve full compliance with the statutory time frame under the current policy, timeliness has been greatly improved.

### **Issue with policy**

Even though the policy has improved timeliness, one aspect of the policy has had a problematic effect. The Board could remedy this issue without significantly affecting timeliness.

As indicated above, the Board required the investigator to submit an incomplete application for an expedited review if the missing items would not have been included in the investigator summary. The investigator would instead note the deficiency. For example, suppose an individual had a 2001 misdemeanor shoplifting offense. This individual would be required to submit, among other items, an explanation of the charge and evidence that the sentence was completed. Since the offense was a misdemeanor greater than two years ago, the investigator would not report on the sentence or summarize the applicant's explanation of the offense. If the applicant failed to submit either an explanation of the crime or court documents showing completion of the sentence, the investigator would still forward the case to the Board for expedited review, even though the application was incomplete, but the investigator would note the deficiency.

The Board's reasoning for this portion of the policy was that the Board wouldn't be reviewing the information, regardless of whether the applicant submitted the required information. The Board did not want to delay a case while waiting for information that the Board ultimately wouldn't review. However, I believe this policy has some problems and would request that the Board change it.

In many cases, applicants don't provide the required information when they first submit the application because they don't carefully read the application instructions or are otherwise confused. After these applicants are notified of the missing items, many of them complete their application package. Under the previous policy, if the hearing

officer heard a case with an incomplete application, the incompleteness was normally the result of the applicant refusing to provide the required information because willing applicants would have worked with the investigator to complete the application package.

However, under the current policy, the situation has changed. Applicants who previously would have been contacted by the investigator to request the missing information are not necessarily contacted. Instead, their cases are presented to the Board despite their incompleteness. Since some of those cases are referred to administrative hearings—sometimes for reasons in addition to the incomplete application package—the hearing officers have seen an increase in the number of cases where the application package is incomplete. The hearing officers are subject to the Board's rules, including the rule on what constitutes a complete application. As a result, the hearing officers have felt compelled to recommend that the Board deny applications that otherwise might have been approved, simply because documentation was missing. The hearing officers believe that in some of these cases, the applicants would have provided the documentation if they were aware that their applications were incomplete. Although the applicants themselves are ultimately responsible for not submitting all required information, it's nonetheless true that applicants often don't read the application instructions or decide that their applications will be approved without submitting the information.

Moreover, the current policy creates a situation where there may not be fair treatment of all applicants. Applicants who diligently follow the instructions and submit all required information are given the same treatment as applicants who don't follow the instructions and submit incomplete applications.

### **Proposed change**

I recommend that the Board return to its previous practice of conducting an expedited review only if (a) the applicant submits a complete application, or (b) the staff can't get the applicant to submit a complete application after reasonable efforts. Returning to this practice will increase the likelihood that applications are complete if the case is referred to an administrative hearing, or at least that instances of incompleteness will be the result of a lack of diligence by the applicant and not a misunderstanding of the application requirements. The Board can leave the remaining policy intact if it wishes.

I don't believe this change will have a significant negative effect on timeliness. The investigator still needs to determine whether information is missing and note the deficiencies. It takes only little additional effort to send a letter to the applicant requesting the missing information. The most important time-saving measure for the investigator—not having to describe the events that led to many of the applicants' charges—will still be in place.