



ARIZONA BOARD OF FINGERPRINTING

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Final Minutes for Public Meeting

Held March 4, 2011, at 9:45 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 9:47 a.m. The following Board members were present: Charles Easaw, 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. LeHew made a motion to approve the draft minutes from October 29, 2010, and Ms. Kirschbaum seconded the motion, which passed 4–0.

EXECUTIVE DIRECTOR’S REPORT

Mr. Easaw referred Board members to Mr. Seavers’s March 1, 2011 memo on the Board’s fiscal year 2011 budget performance (see Attachment 1).

For the strategic plan, Mr. Seavers noted that due to the reduction in force last year, the Board was not meeting its statutory time frames for hearings. However, a policy adopted by the Board had significantly improved the Board’s compliance with the 20-day time frame for expedited reviews.

LEGISLATION

Mr. Easaw referred Board members to Mr. Seavers’s February 28, 2011 legislative-update memo (see Attachment 2). Mr. LeHew explained that the Department of Economic Security wanted to pass Senate Bill (SB) 1082 to require fingerprint clearance cards for certain populations that had not previously been required to have a card.

Mr. Easaw referred Board members to Mr. Seavers’s February 28, 2011 memo on SB 1056 (see Attachment 3). Mr. Seavers explained that he was working on an amendment to the bill that would give the Board access to criminal-history information for central-registry exceptions. Mr. LeHew expressed concern about the impact of a caseload increase on the Board members and resources, particularly if the Board were not permitted to increase the size of its staff. Mr. Easaw noted that Mr. Seavers had been talking to the Governor’s Office about staff resources but expressed concern about some of the issues with implementing this bill, such as whether the good-cause-exception and central-registry processes would run parallel or consecutively for individuals with precluding offenses on their records.

Mr. Easaw referred Board members to Mr. Seavers’s March 1, 2011 memo on SB 1520 (see Attachment 4). Mr. Seavers noted that the bill was amended to make background clearance cards optional, so agencies could decide whether they wanted to require background clearance cards or fingerprint clearance cards. In addition, the Board would retain the name “Arizona Board of Fingerprinting.”

ADJOURNMENT

Mr. LeHew moved to adjourn the meeting, and Ms. Kirschbaum seconded. The motion passed, 5–0. Mr. Easaw adjourned the meeting at 10:29 a.m.

Minutes approved on August 19, 2011

Dennis Seavers, Executive Director



Arizona Board of Fingerprinting Memo

TO: Board members
FROM: Dennis Seavers
C:
Date: March 1, 2011
SUBJECT Budget report

One of the agenda items for the March 4, 2011 Board meeting is a report from the executive director on the Board's budget performance for the first two quarters of FY 2011. To help expedite the meeting, this memo serves as a budget report.

SUMMARY

- On December 31, 2011, the Board of Fingerprinting Fund ("BOFF") balance was \$373,848.72.
- For the first two quarters of FY 2011, expenditures have been \$13,969.19 less than budgeted, and revenues have been \$137,844 higher than anticipated. As a result, the BOFF balance was \$151,813.19 higher than anticipated.
- The governor's budget proposal would sweep \$100,000 from the BOFF in FY 2011 and \$90,000 in FY 2012.

ANALYSIS

Attached is a summary of revenues and expenditures through December 31, 2010. The Board staff has attempted to limit expenditures, resulting in 5.43% in savings. In addition, revenues have been higher than anticipated; Board members may remember that the budget made conservative assumptions about revenues because of significant variations in monthly revenues during FY 2010. During the first two quarters, revenues were \$137,844 higher than anticipated.

The governor has proposed fund sweeps of the BOFF of \$100,000 in the current FY and \$90,000 in FY 2012. Although these sweeps will still leave the Board with a healthy fund balance, some of balance will need to be applied to implementing bills currently being considered by the Legislature. (For more information, see my February 28, 2011 memos on pending legislation and SB 1056 and my March 1, 2011 memo on SB 1520.)

Budget vs. Actual
Fiscal Year 2011, Quarters 1 and 2

	<u>Jul - Dec 10</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Jul - Dec 10 Budget</u>
Income				
4900 - Transfers In	435,344.00	297,500.00	137,844.00	146.33%
FY10 Carryover	181,692.06	181,692.06	0.00	100.0%
Total Income	<u>617,036.06</u>	<u>479,192.06</u>	<u>137,844.00</u>	<u>128.77%</u>
Expense				
6000 - Personal Services	114,452.70	115,305.96	(853.26)	99.26%
6100 - ERE	56,574.04	58,787.90	(2,213.86)	96.23%
6200 - Prof. & Outside Services	2,420.00	4,120.00	(1,700.00)	58.74%
6500 - Travel In-State	26.00			
7000 - Other Operating	56,514.60	64,742.67	(8,228.07)	87.29%
8500 - Non-capital Equipment	0.00	1,000.00	(1,000.00)	0.0%
9100 - Transfers Out	13,200.00	13,200.00	0.00	100.0%
Total Expense	<u>243,187.34</u>	<u>257,156.53</u>	<u>(13,969.19)</u>	<u>94.57%</u>
Net Income	<u><u>373,848.72</u></u>	<u><u>222,035.53</u></u>	<u><u>151,813.19</u></u>	<u><u>168.37%</u></u>



Arizona Board of Fingerprinting Memo

TO: Board members
FROM: Dennis Seavers
C:
Date: February 28, 2011
SUBJECT Legislative update

This memo summarizes the content and status of significant legislation that is relevant to the Board of Fingerprinting. I have not included bills that appear to have failed.

HB 2102 (license eligibility; authorized presence)

- The bill has multiple provisions, not all of which pertain solely to the fingerprint-clearance-card system. As introduced, the bill would have required both DPS and the Board to verify that an applicant was present in the U.S. legally. The bill sponsor agreed to my request to amend the bill to remove references to the Board, since our efforts would have duplicated DPS's.
- As a result of the amendment, the bill no longer applies to the Board. I'm providing this information only for the Board's information.
- The bill has cleared all House committees and caucuses and is awaiting floor action. The Legislature's budget staff has issued a fiscal note about the bill.

SB 1012 (technical correction; technical registration board: NOW fingerprint clearance cards; citizenship)

- Through a strike-everything amendment, this bill would require DPS to determine whether a person is a U.S. citizen or has a legal right to live and work in Arizona before receiving a fingerprint clearance card.
- The bill does not impose any requirements on the Board of Fingerprinting. I'm providing this information only for the Board's information.
- The bill has cleared all Senate committees and caucuses and is awaiting floor action.

SB 1025 (Arizona state hospital; fingerprinting requirements)

- This bill would require all Arizona state hospital (ASH) employees, contractors, or volunteers to have Level I fingerprint clearance cards.
- The bill will be amended to remove contractors from the bill, so that only ASH employees and volunteers will be required to have Level I fingerprint clearance cards.
- DHS estimates that the impact on the fingerprint-clearance card system will be minimal, with only about 100 new fingerprint-clearance-card applicants in the first year and only as turnover and renewal require in subsequent years. The Board should expect to see an increase of less than five good-cause-exception applications in the first year.
- The bill has cleared all Senate committees and caucuses and is awaiting floor action.

SB 1056 (central registry; background checks)

This bill will be addressed in a separate memo.

SB 1082 (DES; fingerprinting; finger imaging)

- The bill has multiple provisions, not all of which apply to the Board. The provision that applies to the Board is a requirement for employees and DES licensees and contractors who provide services directly to vulnerable adults to have a valid Level I fingerprint clearance card, effective December 31, 2012.
- DES estimates that about 3,200 people will need to get a Level I fingerprint clearance card as a result of this legislation, which would yield about 100 new good-cause-exception applications for the Board around the December 31, 2012 effective date.
- The bill has been approved by the Senate and is awaiting hearings in the House.

SB 1520 (Arizona background clearance card)

This bill will be addressed in a separate memo.



Arizona Board of Fingerprinting Memo

TO: Board members
FROM: Dennis Seavers
C:
Date: February 28, 2011
SUBJECT Senate Bill 1056

This memo describes SB 1056, which would expand the Board's responsibilities by creating a new process similar to good cause exceptions for certain individuals who have substantiated allegations of child abuse or neglect.

BACKGROUND

The central registry is a collection of confidential databases maintained by DES of reports of child abuse or neglect. According to the Senate staff analysis, the information in the database includes perpetrator, child victim, date, and the nature of the abuse or neglect. Reports of abuse or neglect are substantiated when CPS or a juvenile court determine that it is likely that the abuse or neglect occurred and that the individual has been afforded due process to challenge the substantiation.

In recent years, DES has worked on legislation that has required certain of its licensees or their employees to have central-registry background checks in addition to the fingerprint-based background checks. In other words, DES wanted checks both on criminal offenses and on instances of child abuse or neglect (which don't necessarily lead to criminal charges) for people who provide direct services to child or vulnerable adults. The introduced bill would require this additional check.

AMENDMENT

Certain interest groups wanted a process similar to the good-cause-exception process for individuals with substantiated allegations in the central registry. These groups felt that, as with an individual with a criminal history, a person with a substantiated allegation should have a chance to demonstrate rehabilitation from the substantiated abuse or neglect.

At stakeholder meetings, we discussed an amendment to the bill that would create a central-registry exception to serve as the exception process for people with substantiated allegations. Since multiple state agencies (DES and DHS) regulate the employers of the people who might need a central-registry exception, it would not make sense for those agencies to have their own exception processes. The Board was chosen because it had a similar process already set up.

IMPACT ON BOARD

The bill would create a new statute, A.R.S. § 41–619.57, for central-registry exceptions. This portion of the memo describes the impact of the legislative changes if the bill were to pass as amended. It discusses the main areas of impact on the Board but is not an exhaustive discussion of all provisions in the bill.¹ The bill would become effective on the general effective date, which is 90 days after the Legislature adjourns.

Application process

If the bill as amended passes, the Board would be required to process applications for central-registry exceptions as outlined below.

- Applications for central-registry exceptions would be altogether separate from good-cause-exception applications.
- The Board would have a two-tiered process, as with good-cause exceptions, consisting of expedited reviews and administrative hearings. This process would include an expedited review, which would have to be conducted within 20 days of receiving an application. If the Board did not approve the application under an expedited review, the Board or its hearing officer would have to conduct an administrative hearing within 45 days of the expedited review, and the Board would have to make a decision within 80 days after the administrative hearing.
- The Board would have to adopt rules and procedures for conducting hearings, but presumably the Board would adopt a process that mirrors the good-cause-exception process.

To establish the process, the Board, primarily through its staff, would need to accomplish at least the following (staffing issues are discussed later in the memo).

- Adopt rules for hearings and application requirements.
- Create an application form.
- Establish IT infrastructure to access the confidential central-registry databases. This infrastructure would have to meet the requirements of GITA for data security.
- Create a new database for central-registry-exception applications.

¹ For example, the bill includes provisions related to the confidentiality of records and exemptions from public-records laws.

There will be costs, as yet undetermined, with some of these tasks, such as paying a vendor for programming a new database.

Criteria

The proposed criteria for granting a central-registry exception are based on the criteria for good-cause exceptions. The Board would consider anything related to whether “the person shows to the Board’s satisfaction that the person is successfully rehabilitated and is not a recidivist” (the Board may want to request advice from the assistant attorney general to ensure that what the Board considers is appropriate and not prohibited by another law).

Before the Board could grant a central-registry exception, the Board would have to consider the following criteria.

- The extent of the person’s criminal and central-registry records
- The length of time that has elapsed since the abuse or neglect occurred
- The nature of the abuse or neglect
- Any applicable mitigating circumstances
- The degree to which the person participated in the abuse or neglect
- The extent of the person’s rehabilitation, including:
 - Evidence of positive action to change the person’s behavior, such as completion of counseling or a drug-treatment, domestic-violence, or parenting program
 - Personal references attesting to the person’s rehabilitation.

Caseload

It is unclear at this point what the impact on the Board’s caseload will be, but it’s not likely to be negligible. There are two agencies involved in this area of regulation, DES and DHS. At stakeholder meetings, DES provided two weeks of data for contractors’ employees, and about 0.5% of employees had central-registry hits. (It was not clear whether this rate of positive hits in the two-week period would be representative for all applicants.)

DHS estimates that there are about 52,000 employees at DHS-contracted facilities who would be subject to central-registry checks. (DES is working on an estimate for its facilities.) Assuming that 0.5% will have central-registry hits, then about 260 people would be eligible to request a central-registry exception. If about 60% of those people actually apply for an exception—a percentage that’s based on the number of people who are eligible to apply for a good cause exception versus those who actually apply, a percentage that may not hold true for central-registry exceptions—then the Board could expect about 156 applications for central-registry exceptions from the pool of employees at DHS-contracted facilities.

For comparison, the Board received 1,749 good-cause-exception applications in FY 2010. Assuming that the Board's good-cause-exception caseload remains consistent in FY 2011, then 156 central-registry applications would represent about a 9% caseload increase (assuming that central-registry exceptions take approximately the same amount of work and time to process as good-cause exceptions).

This estimate of 156 new applicants is very tentative, not only because we're waiting on DES numbers (some of which may overlap with DHS numbers), but also because the estimates from these other agencies are rough. In addition, I can't guarantee that the rate of central-registry hits won't be higher than 0.5%. That number was itself based on a small data sample that may not be representative of the general population. Finally, the percentage of people who are eligible to apply for a central-registry exception *and* who actually apply may be different than 60%.

Staffing issues

As the Board is aware, good-cause-exception applications are not all being processed within statutory time frames because of reduced staffing levels. At a stakeholder meeting, I expressed concern that the Board would have to meet new statutory time frames, with a caseload increase, in addition to the current time frames that the Board can't meet. As a result, I've been working with the Governor's Office to see whether the Board can restore its staffing to a level at least closer to the one that existed before the February 2010 reduction in force.

Costs

As indicated above, there will be potential costs associated with implementing this bill. These costs include both one-time expenditures, such as creating a database, and ongoing costs, such as staffing or maintenance. The bill does not provide the Board with any appropriations or other revenues. Therefore, the costs of having a central-registry process will have to come from the Board's portion of the fingerprint-clearance-card fee.



Arizona Board of Fingerprinting Memo

TO: Board members
FROM: Dennis Seavers
C:
Date: March 1, 2011
SUBJECT Senate Bill 1520

This memo describes SB 1520, which would significantly change the fingerprint-clearance-card system and would substantially affect the Board. Although you are welcome to share this memo with other interested parties, please note that the memo focuses on the bill's impact on the Board and does not address all aspects of the bill.

SUMMARY

As introduced, the bill would effectively privatize DPS's role in the card system by having private investigation companies conduct non-fingerprint-based background checks. These companies, referred to as authorized investigative providers ("providers"), would conduct their checks with investigative databases, court databases, and court files, as well as any other resource the company may wish to use. The cards issued by these companies would be called background clearance cards rather than fingerprint clearance cards and would be valid for two rather than six years.

An amendment will be introduced on the Senate floor to give state agencies the option of requiring either fingerprint clearance cards or background clearance cards.

LEGISLATIVE PROVISIONS

The memo focuses on the provisions of the bill that would most directly affect the Board. Other provisions, such as the licensure requirements for providers, are not discussed or are not described in detail.

- The bill changes the Board's name to the Board of Arizona Background Clearance Cards ("BABCC").
- The bill would not alter the lists of crimes that preclude issuance of a card.

- The bill requires ADOA to license companies that meet certain requirements. Assuming that multiple providers are licensed, BABCC will be dealing with multiple providers rather than just one agency (i.e., DPS) regarding denials and suspensions of cards.
- Providers must determine the identity of the person submitting the background-clearance-card application. If the applicant provides materially false information, the provider must deny the application, and the applicant can appeal the denial to BABCC. This denial would be a separate process from the good-cause-exception process. If BABCC determines that the individual's identity is verified or that the applicant did not provide materially false information, then BABCC would notify the provider, which would continue processing the background-clearance-card application.
- Providers must collect BABCC's fee (just as DPS currently collects the Board's fee) and transmit it within 30 days of the end of each month. BABCC would be authorized to review or audit the provider's financial records with 10 days notice. If a provider fails to transmit the fees on a timely basis, the Board will send a notice to the provider. If the provider still fails to submit the fees within 10 days of the Board's notice, ADOA may revoke the provider's license.
- Cards would be valid for two rather than six years. In the introduced bill, all unexpired fingerprint clearance cards issued before January 1, 2012, would be valid until their normal expiration dates or December 31, 2013, whichever is later. Between January 1, 2012, and December 31, 2013, during which time there will be both fingerprint clearance cards and background clearance cards, DPS will still be responsible for suspensions. (Please note that an amendment is being drafted to have an option for either fingerprint clearance cards or background clearance cards, and this amendment will likely change this section of the bill.)
- Classified school-district personnel (i.e., employees who do not have teaching certificates, such as IT personnel, administrative staff, custodians, etc.) would be required to have background clearance cards. There are currently about 56,000 classified personnel. In the current fiscal year, DPS estimates that it will receive 102,000 fingerprint-clearance-card applications, so an increase of 56,000 would represent a substantial caseload increase for BABCC. In addition, school-district volunteers would be required to have a background clearance card. There isn't a government agency with total numbers of all volunteers in the state, but the number of volunteers would not be negligible.
- With an amendment, the bill would require providers to turn over all records used in an investigation to BABCC at the Board's request, just as DPS now provides the Board with an applicant's criminal-history records.

IMPACT ON BOARD

Apart from relatively superficial changes, such as the name change, much of the Board's work will remain the same. There will be some operational changes, such as dealing with providers rather than DPS, and some of the changes will require one-time expenditures, such as cost associated with database programming. However, these operational changes should be manageable.

The provision with the biggest impact on the Board is the requirement for classified school-district personnel and school-district volunteers to have background clearance cards. This addition will substantially increase the Board's caseload—perhaps by 60% or more. I have conveyed to the Governor's Office that the Board will need to add employees to accommodate this increase. The Board will also need to examine its fee to ensure a healthy cash flow, both because of increased costs and because of issues associated with a change in the fee structure (e.g., making sure that reduced fees on a two-year cycle will not create cash-flow problems during the first few years). If the bill progresses, I will be working on cash-flow projections.

IMPACT ON OTHER AGENCIES

In my opinion, the central public-policy question that this bill raises is whether having background clearance cards would be an improvement over fingerprint clearance cards, although this question will become less important if the bill is amended so that background clearance cards are optional. On the one hand, proponents of the bill have identified what they regard as gaps or deficiencies in the fingerprint-based background checks; on the other hand, some agencies may have concerns about the nature or quality of the providers' background checks.

During negotiations about this bill, I have represented the Board's position as neutral on this question. If an agency like the Board of Education or Department of Health Services—that is, an agency responsible for regulating service providers—is fine (or not) with the proposed change, then the Board of Fingerprinting wouldn't be in a position to disagree. Individual agencies may have concerns about a shift from a fingerprint-based background check, but those agencies have their own lobbyists and methods of expressing any concerns. Therefore, I would recommend that the Board focus on the impact this bill would have on this agency and not weigh concerns that individual agencies may have about moving away from a fingerprint-based check, particularly if the background clearance card will be optional.