



## **ARIZONA BOARD OF FINGERPRINTING**

Post Office Box 6129 • Phoenix, Arizona 85005-6129  
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### **FINAL Minutes for Public Meeting** Held September 4, 2020, at 9:15 a.m. 4205 North 7th Avenue, Suite 206 Phoenix, Arizona

#### **Board Members**

Garnett Burns, Department of Education, Chairperson  
Mark Koch, Administrative Office of the Courts, Vice Chairperson  
Kim Pipersburgh, Department of Health Services  
Shamiran Warda, Department of Juvenile Corrections  
John Piccarreta, Department of Child Safety  
Elanie Estrada, Department of Economic Security  
Christina Ralls, Administrative Office of the Courts

#### **Executive Director**

Matthew A. Scheller

### **I. CALL TO ORDER AND ROLL CALL**

Ms. Burns called the meeting to order at 9:15 a.m. The following Board members were present: Garnett Burns, Mark Koch, Kim Pipersburgh, Shamiran Warda, John Piccarreta, Elanie Estrada, and Christina Ralls (appearing in a non-voting roll). The following Board members were absent: None.

Also in attendance was Matthew A. Scheller, Executive Director (ED).

### **II. CALL TO THE PUBLIC**

Ms. Burns made a call to the public. There were no members of the public present who wished to comment.

### **III. APPROVAL OF MINUTES FROM AUGUST 21, 2020 MEETING AND AUGUST 25, 2020 EXECUTIVE SESSION MEETING**

Mr. Koch made a motion to approve the draft minutes from August 21, 2020 Meeting and the August 25, 2020 Executive Session Meeting, and Ms. Warda seconded. The motion passed 6–0.

### **IV. DISCUSSION OF PROPOSED RULES**

Ms. Burns referred the Board members to Mr. Scheller’s memo, dated September 1, 2020, regarding the Draft Rules Proposal (see Attachment 1).

Mr. Scheller indicated that the Board held a public meeting on February 21, 2020 and the Board approved the rules change to decrease its portion of the fingerprint-clearance-card fee from \$7.00 to \$4.00. The Board received official approval of its Five Year Review Report by the Governor’s Regulatory Review Council on March 3, 2020. The Governor’s Office gave approval to proceed on August 20, 2020.

Mr. Scheller asked that the Board consider following these steps prior to publishing the final rules:

- September 8, 2020: disseminate the draft rules and begin receiving public comments.
- September 30, 2020: close the formal period for accepting public comments. The Board will consider any comments submitted and, if necessary, alter its rules.
- October 1, 2020: adopt and subsequently publish final rules.

Mr. Koch made a motion to adopt the timeline as proposed to finalize the implementation of the Board Rules, and Ms. Warda seconded. The motion passed 6–0.

### **V. REVIEW THE BOARD’S RESPONSE TO THE COMMITTEE OF REFERENCE**

Ms. Burns referred the Board members to Mr. Scheller’s letter and report that was provided to the committee chairman, Senator David Livingston, on August 28, 2020 (see Attachment 2).

Mr. Scheller directed the Board members to the additional factors included in the report that the committee will consider at its public meeting. In late 2020 or early 2021, Mr. Scheller will be making a presentation to the committees of reference comprised of members of the Senate Transportation and Public Safety Committee and the House of Representatives Judiciary Committee. .

The Board did not have any questions regarding the letter or supporting documentation. Mr. Scheller indicated that no motion was necessary at this time and he would keep the Board Chair apprised of the date and time of the public meetings.

## **VI. SPECIAL ACTION LITIGATION**

Mr. Scheller reminded the Board that they just adopted the August 25, 2020 Executive Session Meeting Minutes that addressed the executive session pursuant to A.R.S. § 38-431.03(A)(3) to receive legal advice from the Board's attorney, Mr. Stephen W. Tully from Hinshaw & Culbertson LLP. Mr. Scheller indicated that the Board should discuss any actions that they would like to take pursuant to this meeting. Mr. Scheller also reminded the Board that any motions would need a simple majority to pass and not a "super majority" as required for a Good Cause Exception or Central Registry Exception.

Ms. Burns asked if any members had comments or questions regarding the discussion from the executive session. Mr. Koch asked if there were any recent updates and Mr. Scheller referred Mr. Koch to the Confidential Correspondence dated September 3, 2020 at 4:25 PM, from the Board's attorney.

Ms. Estrada made a motion to direct the Board's attorney to file a response to the Complaint for Special Action and filing both cross claims against Mr. Smith (Real Party-in-Interest and Cross-Defendant) as recommended by Mr. Tully. Ms. Warda seconded the motion. The motion passed 6-0.

## **VII. ADJOURNMENT**

Ms. Koch made a motion to adjourn the meeting, and Ms. Warda seconded. The motion passed 6-0 and the meeting was adjourned at 9:29 a.m.

Minutes approved on January 8, 2021

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Matthew A. Scheller, Executive Director



# Arizona Board of Fingerprinting Memo

TO: Board Members  
FROM: Matthew A. Scheller  
Date: September 1, 2020  
**SUBJECT Draft Rules Proposal**

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On March 3, 2020, the Board received approval of its Five Year Review Report by the Governor's Regulatory Review Council. In the Five Year Review Report the Board identified multiple changes needed to the rules. It also determined, consistent with a report by the Arizona Auditor General dated October 2019, that the fee charged for a good cause exception or a central registry exception determination should be reduced. At a meeting held on February 21, 2020, the Board approved the rules change to decrease its portion of the fingerprint-clearance-card fee from \$7.00 to \$4.00.

At its September 4, 2020 meeting, the Board of Fingerprinting will consider the draft rules (Attachment 1). The Board should consider following these steps prior to publishing the final rules:

- September 8<sup>th</sup>: disseminate the draft rules based the actions taken by the Board at this meeting and begin receiving public comments.
- September 30<sup>th</sup>: close the formal period for accepting public comments. However, please note that the Board will consider any comments submitted and, if necessary, alter its rules, even if the comments are submitted after the deadline.
- October 1<sup>st</sup>: adopt and subsequently publish final rules.

Please share this memo and the draft rules with anyone who may be interested in or affected by the proposed Rule changes. Any comments or questions should be submitted to:

Matthew A. Scheller  
Executive Director Arizona Board of Fingerprinting  
PO Box 6129  
Phoenix, AZ 85005-6129

## **EXCEPTION TO RULEMAKING REQUIREMENTS**

This rulemaking is exempt from the rulemaking requirements of the Administrative Procedures Act under Laws 2012, Chapter 188, §9(a) and A.R.S. § 41–619.53(A)(2) (as amended by Laws 2012, Chapter 188, §5).

Although the Board is not required to follow normal rulemaking procedures, the Board's rulemaking will be as transparent as possible and will solicit public input. The Board will not publish the draft rules in the *Arizona Administrative Register*, although the final rules will be published. The Board encourages the public to share and offer comments on the draft rules.

The attached proposed rules don't follow the conventions in the *Arizona Administrative Register* for announcing rule changes. For a layperson, those conventions may make it difficult to see what's being changed. Instead, I have shown the existing rule and identified changes either with red strikeout font for instances where the Board is proposing to strike portions of a rule or with blue capitalized font for instances where the Board is proposing new language.

**NOTICE OF FINAL EXEMPT RULEMAKING**  
**TITLE 13. PUBLIC SAFETY**  
**CHAPTER 11. BOARD OF FINGERPRINTING**  
**PREAMBLE**

<b><u>1. Articles, Parts, and Sections Affected</u></b>	<b><u>Rulemaking Action</u></b>
R13-11-102	Amend
R13-11-104	Amend
R13-11-105	Amend
R13-11-106	Amend
R13-11-107	Repeal
R13-11-108	Repeal
R13-11-109	Amend
R13-11-110	Amend
R13-11-113	Amend
R13-11-114	New Section

**2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 41-619.53(A)(2)

Implementing statute: A.R.S. § 41-619.53(A)(2) and (A)(5)

Statute or session law authorizing the exemption: A.R.S. § 41-619.53(A)(2)

**3. The effective date for the rules and the reason the agency selected the effective date:**

The rules are effective when filed.

**4. Citation to all related notices published in the *Register* to include the *Register* as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:**

None because the rulemaking is exempt under A.R.S. § 41-619.53(A)(2) from A.R.S. Title 41, Chapter 6.

**5. The agency's contact person who can answer questions about the rulemaking:**

Name: Matthew A. Scheller, Executive Director  
 Address: P.O. Box 6129  
 Phoenix, AZ 85005  
 Telephone: 602-265-0135  
 E-mail: matthew.scheller@fingerprint.az.gov  
 Web site: fingerprint.az.gov

**6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

In a five-year-review report approved by the Council on March 3, 2020, the Board identified multiple minor changes needed to the rules. It also determined, consistent with a report by the Arizona Auditor General dated October 2019, that the fee charged for a good cause exception or a central registry exception determination should be reduced. This rulemaking makes the identified changes and reduces the fee charged for an exception determination. The rulemaking also reformatted the information in R13-11-106, R13-11-107, and R13-11-108 to comply with the second paragraph of Executive Order 2020-02. An exemption from Executive Order 2020-02 was provided by Trista Guzman Glover of the Governor's office in an e-mail dated August 20, 2020.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not 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:**

The Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

**8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. A summary of the economic, small business, and consumer impact, if applicable:**

Under A.R.S. § 41-619.53(A)(2), this rulemaking is exempt from the requirements at A.R.S. Title 41, Chapter 6 including the requirement that an economic, small business, and consumer impact statement be prepared.

The most significant change in this rulemaking is the reduction in the charge made for a good cause or central registry exception determination. The charge was reduced from \$7 to \$4 for each individual who applies for a fingerprint clearance card. In fiscal year 2019, DPS issued 157,085 fingerprint clearance cards. If this reduction had been in place, those who applied for a fingerprint clearance card would have saved a total of \$471,255 and this amount would not have gone into the Board of Fingerprinting Fund established under A.R.S. § 41-619.56.

**10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking (if applicable):**

Not applicable

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments, if applicable:**

The Board received no public comments about the rulemaking.

**12. Other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:**

None

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

The Board does not issue permits. Rather, the Board makes determinations regarding a good cause or central registry exemption based on statutory criteria at A.R.S. § 41-619.55 or 41-619.57.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

No federal law applies to these rules.

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

No analysis was submitted.

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:**

None

**14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

None of the rules was previously made, amended, or repealed as an emergency rule.

**15. The full text of the rules follows:**

**TITLE 13. PUBLIC SAFETY**  
**CHAPTER 11. BOARD OF FINGERPRINTING**  
**ARTICLE 1. BOARD OF FINGERPRINTING**

Section

R13-11-102. Definitions

R13-11-104. Application Requirements

R13-11-105. Expedited Review

R13-11-106. ~~Request to Vacate, Reschedule, or Continue Hearing; Reconvening a~~  
Hearing MATTERS

R13-11-107. ~~Telephonic Testimony~~ Repealed

R13-11-108. ~~Hearings~~ Repealed

R13-11-109. Ex Parte Communications

R13-11-110. Rehearing or Review of Decision

R13-11-113. ~~Fees~~ FEE

R13-11-114. INTERIM WORK PERMIT

## ARTICLE 1. BOARD OF FINGERPRINTING

### R13-11-102. Definitions

~~IN~~ THE DEFINITIONS AT A.R.S. § 41-619.51 APPLY TO THIS ARTICLE. ADDITIONALLY, IN this Article, the following definitions apply, unless the context otherwise requires:

1. "Applicant" means a person who applies for a good cause exception under A.R.S. § 41-619.55 or a central registry exception under A.R.S. § 41-619.57.
- ~~2.~~ ~~"Board" means the Board of Fingerprinting.~~
- ~~3.~~ ~~"Central registry exception" means notification to the Department of Economic Security or the Department of Health Services, as appropriate, pursuant to A.R.S. § 41-619.57 that the person is not disqualified because of a central registry check conducted pursuant to A.R.S. § 8-804.~~
- ~~4.~~2. "Central registry exception application" means all the documents required by A.A.C. R13-11-104(B).
- ~~5.~~3. "CPS" means Child Protective Services.
- ~~6.~~4. "DES" means the Department of Economic Security.
- ~~7.~~5. "DES notice" means the notice of disqualification because of a central registry background check that the Department of Economic Security sends to an applicant under A.R.S. § 8-804(H).
- ~~8.~~6. "DPS" means the Department of Public Safety.
- ~~9.~~7. "DPS notice" means the notice of denial or suspension of a fingerprint clearance card that ~~the Department of Public Safety~~ DPS sends to a fingerprint clearance card applicant under A.R.S. § 41-1758.04.
- ~~10.~~8. "Expedited review" means an examination by the Board, without the applicant being present and in accordance with R13-11-105, of the documents an applicant submits.
- ~~11.~~9. "Good cause exception" means the issuance of a fingerprint clearance card to an applicant under A.R.S. § 41-619.55.
- ~~12.~~10. "Good cause exception application" means all of the documents required by A.A.C. R13-11-104(A).

~~13-11.~~ "Hearing officer" means an administrative law judge or other person appointed by the Board to determine good cause exceptions or central registry exceptions.

#### **R13-11-104. Application Requirements**

A. Good cause exception application. ~~A good cause exception application shall consist of both the criminal history information provided by DPS and~~ TO APPLY FOR A GOOD CAUSE EXCEPTION, AN APPLICANT SHALL SUBMIT the following materials ~~submitted by an applicant~~ to the Board WITHIN ONE YEAR FROM THE DATE OF THE DENIAL OR SUSPENSION LETTER FROM DPS:

1. The good cause exception application form, ~~prescribed by~~ WHICH IS AVAILABLE ON the ~~Board~~ BOARD'S WEB SITE. ~~This~~ THE APPLICANT SHALL HAVE THE COMPLETED form ~~shall be~~ notarized BEFORE SUBMITTING THE FORM.

2. A COPY OF THE DENIAL OR SUSPENSION LETTER FROM DPS.

~~2-3.~~ Two letters of reference, USING THE FORM ~~on forms prescribed by~~ AVAILABLE ON the ~~Board~~ BOARD'S WEB SITE, ~~that~~ WHICH meet the following requirements:

- a. Both letters of reference ~~shall be~~ ARE from individuals who have known the applicant for at least one year; and
- b. At least one letter of reference ~~shall be~~ IS from the applicant's current or former employer or from an individual who has known the applicant for at least three years.

~~3-4.~~ If the DPS notice indicates that DPS could not determine the disposition of a charge, documents from the appropriate court showing the disposition of the charge or showing that records pertaining to the applicant either do not exist or have been purged.

~~4-5.~~ For any ~~charges~~ CHARGE that occurred NO MORE THAN five years ~~or less prior to~~ BEFORE the date on the DPS notice, regardless of whether the ~~charges were~~ CHARGE IS listed on the DPS notice, the police report for each charge and documents from the appropriate court showing the disposition of the charge.

~~5.6.~~ For every ANY criminal conviction, regardless of whether the ~~offenses were~~ OFFENSE IS listed on the DPS notice, documents from the appropriate court showing ~~that~~ EITHER the applicant has met all judicially imposed obligations or sentencing conditions or ~~that~~ records pertaining to the applicant ~~either~~ do not exist or have been purged. If the applicant has not met all judicially imposed obligations or sentencing conditions, the applicant shall provide a written statement indicating or documents from the appropriate court showing the status of the applicant's efforts toward meeting the obligations.

~~6.7.~~ A statement written by the applicant that explains each charge, regardless of whether the ~~charges were~~ CHARGE IS listed on the DPS notice.

**B.** Central registry exception application. ~~A central registry exception application shall consist of the criminal history information provided by DPS, the redacted CPS report and investigative information provided by DES, and~~ TO APPLY FOR A CENTRAL REGISTRY EXCEPTION, AN APPLICANT SHALL SUBMIT the following materials ~~submitted by an applicant~~ to the Board:

1. The central registry exception application form, WHICH IS AVAILABLE ON ~~prescribed by the Board~~ BOARD'S WEB SITE. ~~This~~ THE APPLICANT SHALL HAVE THE COMPLETED form ~~shall be~~ notarized BEFORE SUBMITTING THE FORM.

2. A COPY OF THE DENIAL LETTER FROM DCS OR DPS.

~~2.3.~~ Two letters of reference, ~~on forms prescribed by~~ USING THE FORM AVAILABLE ON the ~~Board~~ BOARD'S WEB SITE, ~~that~~ WHICH meet the following requirements:

- a. Both letters of reference ~~shall be~~ ARE from individuals who have known the applicant for at least one year; and
- b. At least one letter of reference ~~shall be~~ IS from the applicant's current or former employer or from an individual who has known the applicant for at least three years.

~~3.4.~~ If the applicant has had any criminal charges:

- a. Documents from the appropriate court showing EITHER the disposition of the criminal charges or ~~showing~~ that records pertaining to the applicant ~~either~~ do not exist or have been purged;
- b. For any ~~charges~~ CHARGE that occurred NO MORE THAN five years ~~or less prior to~~ BEFORE the date on the DES notice, the police report for ~~each~~ THE charge and documents from the appropriate court showing the disposition of ~~each~~ THE charge;
- c. For ~~every~~ ANY criminal conviction, documents from the appropriate court showing that EITHER the applicant has met all judicially imposed obligations or sentencing conditions or ~~that~~ records pertaining to the applicant ~~either~~ do not exist or have been purged. If the applicant has not met all judicially imposed obligations or sentencing conditions, the applicant shall provide a written statement indicating or documents from the appropriate court showing the status of the applicant's efforts toward meeting the obligations; AND
- d. A statement written by the applicant that explains each criminal charge.

~~4.5.~~ A statement written by the applicant that explains each incident that led to a substantiated allegation of child abuse or neglect.

~~5.6.~~ If CPS assigned a case plan to the applicant, the current CPS case plan or documentation from CPS showing that the case plan is unavailable.

C. AFTER RECEIVING THE APPLICATION FORM REQUIRED UNDER SUBSECTION (A) OR (B), THE BOARD SHALL CONDUCT AN INVESTIGATION THAT INCLUDES OBTAINING THE APPLICANT'S FULL CRIMINAL HISTORY RECORD FROM DPS AND, IF APPLICABLE, THE REDACTED CPS REPORT AND OTHER INVESTIGATIVE INFORMATION AVAILABLE FROM DES.

~~C.D.~~ The Board or its hearing officer may accept any other documents an applicant submits, as allowed by A.R.S. § 41-1062.

### **R13-11-105. Expedited Review**

**A.** Within 20 days of AFTER receiving an application, the Board shall conduct an expedited review. When determining whether the applicant should receive a good

cause exception or central registry exception under an expedited review, the Board shall consider the following:

1. The criteria listed in A.R.S. § 41-619.55(E) for a good cause exception ~~applications~~ APPLICATION or A.R.S. § 41-619.57(E) for a central registry exception ~~applications~~ APPLICATION; and
  2. Whether the documentation submitted in support of a good cause exception application or central registry exception application is sufficient to allow the Board to grant a good cause exception or central registry exception, or whether the Board requires further documentation or oral testimony.
- B.** If the Board determines UNDER AN EXPEDITED REVIEW that the applicant is eligible for a good cause exception or central registry exception ~~under an expedited review~~, the Board shall grant the applicant a good cause OR CENTRAL REGISTRY exception.
- C.** If the Board determines UNDER AN EXPEDITED REVIEW that ~~an~~ the applicant is not eligible for a good cause exception or central registry exception ~~under an expedited review~~, the Board shall direct the Board's executive director to schedule a hearing. The Board's executive director shall give the applicant reasonable notice of the hearing in accordance with A.R.S. § 41-1061. The hearing shall take place within 45 days after the expedited review.

**R13-11-106. ~~Request to Vacate, Reschedule, or Continue Hearing; Reconvening a Hearing~~ MATTERS**

- A.** ~~An applicant who wishes to~~ REQUEST TO VACATE OR RESCHEDULE A HEARING. TO request that the Board or its hearing officer vacate or reschedule a hearing, AN APPLICANT shall submit a written request to the Board BEFORE THE DATE OF THE SCHEDULED HEARING.
- B. 1.** The Board or its hearing officer shall give ~~an~~ THE applicant written ~~notification~~ NOTICE if a OF WHETHER THE REQUEST TO VACATE OR RESCHEDULE THE hearing ~~has been~~ IS vacated or rescheduled GRANTED OR DENIED. IF THE HEARING IS RESCHEDULED, THE BOARD OR ITS HEARING OFFICER

SHALL INCLUDE IN THE NOTICE THE DATE OF THE RESCHEDULED HEARING.

- C. 2.** Vacating a hearing. The Board or its hearing officer may vacate a hearing if:
1. **a.** The applicant no longer requires a good cause exception or central registry exception;
  2. **b.** The applicant withdraws the application by submitting a written notice to the Board; or
  3. **c.** Facts demonstrate to the Board or its hearing officer that it is appropriate to vacate the hearing ~~if the action will further~~ FOR THE PURPOSE OF administrative convenience, ~~expedience~~ EXPEDIENCY, ~~and~~ OR economy and THE ACTION does not conflict with law or cause undue prejudice to any party.
- D. 3.** Rescheduling a hearing. The Board or its hearing officer may reschedule a hearing if:
1. **a.** The applicant shows that attending the calendared hearing would cause excessive or undue prejudice or hardship;~~;~~
  2. **b.** The applicant shows that attending the calendared hearing would be impossible, using ~~reasonable diligence~~ THE EFFORT EXPECTED FROM A REASONABLE PERSON UNDER THE CIRCUMSTANCES; OR
  3. **c.** Facts demonstrate to the Board or its hearing officer that it is appropriate to reschedule the hearing for the purpose of administrative convenience, ~~expedience~~ EXPEDIENCY, ~~and~~ OR economy and THE ACTION does not conflict with law or cause undue prejudice to any party.
- E.B.** Continuing a hearing. ~~When ruling on a motion to continue a hearing, the~~ THE Board or its hearing officer shall consider ~~such~~ THE FOLLOWING factors ~~as~~ WHEN RULING ON A MOTION TO CONTINUE A HEARING:
1. The reasons for continuing the hearing; and
  2. Whether the continuance will cause undue prejudice to any party.
- F.C.** Reconvening a hearing. The Board or its hearing officer may recess a hearing and reconvene at a future date by a verbal ruling.

D. TESTIMONY BY TELEPHONE OR ELECTRONIC MEANS. AN APPLICANT WHO WISHES TO SUBMIT OR HAVE A WITNESS SUBMIT TESTIMONY AT A HEARING BY TELEPHONE OR ELECTRONIC MEANS SHALL SUBMIT A WRITTEN REQUEST TO THE BOARD BEFORE THE TIME OF THE SCHEDULED HEARING. THE BOARD OR ITS HEARING OFFICER MAY ALLOW THE APPLICANT OR THE APPLICANT'S WITNESS TO SUBMIT TESTIMONY BY TELEPHONE OR ELECTRONIC MEANS AT THE HEARING IF:

1. PERSONAL ATTENDANCE BY THE APPLICANT OR THE APPLICANT'S WITNESS AT THE HEARING WILL PRESENT AN UNDUE HARDSHIP FOR THE APPLICANT OR THE APPLICANT'S WITNESS;
2. TESTIMONY BY TELEPHONE OR ELECTRONIC MEANS WILL NOT CAUSE UNDUE PREJUDICE TO ANY PARTY; AND
3. THE APPLICANT OR THE APPLICANT'S WITNESS ASSUMES THE COST OF TESTIFYING BY TELEPHONE OR ELECTRONIC MEANS.

E. FAILURE TO APPEAR. ABSENT GOOD CAUSE, IF AN APPLICANT FAILS TO APPEAR AT A SCHEDULED HEARING, THE BOARD MAY DENY A GOOD CAUSE EXCEPTION OR CENTRAL REGISTRY EXCEPTION TO THE APPLICANT. THE BOARD, USING ITS DISCRETION, SHALL DETERMINE WHETHER GOOD CAUSE EXISTS.

1. AN APPLICANT DEMONSTRATES GOOD CAUSE BY SHOWING THAT THE APPLICANT:
  - A. COULD NOT HAVE BEEN PRESENT AT THE HEARING USING THE EFFORT EXPECTED FROM A REASONABLE PERSON UNDER THE CIRCUMSTANCES, OR
  - B. REQUESTED THAT THE HEARING BE RESCHEDULED UNDER R13-11-106.
2. THE BOARD SHALL NOT ACCEPT THE APPLICANT'S FAILURE TO INFORM THE BOARD OF A CHANGE IN ADDRESS AS GROUNDS FOR GOOD CAUSE.

F. BOARD DECISION. THE BOARD SHALL GRANT OR DENY A GOOD CAUSE EXCEPTION OR CENTRAL REGISTRY EXCEPTION WITHIN 80 DAYS AFTER THE HEARING.

**R13-11-107. Telephonic Testimony Repealed**

- ~~A. An applicant who wishes to submit or have a witness submit telephonic testimony at the hearing shall submit a written request to the Board.~~
- ~~B. The Board or its hearing officer may allow the applicant or the applicant's witness to submit telephonic testimony at the hearing if:~~
- ~~1. Personal attendance by the applicant or the applicant's witness at the hearing will present an undue hardship for the applicant or the applicant's witness;~~
  - ~~2. Telephonic presence will not cause undue prejudice to any party; and~~
  - ~~3. The applicant or the applicant's witness assumes the cost of testifying telephonically.~~

**R13-11-108. Hearings Repealed**

- ~~A. Absent good cause, if the applicant fails to appear at a hearing, the Board may deny the good cause exception application or central registry exception application for failure to appear at the hearing. An applicant demonstrates good cause by showing that the applicant — could not have been present at the hearing or requested that the hearing be rescheduled pursuant to R13-11-106, using reasonable diligence. An applicant's failure to inform the Board of a change in address shall not constitute grounds for good cause. The Board shall determine whether good cause exists.~~
- ~~B. The Board shall grant or deny a good cause exception or central registry exception within 80 days of the hearing.~~

**R13-11-109. Ex Parte Communications**

- A. In any good cause exception or central registry exception case, except to the extent required for disposition of *ex parte* matters as authorized by law:
1. ~~No~~ AN interested person outside the Board ~~may~~ SHALL NOT make or knowingly cause to be made to any Board ~~members~~ MEMBER, hearing 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; AND
2. ~~No~~ 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 proceeding, ~~may~~ SHALL NOT 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 proceeding, who receives, makes, or knowingly causes to be made a communication prohibited ~~by~~ R13-11-109(A) UNDER SUBSECTION (A), ~~must~~ SHALL 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~~ SUBSECTIONS (B)(1) AND (B)(2).
- C.** ~~Upon receipt of~~ IF THE BOARD RECEIVES a communication made or knowingly caused to be made by a party in violation of this Section, the Board or its hearing officer may require the party to show cause why ~~his or her~~ THE PARTY'S 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~~ AN application for a good cause exception or central registry exception is filed.
- 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 applicant 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~~ AFTER the date ~~of service of~~ the decision IS SERVED. The Board shall grant a request for review or rehearing for any of the following reasons materially affecting the rights of the applicant:
1. The findings of fact, conclusions of law, or decision are not supported by the evidence or are contrary to law;
  2. The applicant 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 USING THE EFFORT EXPECTED FROM A REASONABLE PERSON UNDER THE CIRCUMSTANCES; or
  4. Error in admission or rejection of evidence or other errors of law occurring at the hearing.
- B. The APPLICANT SHALL ~~request must~~ specify IN THE REQUEST UNDER SUBSECTION (A) the grounds for a review or rehearing and ~~must~~ provide reasonable evidence that the applicant'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~~ SHALL be a rehearing or review only of the issue upon which the decision is found erroneous. ~~An~~ THE BOARD SHALL SPECIFY IN THE order granting or denying a rehearing or review, ~~must specify~~ the basis for the order.

**R13-11-113. Fees FEE**

- A. ~~DPS shall collect proper fees for good cause exceptions from all applicants and shall transmit the fees to the state Treasurer. A fee of \$7.00 is established for good cause~~

~~exceptions and central registry exceptions.~~ WHEN AN INDIVIDUAL APPLIES TO DPS FOR A FINGERPRINT CLEARANCE CARD, THE INDIVIDUAL PAYS A FEE TO DPS THAT INCLUDES AN AMOUNT FOR THE FINGERPRINT CLEARANCE CARD AND, IF NECESSARY, A GOOD CAUSE OR CENTRAL REGISTRY EXCEPTION DETERMINATION.

- B.** ~~Fees shall be paid in addition to and in the same payment as fees paid to DPS for a fingerprint clearance card application.~~ THE PORTION OF THE FEE PAID UNDER SUBSECTION (A) THAT IS FOR A GOOD CAUSE OR CENTRAL REGISTRY EXCEPTION DETERMINATION IS \$4.

#### **R13-11-114. INTERIM WORK PERMIT**

**A.** UNDER A.R.S. § 41-619.55(I), THE BOARD MAY GRANT AN INTERIM WORK PERMIT TO AN APPLICANT FOR A GOOD CAUSE EXCEPTION IF THE APPLICANT FOR A GOOD CAUSE EXCEPTION:

1. IS REQUIRED BY NEWLY EFFECTIVE LEGISLATION TO OBTAIN A FINGERPRINT CLEARANCE CARD FOR THE APPLICANT'S JOB;
2. HELD THE JOB AT THE TIME THE NEW LEGISLATION WENT INTO EFFECT;

AND

3. WAS NOT PREVIOUSLY REQUIRED TO HAVE A FINGERPRINT CLEARANCE CARD FOR THE JOB.

**B.** THE EMPLOYER OF AN APPLICANT WHO MEETS THE STANDARDS UNDER SUBSECTION (A) SHALL SUBMIT A LETTER OF REFERENCE UNDER R13-11-104(A)(3)(B) WITH THE APPLICANT'S GOOD CAUSE EXCEPTION APPLICATION.

**C.** THE BOARD SHALL NOT GRANT AN INTERIM WORK PERMIT TO AN APPLICANT WHO IS PRECLUDED FROM RECEIVING A FINGERPRINT CLEARANCE CARD UNDER A.R.S. § 41-1758.03(B) OR 41-1757.07(B).

**D.** AN INTERIM WORK PERMIT CEASES TO HAVE EFFECT WHEN THE BOARD MAKES A FINAL DECISION ON THE APPLICANT'S GOOD CAUSE EXCEPTION APPLICATION.

Garnett Burns  
Chair

Mark Koch  
Vice Chair



Douglas A. Ducey  
Governor

Matthew A. Scheller  
Executive Director

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**ARIZONA BOARD OF FINGERPRINTING**

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www.fingerprint.az.gov • info@fingerprint.az.gov

August 28, 2020

Senator David Livingston  
Arizona State Senate  
1700 W Washington  
Phoenix, AZ 85007

Dear Senator Livingston:

Enclosed is the response by the Arizona Board of Fingerprinting requested for the committees of reference comprised of members of the Senate Transportation and Public Safety Committee and the House of Representatives Judiciary Committee. Please note that Board issues a report pursuant to A.R.S. §41-619.54(D) that summarizes the caseload and number of approvals for good cause exceptions that the Board issues from October 1<sup>st</sup> to September 30<sup>th</sup> each year. This report can be found at our website, <https://fingerprint.az.gov/about>, and I would be happy to answer any question you have.

You or members of the committee of reference are free to contact me at matthew.scheller@fingerprint.az.gov or (602) 265-3747 if you need additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew A. Scheller".

Matthew A. Scheller  
Executive Director

Enclosure

c: Board Members and Alternates

## ARIZONA BOARD OF FINGERPRINTING AGENCY RESPONSE

Senate Transportation and Public Safety Committee  
And the House of Representatives Judiciary Committee

### ADDITIONAL FACTORS

1. An identification of the problem or the needs that the agency is intended to address.

#### *Good-cause exceptions*

The fingerprint-clearance-card system was established to address duplication of criminal background checks by multiple agencies by consolidating and standardizing the process for conducting employment or licensure-related criminal background checks. Before the system was established, there were various criteria among agencies for allowing individuals with criminal histories to work with vulnerable populations. Under the current system, the conflicting criteria and overlap are eliminated by having one agency (the Arizona Department of Public Safety) responsible for screening out individuals with disqualifying criminal histories and another agency (the Arizona Board of Fingerprinting) responsible for making consistent decisions on whether individuals with criminal histories are rehabilitated.

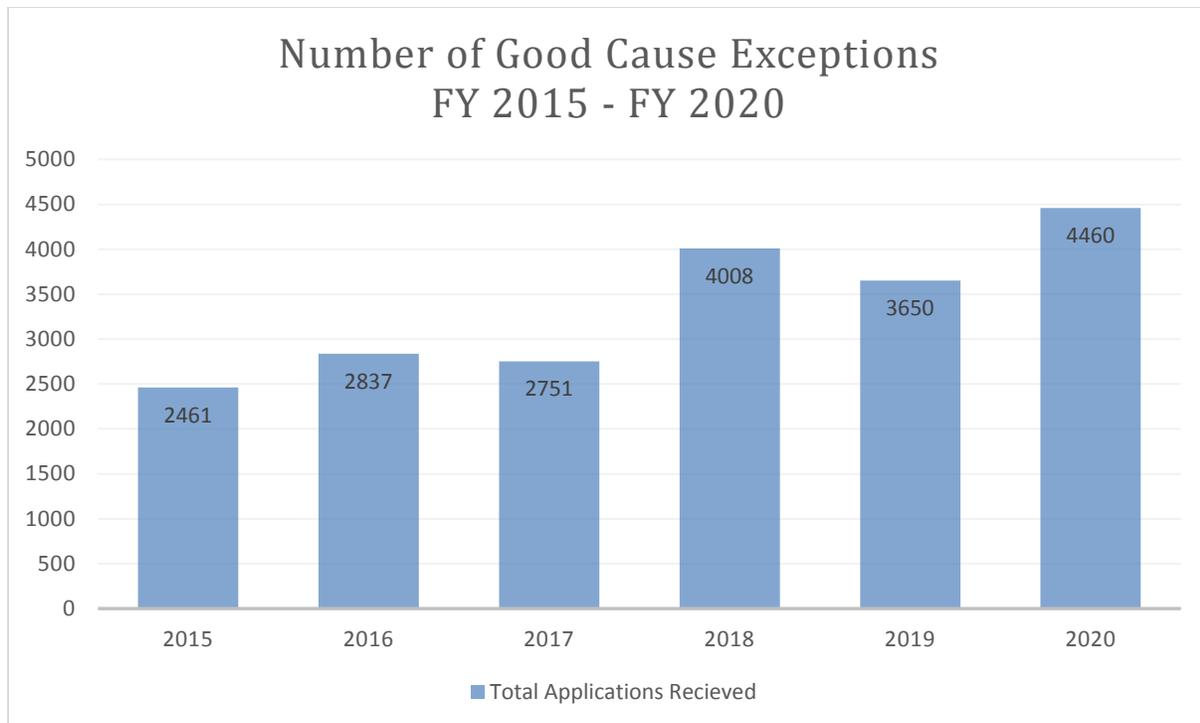
#### *Central-registry exceptions*

In 2012, Senate Bill 1136 increased the number of individuals who required a central-registry background check as a condition of working with vulnerable populations. In addition, the bill addressed the problem that rehabilitated workers would otherwise be ineligible to work by requiring the Board to consider applications for central-registry exceptions. The provision of the bill that created central-registry exceptions was requested by the Arizona Association of Providers for People with Disabilities and supported by the Arizona Child Care Association.

2. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of such agency and its anticipated accomplishments.

The Arizona Board of Fingerprinting evaluates good cause exceptions for people who require a fingerprint clearance card and whose fingerprint clearance card has been denied or suspended by the Department of Public Safety. The Board also determines central registry exceptions for individuals who fail to clear a central registry background check.

The following chart shows the Board's increase in caseload for good cause exception applications from fiscal year 2015 to 2020:



In FY 2020, the Board received 4,460 applications and disposed of 4,496 cases (810 more cases were received than in FY 2019, which is a 22.2% increase). Both of these numbers remain significantly above the Board's prediction of 3,200 cases. Even with the record increase in applications received, the average number of days to dispose of cases decreased by 4.1%. The Board continues to process applications very efficiently and overall wait times for applicants continues to decline.

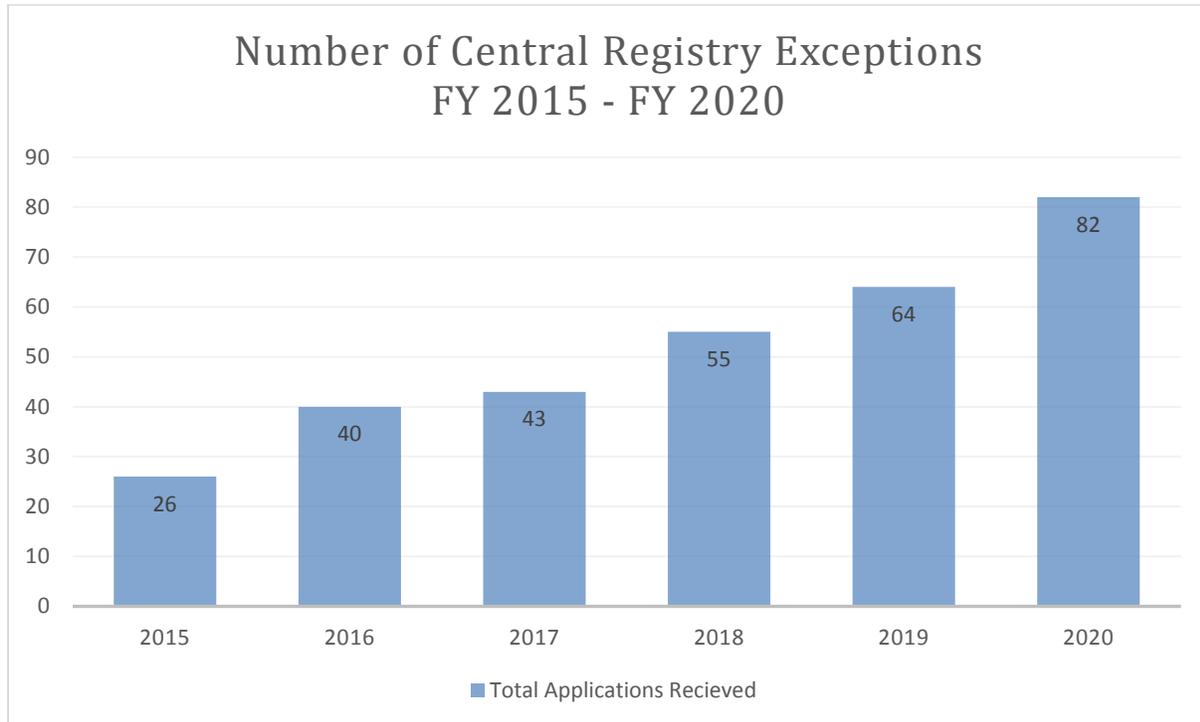
In FY 2020, the Board achieved 100% compliance with all statutory time frames for processing applications. All of the Board's cases complied with the time frames for holding expedited reviews<sup>1</sup> within 20 days of receiving an application, holding an administrative hearing within 45 days from expedited review, and making a final decision within 80 days of an administrative hearing. The Board has improved its compliance with statutory time frames by changing some internal policies, which means that the vast majority of cases are being resolved in a matter of days.

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<sup>1</sup> The Board has a two-tiered process for handling applications:

- The expedited review is an initial review of the application by the Board, without the applicant being present. The purpose of the review is to quickly approve those cases where the documentation alone clearly shows rehabilitation (without needing a hearing) and to refer to hearing those cases where the applicant has not yet demonstrated rehabilitation. Most cases are resolved at an expedited review—in fiscal year 2020, 96% of cases were approved at this point in the process.
- The hearing is reserved for those cases where rehabilitation is not clear or the applicant has not met the application requirements. Few cases require a hearing, although the amount of work required to resolve the case increases significantly.

The following chart shows the Board's increase in caseload for central registry exception applications from fiscal year 2015 to 2020:



In FY 2020, the Board received 82 central registry exception applications and disposed of 84 cases (18 more cases were received than in FY 2019, which is a 28.1% increase). The Board continues to process applications very efficiently. Even with the Board's wait time to receive deficiencies from applicants, criminal history records from the Department of Public Safety, and central registry records from the Department of Child Safety, the overall wait times for applicants continues to decline.

3. An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.

The Board's objectives do not overlap or conflict with other agencies' objectives.

4. An assessment of the consequences of eliminating the agency or of consolidating it with another agency.

Eliminating the agency would have negative consequences for certain citizens and businesses by prohibiting certain potential employees from working in the fields that require fingerprint clearance cards or central-registry background checks.

Business such as schools, child safety providers, health services providers, real-estate agencies, and other human-service providers would have additional limitations on whom they can hire. Especially in rural areas, where fewer qualified personnel are available to work, these limitations could hinder a business's operations. Certain businesses, especially those that provide services to individuals with drug addictions, see a value in hiring personnel with criminal histories, as long as the employees are rehabilitated. According to some of these businesses, a rehabilitated person who has a history with drug addiction, for example, can relate to the experiences of clients and provide a model of rehabilitation and thus can be a valuable employee.

Rehabilitated citizens who are looking for work at a time of high unemployment would have job opportunities further limited if their criminal histories disqualified them from work. Rural areas in particular may have a limited number of available jobs, especially ones that pay reasonably well.

Eliminating the Board would not improve public safety, since only applicants who demonstrate rehabilitation are approved, so the impact of eliminating the Board would be to reduce the cost of a fingerprint clearance card by a negligible amount and place limitations on businesses and job seekers.

5. The extent to which the agency potentially creates unexpected negative consequences that might require additional review by the committee of reference, including increasing the price of goods, affecting the availability of services, limiting the abilities of individuals and businesses to operate efficiently and increasing the cost of government.

The Board is not aware of any unexpected negative consequences.