Minutes of Special Meeting
ARIZONA BOARD OF FINGERPRINTING
February 4, 2002

The Arizona Board of Fingerprinting held a special telephonic meeting at the Board of Fingerprinting, 2222 West Encanto Blvd., Suite 350, Phoenix, Arizona. The meeting began at approximately 9:47 a.m.

MEMBERS PRESENT	MEMBERS ABSENT
Mike LeHew Craig Emanuel, Alternate Vernon Waite, Alternate Cynthia Goertz	Kim Pipersburgh

CALL TO ORDER

ROLL CALL

MINUTES

BUSINESS REPORTS

GENERAL SESSION

The Board has been under-funded since its inception. With the financial difficulties facing the state, it appears unlikely that the Legislature will appropriate adequate funding for the Board in FY 2003. The following legislation is proposed to authorize the Board to establish a fee to support Board operations; to authorize the Department of Public Safety to collect the fee during the clearance card application process and to deposit the funds into the Board of Fingerprinting Fund; and to make the fund exempt from the provisions of Section 35-190 relating to lapsing appropriations. After a brief discussion, Mr. Emanuel made the motion to forward the legislation as written. Motion passed 4-0 with one member absent.	DEVELOPMENT AND APPROVAL OF NEW LEGISLATION AUTHORIZING THE BOARD TO CHARGE FEES. MOTION

CALL TO THE PUBLIC

No one from the public was present at this meeting.

ADJOURNMENT

Mr. LeHew adjourned the meeting at approximately 9:50 a.m.

Approved by the Board on the _____ day of _____, 2002.

_____
Chair

AGENDA ITEM NO. I. A.

BOARD OF FINGERPRINTING MEETING DATE: ~~January 31, 2001~~ 2/4/02

SUBJECT: Consideration of Proposed Legislation Affecting the Board

SUBMITTED BY: Mr. LeHew

BACKGROUND INFORMATION:

The Board has been under-funded since its inception. With the financial difficulties facing the state, it appears unlikely that the Legislature will appropriate adequate funding for the Board in FY2003. Legislation is proposed to authorize the Board to establish a fee to support Board operations; to authorize the Department of Public Safety to collect the fee during the clearance card application process and deposit the funds into the Board of Fingerprinting Fund; and to make the fund exempt from the provisions of Section 35-190 relating to lapsing appropriations.

Attached are copies of the existing legislation and the proposed changes.

BOARD ACTION REQUESTED: **INFORMATION [X]** **ACTION [X]** (described below)

Approve as submitted.

ATTACHMENTS: **YES [X]** **NO [X]**

Proposed Changes to Legislation

41-1750

J. The Director shall establish a fee in an amount necessary to cover the cost of federal noncriminal justice fingerprint processing for criminal history record information checks that are authorized by law for noncriminal justice employment, licensing or other lawful purposes. Additional fees may be charged by the department for state noncriminal justice fingerprint processing. EFFECTIVE JULY 1, 2002, THE DIRECTOR SHALL ADD TO THE ESTABLISHED FEE AN AMOUNT DETERMINED BY THE BOARD OF FINGERPRINTING TO COVER THE OPERATING COSTS OF THE BOARD. Fees submitted to the department for state noncriminal justice fingerprint processing AND THE BOARD are not refundable. THE AMOUNT COLLECTED FOR THE BOARD OF FINGERPRINTING SHALL BE TRANSFERRED INTO THE BOARD OF FINGERPRINTING FUND.

41-619.53

A.5. THE BOARD MAY ESTABLISH A REASONABLE FEE TO COVER THE OPERATING COSTS OF THE BOARD, NOT TO EXCEED $10.00 PER FINGERPRINT CLEARANCE CARD APPLICANT.

41-619.56

A. The Board of Fingerprinting Fund is established consisting of monies appropriated by the legislature AND COLLECTED BY FEES PURSUANT TO 41-1750. ~~The Board shall administer the fund subject to legislative appropriation~~ MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED TO THE BOARD for the purposes provided in this article.

B. ~~Monies deposited in the fingerprinting fund are subject to section 35-190.~~ MONIES DEPOSITED IN THE FUND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS.

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.

2. Adopt rules to implement this article, including rules to establish good cause exceptions for the issuance of class one and class two 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 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.

B. If the board members unanimously agree to grant 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 does not make a unanimous decision, a card shall not be issued to the applicant.

C. Each board member shall determine on behalf of the member's respective agency or division whether a person should be granted a good cause exception.

D. If a person is required to be fingerprinted as a condition of employment by more than one agency and the person would not serve a common population and no common good cause exception standard exists, each board member shall determine for the purposes of the member's agency alone whether a good cause exception should be granted and shall notify the department of public safety to issue the person a card. The board shall request in writing that the department of public safety designate on the fingerprint clearance card the agency or agencies that approve a good cause exception.

E. The board may employ clerical, professional and technical personnel subject to appropriated monies and shall prescribe their duties and determine their compensation.

F. Members of the board are not liable for acts done or actions taken by any board member if the members act in good faith following the requirements of this article.

41-619.56. Board of fingerprinting fund

(Eff. 7/1/99)

A. The board of fingerprinting fund is established consisting of monies appropriated by the legislature. The board shall administer the fund subject to legislative appropriation for the purposes provided in this article.

B. Monies deposited in the fingerprinting fund are subject to section 35-190.

41-1750. Central state repository; department of public safety; duties; funds; accounts; definitions

A. Notwithstanding section 41-2205, the department is responsible for the effective operation of the central state repository in order to collect, store and disseminate complete and accurate Arizona criminal history records and related criminal justice information. The department shall:

1. Procure from all criminal justice agencies in this state accurate and complete personal identification data, fingerprints, charges, process control numbers and dispositions and such other information as may be pertinent to all persons who have been charged with, arrested for, convicted of or summoned to court as a criminal defendant for a felony offense or an offense involving domestic violence as defined in section 13-3601 or a violation of title 13, chapter 14 or title 28, chapter 4.

2. Collect information concerning the number and nature of offenses known to have been committed in this state and of the legal steps taken in connection with these offenses, such other information that is useful in the study of crime and in the administration of criminal justice and all other information deemed necessary to operate the statewide uniform crime reporting program and to cooperate with the federal government uniform crime reporting program.

3. Collect information concerning criminal offenses that manifest evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender or disability.

4. Cooperate with the central state repositories in other states and with the appropriate agency of the federal government in the exchange of information pertinent to violators of the law.

5. Ensure the rapid exchange of information concerning the commission of crime and the detection of violators of the law among the criminal justice agencies of other states and of the federal government.

6. Furnish assistance to peace officers throughout this state in crime scene investigation for the detection of latent fingerprints and in the comparison of latent fingerprints.

7. Conduct periodic operational audits of the central state repository and of a representative sample of other agencies that contribute records to or receive criminal justice information from the central state repository or through the Arizona criminal justice information system.

8. Establish and enforce the necessary physical and system safeguards to ensure that the criminal justice information maintained and disseminated by the central state repository or through the Arizona criminal justice information system is appropriately protected from unauthorized inquiry, modification, destruction or dissemination as required by this section.

9. Aid and encourage coordination and cooperation among criminal justice agencies through the statewide and interstate exchange of criminal justice information.

10. Provide training and proficiency testing on the use of criminal justice information to agencies receiving information from the central state repository or through the Arizona criminal justice information system.

11. Operate and maintain the Arizona automated fingerprint identification system established pursuant to section 41-2411.

12. Provide criminal history record information to the fingerprinting division for the purpose of

screening applicants for fingerprint clearance cards.

B. The director may establish guidelines for the submission and retention of criminal justice information as deemed useful for the study or prevention of crime and for the administration of criminal justice.

C. The chief officers of criminal justice agencies of this state or its political subdivisions shall provide to the central state repository fingerprints and information concerning personal identification data, descriptions, crimes for which persons are arrested, process control numbers and dispositions and such other information as may be pertinent to all persons who have been charged with, arrested for, convicted of or summoned to court as criminal defendants for felony offenses or offenses involving domestic violence as defined in section 13-3601 or violations of title 13, chapter 14 or title 28, chapter 4 that have occurred in this state.

D. The chief officers of law enforcement agencies of this state or its political subdivisions shall provide to the central state repository such information as necessary to operate the statewide uniform crime reporting program and to cooperate with the federal government uniform crime reporting program.

E. The chief officers of criminal justice agencies of this state or its political subdivisions shall comply with the training and proficiency testing guidelines as required by the department to comply with the federal national crime information center mandates.

F. The chief officers of criminal justice agencies of this state or its political subdivisions also shall provide to the criminal identification section information concerning crimes that manifest evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender or disability.

G. The director shall authorize the exchange of criminal justice information between the central state repository, or through the Arizona criminal justice information system, whether directly or through any intermediary, only as follows:

1. With criminal justice agencies of the federal government, Indian tribes, this state or its political subdivisions and other states, upon request by the chief officers of such agencies or their designated representatives, specifically for the purposes of the administration of criminal justice and for evaluating the fitness of current and prospective criminal justice employees.

2. With any noncriminal justice agency pursuant to a statute, ordinance or executive order that specifically authorizes the noncriminal justice agency to receive criminal history record information for the purpose of evaluating the fitness of current or prospective licensees, employees, contract employees or volunteers, on submission of the subject's fingerprints and the prescribed fee. Each statute, ordinance, or executive order that authorizes noncriminal justice agencies to receive criminal history record information for these purposes shall identify the specific categories of licensees, employees, contract employees or volunteers, and shall require that fingerprints of the specified individuals be submitted in conjunction with such requests for criminal history record information.

3. With the board of fingerprinting for the purpose of conducting good cause exceptions pursuant to section 41-619.55.

4. With any individual for any lawful purpose on submission of the subject of record's fingerprints and the prescribed fee.

5. With the governor, if the governor elects to become actively involved in the investigation of criminal

activity or the administration of criminal justice in accordance with the governor's constitutional duty to ensure that the laws are faithfully executed or as needed to carry out the other responsibilities of the governor's office.

6. With regional computer centers that maintain authorized computer-to-computer interfaces with the department, that are criminal justice agencies or under the management control of a criminal justice agency and that are established by a statute, ordinance or executive order to provide automated data processing services to criminal justice agencies specifically for the purposes of the administration of criminal justice or evaluating the fitness of regional computer center employees who have access to the Arizona criminal justice information system and the national crime information center system.

7. With an individual who asserts a belief that criminal history record information relating to the individual is maintained by an agency or in an information system in this state that is subject to this section. On submission of fingerprints, the individual may review this information for the purpose of determining its accuracy and completeness by making application to the agency operating the system. Rules adopted under this section shall include provisions for administrative review and necessary correction of any inaccurate or incomplete information. The review and challenge process authorized by this paragraph is limited to criminal history record information.

8. With individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement if the agreement specifically authorizes access to data, limits the use of data to purposes for which given and ensures the security and confidentiality of the data consistent with the provisions of this section.

9. With individuals and agencies for the express purpose of research, evaluative or statistical activities pursuant to an agreement with a criminal justice agency if the agreement specifically authorizes access to data, limits the use of data to research, evaluative or statistical purposes and ensures the confidentiality and security of the data consistent with this section.

10. With the auditor general for audit purposes.

11. With central state repositories of other states for noncriminal justice purposes for dissemination in accordance with the laws of those states.

12. On submission of the fingerprint card, with the department of economic security to provide criminal history record information on prospective adoptive parents for the purpose of conducting the preadoption certification investigation under title 8, chapter 1, article 1 if the department of economic security is conducting the investigation, or with an agency or a person appointed by the court, if the agency or person is conducting the investigation. Information received under this paragraph shall only be used for the purposes of the preadoption certification investigation.

13. With the department of economic security and the superior court for the purpose of evaluating the fitness of custodians or prospective custodians of juveniles including parents, relatives and prospective guardians. Information received under this paragraph shall only be used for the purposes of that evaluation. The information shall be provided on submission of either:

(a) The fingerprint card.

(b) The name, date of birth and social security number of the person.

14. On submission of a fingerprint card, provide criminal history record information to the superior court for the purpose of evaluating the fitness of investigators appointed under section 14-5303 or 14-5407, or guardians appointed under section 14-5206.

15. With the supreme court to provide criminal history record information on prospective private fiduciaries pursuant to section 14-5651.

16. With the department of juvenile corrections to provide criminal history record information pursuant

2. In every criminal case in which the defendant is incarcerated or fingerprinted as a result of the charge, an originating law enforcement agency or prosecutor, within forty days of the disposition, shall advise the central state repository of all dispositions concerning the termination of criminal proceedings against an individual arrested for an offense specified in subsection C of this section. This information shall be submitted on a form or in a manner required by the department.

3. Dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who is arrested for an offense specified in subsection C of this section or section 8-341, subsection R shall be reported to the central state repository within forty days of the date of the disposition. This information shall be submitted on a form or in a manner specified by rules approved by the supreme court.

4. The state department of corrections or the department of juvenile corrections, within forty days, shall advise the central state repository that it has assumed supervision of a person convicted of an offense specified in subsection C of this section or section 8-341, subsection R. The state department of corrections or the department of juvenile corrections shall also report dispositions that occur thereafter to the central state repository within forty days of the date of the dispositions. This information shall be submitted on a form or in a manner required by the department of public safety.

5. Each criminal justice agency shall query the central state repository before dissemination of any criminal history record information to ensure the completeness of the information. Inquiries shall be made before any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding within the necessary time period. If time is of the essence, the inquiry shall still be made and the response shall be provided as soon as possible.

V. The director shall adopt rules specifying that any agency that collects, stores or disseminates criminal justice information that is subject to this section shall establish effective security measures to protect the information from unauthorized access, disclosure, modification or dissemination. The rules shall include reasonable safeguards to protect the affected information systems from fire, flood, wind, theft, sabotage or other natural or man-made hazards or disasters.

W. The department shall make available to agencies that contribute to, or receive criminal justice information from, the central state repository or through the Arizona criminal justice information system a continuing training program in the proper methods for collecting, storing and disseminating information in compliance with this section.

X. Nothing in this section creates a cause of action or a right to bring an action including an action based on discrimination due to sexual orientation.

Y. For purposes of this section:

1. "Administration of criminal justice" means performance of the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of criminal offenders. Administration of criminal justice includes enforcement of criminal traffic offenses and civil traffic violations, including parking violations, when performed by a criminal justice agency. Administration of criminal justice also includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

2. "Administrative records" means records that contain adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and that

are designed to furnish information to protect the rights of this state and of persons directly affected by the agency's activities.

3. "Arizona criminal justice information system" or "system" means the statewide information system managed by the director for the collection, processing, preservation, dissemination and exchange of criminal justice information and includes the electronic equipment, facilities, procedures and agreements necessary to exchange this information.

4. "Central state repository" means the central location within the department for the collection, storage and dissemination of Arizona criminal history records and related criminal justice information.

5. "Criminal history record information" and "criminal history record" means information that is collected by criminal justice agencies on individuals and that consists of identifiable descriptions and notations of arrests, detentions, indictments and other formal criminal charges, and any disposition arising from those actions, sentencing, formal correctional supervisory action and release. Criminal history record information and criminal history record do not include identification information to the extent that the information does not indicate involvement of the individual in the criminal justice system or information relating to juveniles unless they have been adjudicated as adults.

6. "Criminal justice agency" means either:

(a) A court at any governmental level with criminal or equivalent jurisdiction, including courts of any foreign sovereignty duly recognized by the federal government.

(b) A government agency or subunit of a government agency that is specifically authorized to perform as its principal function the administration of criminal justice pursuant to a statute, ordinance or executive order and that allocates more than fifty per cent of its annual budget to the administration of criminal justice. This subdivision includes agencies of any foreign sovereignty duly recognized by the federal government.

7. "Criminal justice information" means information that is collected by criminal justice agencies and that is needed for the performance of their legally authorized and required functions, such as criminal history record information, citation information, stolen property information, traffic accident reports and wanted persons information. Criminal justice information does not include the administrative records of a criminal justice agency.

8. "Disposition" means information disclosing that a decision has been made not to bring criminal charges or that criminal proceedings have been concluded or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of an appellate review of criminal proceedings or executive clemency.

9. "Dissemination" means the written, oral or electronic communication or transfer of criminal justice information to individuals and agencies other than the criminal justice agency that maintains the information. Dissemination includes the act of confirming the existence or nonexistence of criminal justice information.

10. "Management control":

(a) Means the authority to set and enforce:

(i) Priorities regarding development and operation of criminal justice information systems and programs.

(ii) Standards for the selection, supervision and termination of personnel involved in the development of criminal justice information systems and programs and in the collection, maintenance, analysis and dissemination of criminal justice information.

(iii) Policies governing the operation of computers, circuits and telecommunications terminals used to process criminal justice information to the extent that the equipment is used to process, store or transmit criminal justice information.

(b) Includes the supervision of equipment, systems design, programming and operating procedures necessary for the development and implementation of automated criminal justice information systems.

11. "Process control number" means the Arizona automated fingerprint identification system number that attaches to each arrest event at the time of fingerprinting and that is assigned to the arrest fingerprint card, disposition form and other pertinent documents.

12. "Secondary dissemination" means the dissemination of criminal justice information from an individual or agency that originally obtained the information from the central state repository or through the Arizona criminal justice information system to another individual or agency.

13. "Sexual orientation" means consensual homosexuality or heterosexuality.

14. "Subject of record" means the person who is the primary subject of a criminal justice record.