



ARIZONA BOARD OF FINGERPRINTING

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Final Minutes for Public Meeting

Held September 22, 2006, at 8:00 a.m.
2222 West Encanto Blvd., Suite 350, Phoenix, Arizona

Board Members

Mike LeHew, Department of Economic Security, Chair
Kim Pipersburgh, Department of Health Services, Vice Chair
Alvin Vasicek, Administrative Office of the Courts
Rachell Tucker, Department of Education
Arthur W. Baker, Department of Juvenile Corrections

Executive Director

Dennis Seavers

CALL TO ORDER AND ROLL CALL

Mr. LeHew called the meeting to order at 9:50 a.m. The following Board members were present: Mike LeHew, Kim Pipersburgh, Alvin Vasicek, Rachell Tucker, and Arthur W. Baker. No Board members were absent.

CALL TO THE PUBLIC

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

APPROVAL OF MINUTES

Mr. Vasicek moved that the Board adopt the minutes from its meetings on August 10 and August 18, 2006, and Ms. Tucker seconded. The motion passed, 5-0.

RULES

Mr. Seavers referred the Board members to the draft proposals for rules on *ex parte* communications and rehearing or reviewing a Board decision (see Attachment 1).

Mr. Baker asked whether the Board was required to pass rules on *ex parte* communication and rehearing or review of a Board decision. He suggested that the Board should avoid passing rules that are unnecessary and might constrain the Board and create liability. Mr. Seavers responded that the Board is required by statute to have a rule on rehearing or reviewing a Board decision. However, the Board is not required by statute to have a rule on *ex parte* communication. He said that the *ex parte* rule was meant to preserve the integrity and completeness of the administrative record and to protect the Board members and the appellants.

Mr. Vasicek asked what would happen if a Board member were to have *ex parte* communications like the ones prohibited by the proposed rule. Mr. Seavers replied that there would not be a rule violation, but the *ex parte* communication could be raised in an appeal before superior court of a Board's decision.

Ms. Pipersburgh asked whether the proposed rule on *ex parte* communications would prohibit Board members from providing general information about the good cause exception process, such as how to contact the Board staff. Mr. LeHew said that the only communication prohibited would apply to the merits of the Board's determination.

Ms. Tucker made a motion to propose the draft rule on *ex parte* communication, and Mr. Vasicek seconded. The motion passed, 5-0. Mr. Vasicek made a motion to propose the draft rule on rehearing or review of a Board's decision, and Mr. Baker seconded. The motion passed, 5-0.

Mr. Seavers said he would file a notice of proposed exempt rulemaking with the Secretary of State's office.

LEGISLATION

Mr. Seavers referred the Board members to his August 28, 2006, memorandum on legislative issues for 2007 (see Attachment 2).

Mr. LeHew asked Board members about feedback they had gotten from their respective agencies on possible legislative proposals.

- Ms. Tucker said that the Department of Education did not support legislation to create time limits for precluding offenses. However, the Department of Education does support legislation to expand the list of precluding offenses.
- Mr. Vasicek said that the Administrative Office of the Courts ("AOC") shared the position of the Department of Education. The AOC might support time-limits legislation if there were fewer criminal offenses with time limits. However, the AOC believed that

putting time limits on all offenses in A.R.S. § 41-1758.03(C) would be too encompassing a change.

- Mr. Baker said that the Department of Juvenile Corrections would like legislative changes that would allow the Board or the Department of Public Safety to consider only arrests that yield convictions.
- Ms. Pipersburgh said that the Department of Health Services did not have specific comments on any possible legislative proposals.

Mr. Seavers said that the Department of Public Safety (“DPS”) will not be pursuing legislation on time limits for the next legislative session.

Mr. LeHew asked Mr. Seavers whether splitting the legislative proposals for time limits and expanding the list of precluding crimes would affect the outcome of possible legislation. Mr. Seavers replied that, in his opinion, a single bill, with both the expanded list of crimes and time limits included, would fail. He believed that if there were two bills—one with legislation to expand the list of crimes and another with legislation to establish time limits—the time-limits bill would fail, while the other bill would pass. Mr. Seavers recommended that the Board, if it were to propose both time limits and an expanded crimes list, should split the legislation into two bills to ensure that at least one passes.

Mr. LeHew recommended that the Board make a decision on whether to pursue legislation to expand the list of precluded crimes. He suggested that the Board ask Mr. Seavers to find out whether DPS had a more specific proposal on time limits.

Ms. Tucker made a motion to authorize Mr. Seavers to seek legislative sponsorship and lobby for legislation to alter and expand the list of precluding crimes, as indicated in Mr. Seavers’ August 28 legislative memo. Ms. Pipersburgh seconded the motion, which passed, 5-0.

Mr. Vasicek made a motion to ask Mr. Seavers to contact DPS, find out what its specific proposal for time-limits legislation would have been, and present that proposal to the Board at the next public meeting. Mr. Baker seconded the motion. The motion passed, 4-1.

Mr. Seavers said that the Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (“NCIA Board”) intends to join the fingerprint clearance card system. Mr. Seavers told the NCIA Board’s executive director that his board could seek legislation on its own to join the card system. Alternatively, the NCIA Board could include its legislative changes in any legislation that the Board of Fingerprinting might propose. Mr. Seavers asked whether the Board would be willing to allow the NCIA Board to add its legislation on joining the card system to the Board’s bill proposal.

Ms. Tucker asked whether the NCIA Board’s legislation would Board member to the Board of Fingerprinting to represent the NCIA Board. Mr. Seavers responded that the NCIA Board would not seek representation on the Board of Fingerprinting. The NCIA Board would like the State Board for Charter Schools, which is in the fingerprint clearance card system but which does not have representation on the Board of Fingerprinting.

Mr. Vasicek made a motion to allow the NCIA Board to include legislation on joining the fingerprint clearance card system to any legislation the Board of Fingerprinting proposes. Mr. Baker seconded the motion. The motion passed, 5-0.

ADJOURNMENT

Ms. Pipersburgh made a motion to adjourn the meeting, and Mr. Vasicek seconded. The motion passed, 5-0. Mr. LeHew adjourned the meeting at 10:28 a.m.

Minutes approved on October 20, 2006

Dennis Seavers, Executive Director

Draft rule on *ex parte* communication

- A. In any good cause exception case, except to the extent required for disposition of *ex parte* matters as authorized by law or these rules of procedure:
1. No interested person outside the Board shall make or knowingly cause to be made to any Board members, hearing officer, administrative law judge, or other employee or consultant who is 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;
 2. No 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 good cause exception determination, shall 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 good cause exception determination, who receives, makes, or knowingly causes to be made a communication prohibited by this rule, shall place on the record of the proceeding and serve on all parties to the proceeding:
1. All such written communications;
 2. Memoranda stating the substance of all such oral communications; and
 3. All written responses, and memoranda stating the substance of all oral responses, to the communications described in paragraphs 1 and 2 of this subsection.
- C. Upon receipt of a communication made or knowingly caused to be made by a party in violation of this section, the Board or its hearing officer, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules, may require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.
- D. The provisions of this section shall apply beginning at the time in which the request for a good cause exception is filed in accordance with R13-11-103.
- E. For purposes of this section:

1. "Person outside the Board" means any person other than a Board member, and employee or consultant of the Board, or any 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.

Draft rule on rehearing or review of decision or order

A. An appellant 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 the date of service of the decision. The Board shall grant a request for review or rehearing for any of the following reasons materially affecting the rights of the appellant:

1. The findings of fact, conclusions of law, order, or decision are not supported by the evidence or are contrary to law;
2. The appellant was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct of 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; or
4. Error in admission or rejection of evidence, or other errors of law occurring at the hearing.

B. The request shall specify the grounds for a review or rehearing and shall provide reasonable evidence that the appellant'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 findings of fact and conclusions of law, or make new findings and conclusions, and affirm, modify, or reverse the original decision.

D. A rehearing or review, if granted, shall be a rehearing or review only of the issue upon which the decision is found erroneous. An order granting or denying a rehearing or review shall specify the basis for the order.

Arizona Board of Fingerprinting

Memo

TO: Board members
FROM: Dennis Seavers
C:
Date: August 28, 2006
SUBJECT: Legislative Issues for 2007



At its meeting on August 10, 2006, the Board requested that I prepare a memorandum that describes legislative issues for the 2007 session. This memo identifies those issues and lists what options the Board has for responding to the issues.

There are two basic legislative changes that have been discussed: (1) expanding the list of crimes that cause the denial or suspension of a fingerprint clearance card and (2) instituting time limits for offenses that cause a denial or suspension. Each of these possible changes is described below.

(1) EXPANDING THE LIST OF PRECLUDING CRIMES

Background

This legislative change was discussed at a series of meetings in 2005. The meetings were attended by representatives of the Administrative Office of the Courts; the Departments of Economic Security, Education, Health Services, Juvenile Corrections, and Public Safety; and the Board of Fingerprinting.¹

The representatives generally agreed upon a list of proposed crimes to add to A.R.S. § 41-1758.03, the statute that includes the offenses that cause a card to be denied or suspended (sometimes called precluding offenses). The agreed-upon list was shared with Board members at the August 10, 2006, meeting and is attached for reference. (See Attachment A.)

For the 2006 legislative session, no agency sought sponsorship for the legislation. In 2007, the state agencies may want to pursue the legislation, either as a joint effort or through the Board. (See section (3), "Additional Considerations," below.)

Board options

- 1. Oppose the legislation.** The Board could direct its executive director to lobby for the defeat of the bill. This action could supplement similar actions by representatives of the other state agencies, or the Board could spearhead the opposition.

¹ Since this memo is public record, I wish to note that these representatives were not usually Board members, and the meetings were not subject to the Open Meeting Law.

2. **Support the legislation.** The Board could direct its executive director to lobby for the passage of the bill. This action could supplement similar support by representatives of the other state agencies, or the Board could take the lead on supporting the bill.
3. **Take no action or take a neutral position.** The Board could decline to take a position on the bill. If members of the Legislature were to solicit testimony from the Board's executive director, he would explain what impact the legislation would have on the Board's operations. However, the executive director would not advocate for the passage or defeat of the bill. Other state agencies could oppose, support, or adopt a neutral stance on the bill.
4. **Propose or support an alternative version.** The Board (or the state agencies) could propose alternative legislation that expands the list of precluded crimes but that differs from the proposed list in Attachment A.

(2) ESTABLISHING TIME LIMITS FOR PRECLUDED CRIMES

Background

This legislative change was discussed at the same series of meetings described in section (1) ("Expanding the List of Precluding Crimes") above. At the request of the Board chair, I developed a proposal for time limits for precluding offenses that was based on statistical information from good cause exception applications. (See Attachment B.) The proposal assumed that the Board could incorporate time limits into its rules rather than amending A.R.S. § 41-1758.03. Since the Board is exempt from the rulemaking requirements of the Administrative Procedures Act, any unforeseen problems with the time limits could quickly be remedied by eliminating the relevant rules. In contrast, if the agencies pursued statutory changes to incorporate the time limits, and unforeseen problems arose, it would likely take several months to eliminate the time limits.

However, there was not a consensus on the draft proposal. In particular, at least one agency believed that the statutory criteria the Board must consider when deciding whether to grant a good cause exception would prevent the proposal of a Board-rule-based method of establishing time limits. For instance, one statutory criterion requires the Board to consider the nature of an offense. However, if applicants' criminal records would have allowed them to receive a good cause exception under the rule-based time limits, the Board would not meet the statutory requirement because the applicants would automatically get a fingerprint clearance card.

This year, the Department of Public Safety (DPS) considered and tentatively proposed a statute-based scheme for implementing time limits. (See Attachment C.²) Under this proposal, a person would have a fingerprint clearance card denied only if he or she committed or attempted or conspired to commit precluded crimes within a certain number of years from the date he or she applied for a fingerprinting clearance card. The DPS proposal does not yet specify the number of years for the time limit.

² Attachment C includes amendments both to establish time limits and to add certain criminal offenses to the list of precluding offenses. The additional offenses do not include all the proposed additions that appear in Attachment A. The proposal also would add solicitation and facilitation as preparatory offenses.

Board options

Assuming that DPS pursues this legislation—and to my knowledge, DPS has not made a final decision to seek sponsorship for the legislation—the Board has the following options.

- 1. Oppose the legislation.** The Board could direct its executive director to lobby for the defeat of the bill. This action could supplement similar actions by representatives of the other state agencies, or the Board could spearhead the opposition.
- 2. Support the legislation.** The Board could direct its executive director to lobby for the passage of the bill. This action could supplement similar support by representatives of the other state agencies, or the Board could take the lead on supporting the bill.
- 3. Take no action or take a neutral position.** The Board could decline to take a position on the bill. If members of the Legislature were to solicit testimony from the Board's executive director, he would explain what impact the legislation would have on the Board's operations. However, the executive director would not advocate for the passage or defeat of the bill. Other state agencies could oppose, support, or adopt a neutral stance on the bill.
- 4. Propose or support an alternative version of the DPS proposal.** The Board (or the state agencies) could propose alternative legislation, such as the 2005 proposal (Attachment B).

(3) ADDITIONAL CONSIDERATIONS

What role should the Board play in either of the proposed legislative changes? The Board and DPS support the state agencies by administering the fingerprint clearance card system: DPS by processing card applications, the Board by making good cause exception determinations. However, the fingerprint clearance card system exists for the benefit of the state agencies. It does not exist for the benefit of DPS or the Board. Any substantive policy changes, including legislation, perhaps should be led by the state agencies.

On the other hand, it is difficult for five independent agencies to collaborate on legislation without one agency taking a leadership role. The Board, as a common point for all agencies, may be the best agency to secure sponsorship of and lobby for a bill. In fact, this approach was adopted by the state agencies by having me and DPS' legislative liaison lead the legislative reforms in 2003. This approach makes use of the Board as an institution common to all the state agencies.

Finally, Board members and other readers should note that the proposed legislative changes in Attachments A and C have not been proposed by the Board. However, the state agencies should, within the next few weeks, decide whether they support or oppose the proposals. Depending on agency support, the state agencies will then need to decide what role they will play in lobbying for or against the proposed bills.

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NON APPEALABLE	APPEALABLE
13-1404 Sexual Abuse	13-2008 Taking Identity of Another Person
13-1102 Negligent Homicide	13-2009 Aggravated Taking the Identity of Another Person or Entity
13-3502 Production, publication, sale, possession and presentation of obscene items	13-2010 Trafficking in the Identity of Another Person or Entity
13-3506 Furnishing harmful items to minors	13-3415 Possession of Drug Paraphernalia
13-3506.01 Furnishing harmful items to minors; internet activity	13-1505 Possession of Burglary Tools
13-3512 Obscene or indecent telephone communication to minors for commercial purposes	13-1818 Misappropriation of Charter School Monies (A & B)
13-3554 Luring a Minor for Sexual Exploitation	13-2910 Cruelty to Animals
13-1307 Sex Trafficking	46-215 Welfare Fraud
	13-3513 Sale or distribution of material harmful to minors through vending machines
Child Neglect (There was discussion among the department representatives whether this offense which is on the current list as appealable, should be a non-appealable offense.)	13-3555 Portraying adult as a minor
	13-3558 Admitting minors to public displays of sexual conduct
	13-1602 Criminal Damage
	Add two (2) more Preparatory offenses (Solicitation and Facilitation would be inserted into sections 41-1758.03. B & C)
	13-3214 Prostitution (In trying to decide whether this offense should be added, the 5 departments (DHS, DES, DJC, AOC and ADE) were unsure as to the merits of adding this offense. Also, DPS was curious as to why this offense was left off of the original list when all of the other prostitution related offenses were on the list. There was discussion whether this offense was an offense of moral turpitude, if a person had committed this offense does that mean they wouldn't be a good provider or were we adding this offense because it wasn't on the list. The 5 departments were somewhat split as to whether this offense should be added.)

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Note:

In looking at the current crimes list, the 5 departments (DHS, DES, AOC, ADE and DJC) tried to reflect the current trends in law enforcement, societal changes, offenses that may have been overlooked and offenses that DPS has seen an increase in over the past several years. There were no preconceived ideas as to which offenses would be reviewed. The departments could bring up any offense they felt needed to be addressed which could mean that we could have taken offenses off of the list just as well as adding offenses.

The group also tried on two separate occasions to address timeframes. The group felt that there was merit in assigning or addressing timeframes but could not get a total commitment to the concept from all of the departments on how to administer the timeframes and on which crimes. The ADE felt that timeframes should not be considered. The Arizona Board of Fingerprinting (BOF) offered to address the timeframe issue within the BOF rules. But, as the ADE pointed out, the BOF is obligated by statute to consider certain factors before approving or denying a good cause exception. In addition, the DJC felt that a card should only be denied if there was a felony conviction and that it did not seem to be in the best interest of the state to hold minor offenses that are 5, 10 and 15 years old against someone.

Also, the departments briefly discussed that everyone within the clearance card system have a CPS and APS check completed before their employment.

The lists of offenses listed on page 1 are recommendations from representatives of the 5 departments plus input from the DPS and the BOF. Also, the departments felt that timeframes could be a viable asset if it was thoroughly researched and implemented correctly plus having all of the departments buy into the idea.

In closing, I would like to thank everyone who participated in this process and hope that we can continue to improve and enhance how the clearance card system works.

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TIME LIMITS FOR PRECLUDING OFFENSES
August 4, 2005 Proposal

PROPOSAL

Readers should note the “Background” and “Methodology” sections below to understand how I developed these time limits and what this proposal is meant to do.

A person would qualify for a good cause exception based on time limits if all of the following criteria apply.

1. All of the arrests for precluding offenses have known dispositions
2. The appellant has no more than one precluding offense that yielded a conviction on his or her record
3. The offense was committed no later than the following time limits, starting with the DPS denial date as a point of reference.
 - a. Ten years
 - 1) Endangerment
 - 2) Threatening or intimidating
 - 3) Assault
 - 4) Unlawfully administering intoxicating liquors, narcotic drugs, or dangerous drugs
 - 5) Aggravated criminal damage
 - 6) Theft
 - 7) Theft by extortion
 - 8) Shoplifting
 - 9) Forgery
 - 10) Criminal possession of a forgery device
 - 11) Obtaining a signature by deception
 - 12) Criminal impersonation
 - 13) Theft of a credit card or obtaining a credit card by fraudulent means
 - 14) Receipt of anything of value obtained by fraudulent use of a credit card
 - 15) Forgery of a credit card
 - 16) Fraudulent use of a credit card
 - 17) Possession of any machinery, plate, or other contrivance or incomplete credit card
 - 18) False statement as to financial condition or identity to obtain a credit card
 - 19) Fraud by persons authorized to provide goods or services
 - 20) Credit card transaction theft
 - 21) Concealed weapon violation
 - 22) Enticement of any persons for purposes of prostitution
 - 23) Procurement by false pretenses of any persons for purposes of prostitution
 - 24) Procuring or placing persons in a house of prostitution
 - 25) Receiving earnings of a prostitute

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- 26) Causing one's spouse to become a prostitute
- 27) Detention of persons in a house of prostitution
- 28) Keeping or residing in a house of prostitution or employment in prostitution
- 29) Pandering
- 30) Transporting persons for the purpose of prostitution or other immoral purposes
- 31) Possession and sale of peyote
- 32) Possession and sale of a vapor-releasing substance containing a toxic substance
- 33) Possession, use, or sale of marijuana, dangerous drugs, or narcotic drugs
- 34) Possession or possession with intent to use an imitation controlled substance
- 35) Possession or possession with intent to use an imitation prescription-only drug
- 36) Possession or possession with intent to use an imitation over-the-counter drug
- 37) A criminal offense involving criminal trespass and burglary under title 13, chapter 15
- 38) Misdemeanor offenses involving contributing to the delinquency of a minor
- 39) Offenses involving domestic violence
- b. Fifteen years
 - 1) Assaults by vicious animals
 - 2) Assaults on officers or firefighters
 - 3) Discharging a firearm at a structure
 - 4) Misconduct involving weapons
 - 5) Sale of precursor chemicals
 - 6) Manufacture or distribution of an imitation controlled substance
 - 7) Manufacture or distribution of an imitation prescription-only drug
 - 8) Manufacture or distribution of an imitation over-the-counter drug
 - 9) Manufacture of certain substances and drugs by certain means
 - 10) Felony offenses involving sale, distribution, or transportation of; offer to sell, transport, or distribute; or conspiracy to sell, transport or distribute marijuana, dangerous drugs, or narcotic drugs
 - 11) Robbery
 - 12) Aggravated assault
 - 13) Felony offenses involving contributing to the delinquency of a minor

The following offenses would not have any time limits under this proposal.

1. Any offense listed in A.R.S. § 41-1758.03(B)
2. Manslaughter
3. Drive-by shooting
4. Indecent exposure
5. Public sexual indecency

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6. Misconduct involving explosives
7. Depositing explosives
8. Misconduct involving simulated explosive devices
9. Adding poisoning or other harmful substances to food, drink, or medicine
10. Child neglect
11. Arson
12. Kidnapping

BACKGROUND

Nature of this proposal

On July 28, 2005, representatives from the Administrative Office of the Courts, Arizona Board of Fingerprinting (“Board”), and Departments of Economic Security, Education, Health Services, Juvenile Corrections, and Public Safety met to discuss (a) alterations to the lists of precluding offenses that appear in Arizona Revised Statutes (“A.R.S.”) § 41–1758.03 and (b) time limits for precluding offenses. The Board’s executive director agreed to develop an initial proposal for time limits primarily based on statistical criteria.

Although the Board’s executive director developed this proposal, it should not be viewed as a proposal made by or on behalf of the Board. Furthermore, the specific time limits set forth in this proposal were not discussed at the July 28 meeting. Therefore, it should not be understood as a summary of the discussion from that meeting.

Provided that readers do not oppose the notion of time limits, they should not decide whether this proposal should be rejected but rather whether and how it should be modified.

What is the purpose of time limits?

The Board requires individuals who apply for a good cause exception to undergo a rigorous and time-consuming application process. For some individuals, this process appears to be overly burdensome because they committed relatively minor offenses many years ago. For instance, the Board might see someone who committed a single offense – a 1970 charge and subsequent conviction for possession of marijuana – but who nonetheless must fulfill the application requirements and be removed from direct care until the Board makes a determination.

The Board conducts expedited reviews in order to give good cause exceptions to appellants who really do not need to appear at an administrative hearing. However, it could further cut down on the wait time for all appellants and decrease unnecessary application requirements for individuals whose criminal histories ended many years ago. With time limits, individuals with old criminal offenses would not necessarily need to undergo the rigors of the Board’s appeal process.

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Time limits would apply only to the offenses listed in A.R.S. § 41-1758.03(C), or so-called appealable offenses. Thus, individuals who committed child abuse or who are subject to registration as sex offenders would not benefit from time limits.

Method of implementing time limits

There are two options for putting time limits in place: through statutory or administrative law. This section describes both options, but the proposal favors administrative law as a means of implementing time limits.

Statutory time limits

Time limits could appear in DPS' statutes. DPS employees would issue a fingerprint clearance card if (a) no conviction for a precluding offense existed or (b) a conviction existed, but the offense did not occur within the time limits.

The inherent problem with statutory time limits is the amount of time and effort it takes to amend statutes. If an unanticipated problem were to arise with the time limits – in particular, if a person were to get a fingerprint clearance card because of a loophole in the wording of the time limits – it could take about one year to remedy the problem.

Time limits in Board rules

Alternatively, time limits could appear in Board rules. This proposal favors a rule-based set of time limits.

When DPS determines that an individual should be denied a fingerprint clearance card, it sends the applicant a notice of denial. In order to request a good cause exception, the individual sends a signed and dated copy of the denial notice to the Board. With time limits, the Board would examine just the arrests listed on the DPS notice. If the individual perpetrated the crimes outside of the time limits (i.e., the offenses were old, as defined by the time limits), then the Board would automatically issue a good cause exception and request DPS to issue a fingerprint clearance card. The individual would not need to complete the Board's application process. However, if the crimes occurred within the time limits (i.e., the crimes were recent, as defined by the time limits), the Board would send the individual a good cause exception application package.

The problem that statutory time limits face – the difficulty in amending them – is eliminated with rule-based time limits. A.R.S. § 41-619.53(A)(2) exempts the Board from the rulemaking requirements of the Administrative Procedures Act. In effect, the Board could establish, amend, or eradicate rules immediately. Thus, if a problem with the time limits were to arise that needed quick remedy, the Board simply could repeal the rules within a few days.

Future steps toward implementing time limits

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Readers of this proposal should consider the particular needs of their own agencies and the possible effects these time limits might have. They should decide whether this proposal offers a viable option for time limits, given their agencies' regulatory needs.

Although readers are welcome to take whatever steps necessary to decide what changes should be made to the proposed time limits, this initial proposal probably is not the best time to involve a variety of stakeholders. For instance, the Department of Economic Security may not yet want to solicit feedback from group homes or other licensed caregivers. The most immediate goal is to develop a set of time limits that are initially agreeable. After achieving consensus on a set of time limits, agencies may then want to involve more stakeholders. Agencies should not feel obliged to support any final time limits just because they might originally support this proposal (or some modification of it). If too many stakeholders are involved during the initial time-limit proposals, the process of developing the limits will become inefficient and confusing.

METHODOLOGY

I tried to make this proposal as much based on the Board's approval rates and similar statistics as possible. In particular, I examined the cases where the Board granted a good cause exception under an expedited review and where the appellant had only one arrest in his or her criminal record.

This approach has a number of statistical deficiencies; for instance, it does not take into account the fact that arrests do not always yield convictions. In addition, it may have some policy weaknesses; for example, this approach would exclude certain groups of individuals who commit multiple offenses, although the most recent offense was many years ago. At the same time, this approach has various merits. It is a conservative approach to granting time-limit-based good cause exceptions; conservatism may be most appropriate for a pilot program of time limits.

The statistics I gathered suggested a variety of time limits, depending on the crime. However, I sought to collapse crimes into a limited number of groupings. I decided on 15- and 10-year limits for no better reason than they were factors of five. I did not include a 5-year category in order to adhere to the principle of conservatism and because the Board tends to send cases where an offense took place within the past five years to a hearing. Furthermore, the Board has in place additional application requirements for appellants with offenses that occurred within a five-year period.

Finally, for offenses where there were limited or no statistical data, I attempted to group the offense with similar crimes.

41-1758.03. Fingerprint clearance cards; issuance; immunity

A. On receiving the state and federal criminal history record of a person, the division shall compare the record with the list of criminal offenses that preclude the person from receiving a fingerprint clearance card. If the person's criminal history record does not contain any of the offenses listed in subsections B and C of this section, the division shall issue the person a fingerprint clearance card.

B. A person who is subject to registration as a sex offender in this state or any other jurisdiction or who is awaiting trial on or who has been convicted of committing or attempting, **SOLICITING, FACILITATING** or conspiring to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction is precluded from receiving a fingerprint clearance card:

1. Sexual abuse of a minor.
2. Sexual abuse of a vulnerable adult.
3. Incest.
4. First or second degree murder.
5. Sexual assault.
6. Sexual exploitation of a minor.
7. Sexual exploitation of a vulnerable adult.
8. Commercial sexual exploitation of a minor.
9. Commercial sexual exploitation of a vulnerable adult.
10. Child prostitution as prescribed in section 13-3212.
11. Child abuse.
12. Abuse of a vulnerable adult.
13. Sexual conduct with a minor.
14. Molestation of a child.
15. Molestation of a vulnerable adult.
16. A dangerous crime against children as defined in section 13-604.01.

17. Exploitation of minors involving drug offenses.

18. Taking a child for the purposes of prostitution as prescribed in section 13-3206.

19. Neglect or abuse of a vulnerable adult.

20. SEXUAL ABUSE

21. LURING A MINOR FOR SEXUAL EXPLOITATION

22. SEX TRAFFICKING

C. A person who is awaiting trial on or who has been convicted of committing or attempting or conspiring to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction **WITHIN XX YEARS FROM THE DATE OF APPLYING** is precluded from receiving a fingerprint clearance card, except that the person may petition the board of fingerprinting for a good cause exception pursuant to section 41-619.55:

1. Manslaughter.

2. Endangerment.

3. Threatening or intimidating.

4. Assault.

5. Unlawfully administering intoxicating liquors, narcotic drugs or dangerous drugs.

6. Assault by vicious animals.

7. Drive by shooting.

8. Assaults on officers or fire fighters.

9. Discharging a firearm at a structure.

10. Indecent exposure.

11. Public sexual indecency.

12. Aggravated criminal damage.

13. Theft.

14. Theft by extortion.

15. Shoplifting.
16. Forgery.
17. Criminal possession of a forgery device.
18. Obtaining a signature by deception.
19. Criminal impersonation.
20. Theft of a credit card or obtaining a credit card by fraudulent means.
21. Receipt of anything of value obtained by fraudulent use of a credit card.
22. Forgery of a credit card.
23. Fraudulent use of a credit card.
24. Possession of any machinery, plate or other contrivance or incomplete credit card.
25. False statement as to financial condition or identity to obtain a credit card.
26. Fraud by persons authorized to provide goods or services.
27. Credit card transaction record theft.
28. Misconduct involving weapons.
29. Misconduct involving explosives.
30. Depositing explosives.
31. Misconduct involving simulated explosive devices.
32. Concealed weapon violation.
33. Enticement of any persons for purposes of prostitution.
34. Procurement by false pretenses of any person for purposes of prostitution.
35. Procuring or placing persons in a house of prostitution.
36. Receiving earnings of a prostitute.
37. Causing one's spouse to become a prostitute.

38. Detention of persons in a house of prostitution for debt.
39. Keeping or residing in a house of prostitution or employment in prostitution.
40. Pandering.
41. Transporting persons for the purpose of prostitution or other immoral purposes.
42. Possession and sale of peyote.
43. Possession and sale of a vapor-releasing substance containing a toxic substance.
44. Sale of precursor chemicals.
45. Possession, use or sale of marijuana, dangerous drugs or narcotic drugs.
46. Manufacture or distribution of an imitation controlled substance.
47. Manufacture or distribution of an imitation prescription-only drug.
48. Manufacture or distribution of an imitation over-the-counter drug.
49. Possession or possession with intent to use an imitation controlled substance.
50. Possession or possession with intent to use an imitation prescription-only drug.
51. Possession or possession with intent to use an imitation over-the-counter drug.
52. Manufacture of certain substances and drugs by certain means.
53. Adding poison or other harmful substance to food, drink or medicine.
54. A criminal offense involving criminal trespass and burglary under title 13, chapter 15.
55. ~~A criminal offense involving organized crime and fraud~~ **ANY OFFENSE LISTED**
under title 13, chapter 23, **ORGANIZED CRIME, FRAUD, AND TERRORISM.**
56. Child neglect.
57. Misdemeanor offenses involving contributing to the delinquency of a minor.
58. Offenses involving domestic violence.
59. Arson.
60. Kidnapping.

61. Felony offenses involving sale, distribution or transportation of, offer to sell, transport or distribute or conspiracy to sell, transport or distribute marijuana, dangerous drugs or narcotic drugs.

62. Robbery.

63. Aggravated assault.

64. Felony offenses involving contributing to the delinquency of a minor.

65. TAKING IDENTITY OF ANOTHER PERSON.

66. AGGRAVATED TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY.

67. TRAFFICKING IN THE IDENTITY OF ANOTHER PERSON OR ENTITY.

68. WELFARE FRAUD.

69. ADMITTING MINORS TO PUBLIC DISPLAYS OF SEXUAL CONDUCT.

70. PRODUCTION, PUBLICATION, SALE, POSSESSION AND PRESENTATION OF OBSCENE ITEMS.

71. NEGLIGENT HOMICIDE.