

## REPORT HIGHLIGHTS PERFORMANCE AUDIT

### Subject

The Legislature created the Board of Fingerprinting (Board) in 1999 to review good cause exceptions of applicants who had been denied a fingerprint clearance card or whose card was suspended by the Department of Public Safety (DPS). Statutes require a fingerprint clearance card for various professional licenses, certification, and state jobs, mainly those that involve working with children or vulnerable adults.

### Our Conclusion

The Board needs to improve the timeliness of its decisions because delays can affect the applicants' employment. The Board also needs to improve its case management, as some decisions have been issued without the Board's knowledge. Finally, the Board needs to ensure that all of its decisions follow statutory criteria.



2007

## Board should improve good cause exception decision timeliness

The Board of Fingerprinting and the fingerprint clearance card (card) were created in 1999. The Board considers applications for good cause exceptions for people who were denied a card or whose card was suspended by DPS. By law, DPS must deny a card if a person is subject to registration as a sex offender, has been convicted of or is awaiting trial for specified crimes, or if it cannot determine the arrest outcome for these crimes within 30 business days of receiving the criminal records. In 2006, DPS denied 5,469 (4.6 percent) of the 119,260 card applications. During the same year, the Board received 1,769 good cause exception applications.

Once a card has been issued, DPS matches prints from newly reported arrests to the prints of people who hold the cards. If any matches are found, DPS suspends the card and reports the suspension to the cardholder and the state agency that licenses, certifies, or employs the cardholder.

People convicted of very serious crimes, such as murder, sexual assault, or child abuse, cannot appeal DPS' denial of a card.

Other convictions, or arrests where the outcome was unknown, can be appealed to the Board. The Board may grant a "good cause exception" and request that DPS issue a card if it is satisfied that the person:

- Is not awaiting trial for a crime that would result in denial of a card.

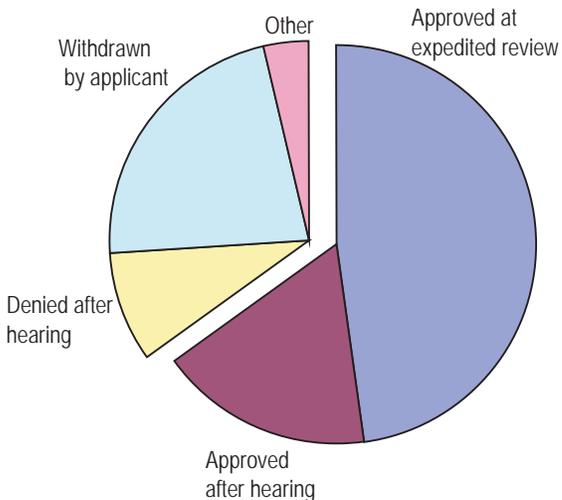


- Has been rehabilitated, if convicted of such a crime.
- Is not a recidivist.

Before the creation of the Board and the fingerprint clearance card, five agencies whose heads now appoint members of the Board were responsible for decisions about the criminal records of the people they licensed, certified, or employed to work with children and vulnerable adults. Not only could duplicate efforts occur, but there was no assurance that the same standards were applied across the five agencies. These agencies are the Departments of Economic Security, Education, Health Services, and Juvenile Corrections, and the Supreme Court. The Board for Charter Schools also requires fingerprint clearance cards for teachers and principals.

**Most good cause exceptions approved at expedited review**—The Board initially reviews all cases at an expedited review. At this review, the Board makes a decision to grant a good cause exception or refer the case to a hearing. This decision is based on the documents the applicant submitted and the recommendation of board staff. Almost half of the Board's cases are granted a

### Applications the Board Approved/Denied Fiscal Year 2006



good cause exception at the expedited review. However, when the Board decides that it needs more information, it requires a hearing before reaching a decision.

**Board addressed previous backlog**—In 2002, the Board had an estimated backlog of 462 cases waiting for a hearing. Some cases were not scheduled for a hearing for up to 2 years after the good cause exception applications were received. The Board eliminated the backlog by creating an investigator position to help prepare case summaries for the Board to consider at expedited reviews, and obtaining statutory authority to use hearing officers to conduct hearings.

**Timeliness is again decreasing**—While the Board is quickly moving cases into the process, it is continuing to experience delays between the time of the hearing and delivering a final written decision.

The Board's goals are to have a hearing, if necessary, within 60 days of an expedited review, and a final decision within 90 days of the hearing. However, based on auditors' review of 31 cases that had a hearing at least 3 months earlier and lacked a final decision as of August 14, 2006, these 31 applicants had already waited from 5 months to 1 year after the hearing and still did not have the Board's decision.

These delays have occurred because the Board has largely relied on its Executive Director to also

serve as its hearing officer. Although he has held hearings in a reasonably timely manner, he has not been able to keep up with completing the hearing write-ups and preparing written recommendations for the Board.

**Delays can affect employment**—The burden of the Board's delays is borne by the applicants. People already employed in positions that require a card and whose card is suspended may be terminated or moved to a position excluding them from direct contact with juveniles or vulnerable adults until they have a good cause exception. Similarly, people applying for a job requiring a card cannot work until the card is acquired, or for some positions, apply for the card within a certain time frame. For example:

- An applicant lost his teacher certification when DPS suspended his card. He applied to the Board for a good cause exception in July 2005. A hearing was held in September 2005. By September 2006, the Board still had no recommendation and had not made a decision. As a result, the applicant could not legally work as a teacher in Arizona.

**Steps to improve timeliness**—In November 2006, the Board hired a hearing officer to conduct its hearings. This should help improve timeliness.

However, the Board should also consider taking steps to better use the Office of Administrative Hearings (OAH) if additional hearing resources are needed in the future. The Board has used OAH in the past, but the Board's agreement with OAH only requires OAH to provide a final decision, rather than to provide the Board a detailed report to use to make its own decision. Because the Board has not always agreed with OAH's hearing decisions, it does not often use OAH. According to OAH's Director, most agencies that use OAH for hearings retain the right to accept, reject, or modify OAH's decisions. Although it would cost more, the Board could amend its agreement with OAH to require it to provide the Board with detailed recommendations.

Another step to address delays is to expand monitoring of case progress. The Board has a database that captures many steps in the decision process, but does not include some key information, and the reports the Board receives do not show how long beyond 60 days cases have been waiting for a decision.

The Board could also emphasize timeliness with formal time frames for holding its hearings and issuing its decisions. Fourteen other Arizona entities, including OAH and many health regulatory

boards, such as the Arizona Medical Board, have statutes prescribing hearing time frames. In addition, OAH's statutes prescribe the time period within which it must issue its recommended decision.

## Recommendations

### The Legislature should consider:

- Establishing time frames in statute for the Board to hold a hearing and make a final decision after hearing.

### The Board should:

- Modify its database.
- Expand its monitoring of case progress.
- Consider amending its OAH agreement and use OAH if timeliness problems persist.
- Establish hearing and decision time frames in policy if the Legislature does not put them in statute.

## Board needs to improve decision oversight

The Board believes that it should make the final decision to grant or deny a good cause exception for a fingerprint clearance card. However, some cases heard by the Executive Director had a card issued without the Board making the final decision.

Auditors found 22 cases where DPS' files contained a letter from the Board's Executive Director requesting DPS to issue a card, but the Board's files and audio tapes of its meetings do not include any record of the Board's decision. For example:

- In March 2005, DPS denied an applicant a card. The Executive Director heard this case in September 2005. While there is no evidence in the Board's files that it received or reviewed the Executive Director's hearing recommendations, there is a note that the applicant contacted board staff on March 3, 2006, concerning the hearing's results. One week later, DPS issued the applicant a card.
- In February 2005, DPS denied a card to an applicant. The Executive Director heard the case. According to the Board's database, a good cause exception was granted on August 12, 2005, and DPS issued the

applicant a card in September 2005. However, the audio tapes of the Board's meetings do not mention this applicant, and this case's hearing recommendations were not included with the cases e-mailed to the board chair for review.

Although the Board wants to review and make the final decision on all cases the Executive Director hears, the Board needs to develop and implement better management controls. For example, the Board could adopt and implement a policy to require staff to develop and submit reports on cases sent to hearing to monitor case progress and disposition. The Board could also adopt and implement a policy to have staff reconcile closed cases with DPS to verify whether fingerprint clearance cards were issued or not.

Further, maintaining board meeting minutes would help the Board monitor cases. Although the Board is exempt from the Open Meetings Laws, it still should keep records of its activities. The Board previously kept audio tapes of its meetings, but discontinued this practice in 2005. During the course of this audit, the Board resumed recording its meetings and keeping detailed records of its decisions.

## Recommendations

### The Board should:

- Improve its operations management by developing and implementing better management controls.
- Continue to keep records of its meetings when it makes good cause exception decisions.

## Board needs to ensure decisions comply with statute

Auditors discovered two cases where applicants had been denied good cause exceptions and the Board appeared to go beyond the statutory criteria in denying the appeals. Auditors identified these cases in a review of 40 cases heard by the Executive Director in fiscal years 2005 and 2006. Based on statute, the Board should grant good cause exceptions when the applicant shows that he or she is not awaiting trial or has not been convicted of a precluding offense, or when the applicant shows that he or she has been rehabilitated and is not a recidivist.

- In May 2004, DPS denied a fingerprint clearance card because it could not determine whether the applicant was awaiting trial for a January 2002 drug arrest. The Executive Director recommended that the Board grant a good cause exception because the police report indicated that the prosecutor was not going to seek charges. However, the Board refused because it believed the applicant was guilty of a crime based on the arrest report and the applicant's testimony, and the arrest was only 2 years old.

- In February 2005, DPS determined that an applicant's charges from 2003 were dropped but denied a fingerprint clearance card because it could not determine whether the applicant was awaiting trial for a May 1995 criminal trespass arrest. The Executive Director recommended that the Board grant an exception because the applicant showed that she was not awaiting trial. However, the Board refused because the most recent arrest was only 2 years old and the charges were of a serious nature.

The Board also needs to modify its application form so that it does not ask all applicants for information about contacts with Child Protective Services and suspension or revocation of professional licenses/certifications. This information is appropriate to consider when assessing rehabilitation for applicants who were convicted of related precluding offenses. However, the Board should not request it from applicants who have not been convicted of a precluding offense because statutes do not authorize it to obtain this information in these cases. Further, the Board would be treating applicants without convictions differently than they would be treated by DPS.

### TO OBTAIN MORE INFORMATION

A copy of the full report can be obtained by calling  
**(602) 553-0333**



or by visiting our Web site at:  
[www.azauditor.gov](http://www.azauditor.gov)

Contact person for this report:  
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### Recommendations

The Board should:

- Ensure it follows statute when granting or denying good cause exceptions.
- Modify its application so it asks for information regarding substantiated CPS reports and professional license/certification suspension or revocation only from applicants convicted of a precluding offense and when it is related to the type of offense the applicant was convicted of.