

# Arizona Board of Fingerprinting

Board granted or denied most good-cause and central registry exceptions we reviewed in accordance with statute and rule but should ensure it collects all required application materials

Performance Audit and  
Sunset Review

October 2019  
Report 19-114

A Report to the Arizona Legislature

Lindsey A. Perry  
Auditor General





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October 2, 2019

Members of the Arizona Legislature

The Honorable Doug Ducey, Governor

Mr. Matthew Scheller, Executive Director  
Arizona Board of Fingerprinting

Transmitted herewith is the Auditor General's report, *A Performance Audit and Sunset Review of the Arizona Board of Fingerprinting*. This report is in response to a September 19, 2018, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq. I am also transmitting within this report a copy of the Report Highlights to provide a quick summary for your convenience.

As outlined in its response, the Arizona Board of Fingerprinting agrees with all the findings and plans to implement all the recommendations.

My staff and I will be pleased to discuss or clarify items in the report.

Sincerely,

Lindsey Perry, CPA, CFE  
Auditor General

cc: Arizona Board of Fingerprinting members



## Arizona Board of Fingerprinting

**CONCLUSION:** The Arizona Board of Fingerprinting (Board) determines good-cause exceptions for individuals whose fingerprint clearance card the Arizona Department of Public Safety (DPS) has denied or suspended and who are trying to demonstrate that they are rehabilitated and not recidivists. It also determines central registry exceptions for individuals disqualified from employment based on substantiated allegations of child abuse or neglect and who are trying to demonstrate that they are rehabilitated and not recidivists. The Board granted or denied most exceptions we reviewed in accordance with statute and rule, although it lacked required documentation in some instances and should develop and implement a process to ensure it has received, reviewed, and retained all required application materials. Additionally, the Board should monitor its workload and assess whether additional staff might be needed, analyze its current revenues and costs to determine whether its fee should be adjusted, and develop and implement policies and procedures for addressing potential conflicts of interest.

### Board granted or denied most exceptions we reviewed in accordance with statute and rule but lacked required application materials in some instances

We reviewed the Board's documentation for a judgmental sample of 30 good-cause exception applications and 10 central registry exception applications it received in calendar year 2018. Based on our review, the Board granted or denied 36 of 40 exceptions in accordance with its statutes and rules. However, the Board granted 4 exceptions for which it lacked documentation of some required application materials, such as the applicant's notarized signature, a second letter of reference, and documentation of the status of meeting all court obligations or sentencing conditions. Although the Board did not have all required materials for these 4 applications, it based its determinations on other documents demonstrating that the applicants were rehabilitated and not recidivists, such as criminal history reports, written statements from the applicants explaining their criminal charges, and documentation of meeting court obligations.

4 of 40 exceptions were missing some required application materials



#### Recommendation

The Board should develop and implement a checklist for staff use to ensure that all required application materials are received, reviewed, and retained.

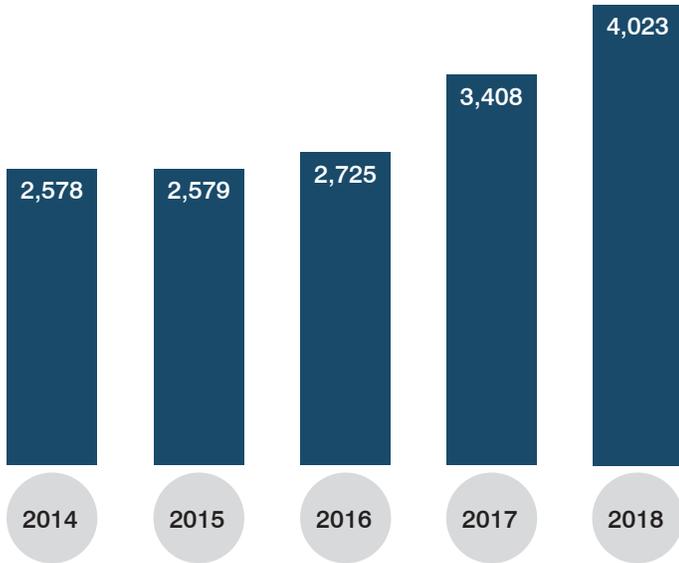
### Board should monitor and assess staffing needs if workload continues to increase

The Board has experienced an increase in the number of good-cause exception applications received in calendar years 2017 and 2018 (see figure on next page). Although the Board has been able to meet its statutory time frames for reviewing applications, it reported that the increasing workload has been challenging for staff to keep up with and makes it difficult for staff to take annual leave. The Board has sufficient revenues to hire additional staff if needed.

#### Recommendation

If the number of good-cause exception applications continues to increase, the Board should monitor the impact to its operations and assess whether additional staff are needed to handle its increasing workload and continue meeting its statutory time frames.

**Number of good-cause exception applications received**  
**Calendar years 2014 through 2018**



**Board should review and revise its fee, if necessary**

The Board has statutory authority to establish fees and charges a \$7 fee that DPS collects as part of the total \$67 application fee for a fingerprint clearance card. However, the Board collects more revenue than it needs to operate. For example, the Board's revenues totaled nearly \$1.2 million in fiscal year 2019, while its total expenditures were approximately \$550,000. As a result, the Board's fund balance has been growing, indicating that the Board's \$7 fee may be too high given the current number of applicants for a fingerprint clearance card and the Board's costs for processing the good-cause exception applications it receives.

**Recommendation**

The Board should analyze its revenues and costs to determine whether the \$7 fee should be adjusted, document its analysis and determination, and establish and implement a process for periodically reviewing the appropriateness of its fee.

**Board has not ensured compliance with State conflict-of-interest laws**

The Board has not implemented policies and procedures for ensuring compliance with State laws that require public officers and employees of public agencies, including Board members, to avoid conflicts of interest that might influence or affect their official conduct. These laws require certain interests to be disclosed in a public agency's official records, either through a signed document or the agency's official minutes. Public officers/employees must then refrain from participating in matters related to disclosed interests. In addition, public agencies are required to maintain a special file of all documents necessary to memorialize such disclosures and make this file available for public inspection. The Board does not have a process to address potential conflicts of interest in accordance with these laws.

**Recommendation**

The Board should develop and implement policies and procedures for addressing potential conflicts of interest in accordance with State laws.



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The Office of the Auditor General has conducted a performance audit and sunset review of the Arizona Board of Fingerprinting (Board). This report addresses the statutory sunset factors and includes a review of the Board's processes for reviewing good-cause and central registry exception applications, setting its fee, disclosing conflicts of interest, and complying with annual reporting requirements.

## Mission and responsibilities

The Board was established in 1999 to consider good-cause exception requests from individuals whose fingerprint clearance card (see textbox) the Arizona Department of Public Safety (DPS) has denied or suspended and who are trying to demonstrate that they are rehabilitated and not recidivists. In 2012, the Board's authority was expanded to include considering exception requests from individuals disqualified from employment because of substantiated allegations of child abuse or neglect listed in the Arizona Department of Child Safety's (DCS) central registry database.<sup>1</sup> These individuals may obtain a central registry exception if they demonstrate that they are rehabilitated and not recidivists. The Board's mission is to fairly, expeditiously, and responsibly determine good-cause exceptions and central registry exceptions for applicants.

### Fingerprint clearance card system

The fingerprint clearance card system was designed to consolidate and standardize the process for conducting employment or licensure-related criminal background checks.<sup>1</sup> Statute requires a card for some types of professional licensure, certification, and State jobs, such as those that involve working with children or vulnerable adults. These include teachers, those who provide services to persons with developmental disabilities, and nursing home employees. DPS issues a card if the applicant has not been convicted of or is not awaiting trial for certain precluding criminal offenses. Statute identifies 2 categories of precluding criminal offenses:

- Appealable precluding offenses, which are eligible for a good-cause exception. Examples include theft, forgery, shoplifting, and possession of narcotics.
- Nonappealable precluding offenses, which are not eligible for a good-cause exception. Examples include murder, sexual assault, sexual abuse of a minor or vulnerable adult, and child abuse.

The card is valid for 6 years, but if a cardholder is subsequently arrested for a precluding offense during this time period, DPS is authorized to suspend the card.

<sup>1</sup> Prior to the creation of the card system, applicable State agencies were individually responsible for deciding how to treat the criminal records of people applying for licensure, certification, or employment to work with vulnerable populations and could apply different standards to determine whether to provide clearance to the applicant or to people with similar backgrounds.

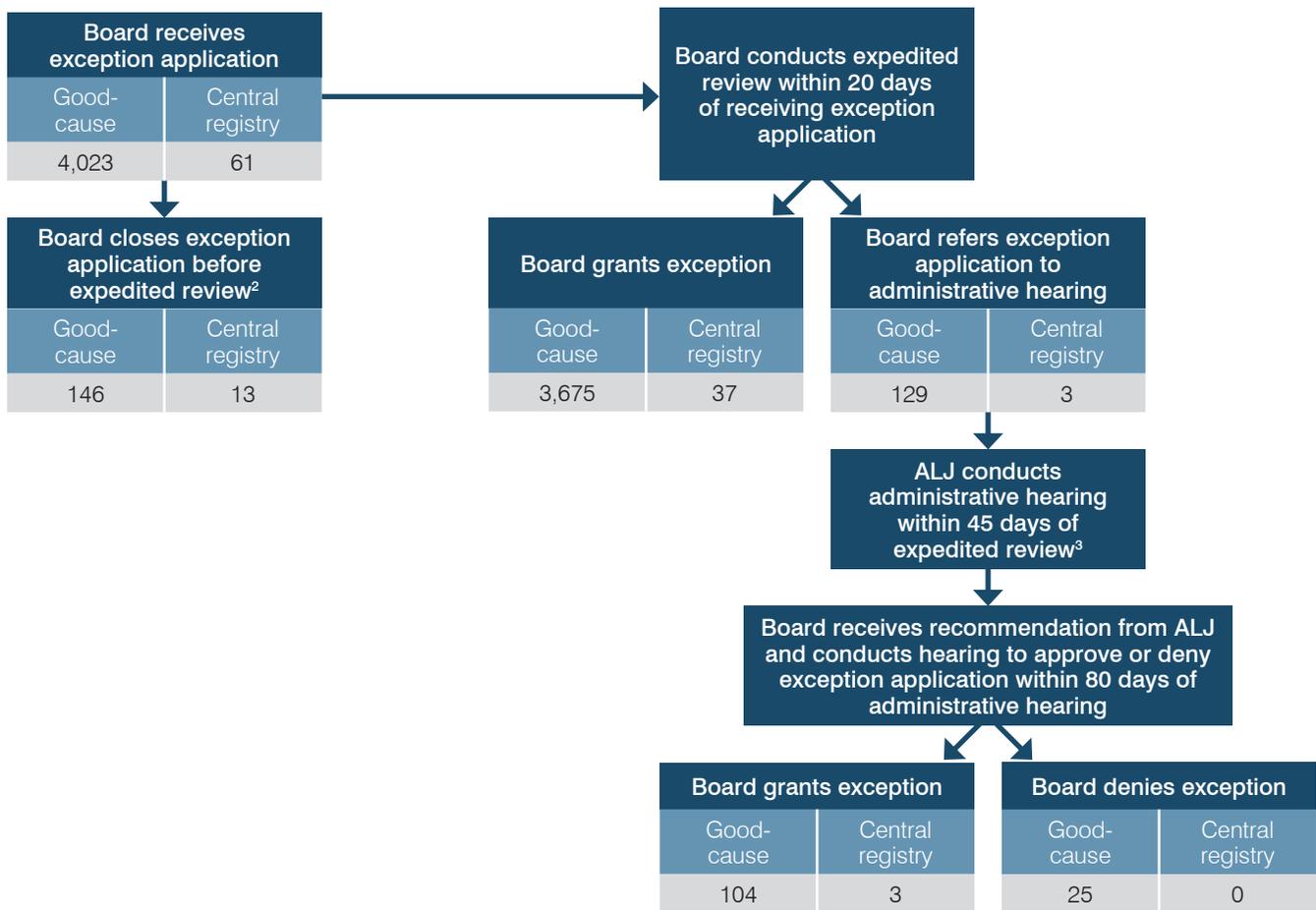
Source: Auditor General staff analysis of Arizona Revised Statutes (A.R.S.) §§41-619.51 and 41-1758 et seq. and information provided by Board staff.

## Exception review process

Statute establishes the requirements for granting good-cause and central registry exceptions. The Board's process for reviewing exception requests incorporates these requirements and is described in the following bullets. Figure 1 (see page 2) summarizes this process and provides the number of exception applications the Board received, and the number of exceptions granted and denied in calendar year 2018.

<sup>1</sup> Certain persons (contractors, subcontractors, their employees, and childcare workers) who provide direct services to children or vulnerable adults (such as individuals with developmental disabilities and nursing home residents) may be required to have a background check through the central registry.

**Figure 1**  
**Board's exception review process, number of applications received, and exceptions granted and denied<sup>1</sup>**  
**Calendar year 2018**



<sup>1</sup> Of the applications received, 73 good-cause applications and 8 central registry applications were in process, including incomplete applications that required the applicant to submit additional materials and applications that were scheduled for administrative or Board hearings. These applications were not included in the number of applications the Board granted or denied.

<sup>2</sup> Board staff may close an application before the Board's expedited review because either the applicant had been convicted of a nonappealable precluding offense; the applicant withdrew the application; or, for good-cause exception applications, DPS issued a fingerprint clearance card after initially denying or suspending the card. DPS might initially deny a card because of a recent arrest but later approve the card if the individual is not convicted of a crime.

<sup>3</sup> ALJ stands for administrative law judge.

Source: Auditor General staff review of A.R.S. §41-619 et seq. and analysis of Board data.

- **Application received**—Individuals whose fingerprint clearance cards that DPS denies or suspends for an appealable precluding offense may apply for a good-cause exception from the Board. DPS notifies individuals regarding their eligibility for an exception when it denies or suspends the fingerprint clearance card. Similarly, individuals who fail a central registry check required for employment with certain State agencies may apply for a central registry exception from the Board.<sup>2</sup> DCS notifies these individuals that they may apply for an exception.

<sup>2</sup> A.R.S. §8-804 directs DCS to conduct central registry background checks as 1 factor in determining the qualifications of persons applying to become a licensed, certified, or registered caregiver, such as a foster parent or childcare provider for 4 or fewer children, or seeking State employment, including contractors and their employees, in a position providing direct services to children or vulnerable adults.

The Board has established specific application requirements for good-cause and central registry exceptions in rule (see textbox for examples) and has developed separate applications for each exception type, which are available on the Board's website.

## Examples of application requirements

- A notarized application.
- Two letters of reference.
- Police reports for charges that occurred 5 years or less prior to card denial or suspension.
- Documents from the appropriate court showing the applicant has met all judicially imposed obligations or sentencing conditions, or, if not yet fully met, a written statement from the applicant indicating the status of his/her efforts to meet the obligations.
- A written statement from the applicant explaining each criminal charge and/or each incident leading to a substantiated allegation of abuse or neglect.

Source: Arizona Administrative Code R13-11-104.

- **Expedited review**—Per statute, the Board is required to hold an expedited review of all exception requests within 20 days of receiving an application.<sup>3</sup> The purpose of this review is for the Board to consider whether the applicant has shown to the Board's satisfaction that he/she is successfully rehabilitated and not a recidivist and, for good-cause exceptions, is not awaiting trial on or has not been convicted of committing a nonappealable precluding offense. Statute requires the Board to consider specific criteria for each exception type (see textbox).

### Criteria for considering good-cause exceptions

1. The extent of the person's criminal record.
2. The length of time that has elapsed since the offense was committed.
3. The nature of the offense.
4. Any applicable mitigating circumstances.
5. The degree to which the person participated in the offense.
6. The extent of the person's rehabilitation, including:
  - a. Completion of probation, parole or community supervision.
  - b. Whether the person paid restitution or other compensation for the offense.
  - c. Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling.
  - d. Personal references attesting to the person's rehabilitation.

Source: A.R.S. §§41-619.55 and 41-619.57.

### Criteria for considering central registry exceptions

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

To help prepare for the Board's expedited review, Board staff will review the application to ensure it includes all required materials and request the associated criminal-history records from DPS or the central registry report from DCS, as applicable. If the application is missing required materials, Board staff will send the applicant a letter explaining what is missing and establish a time frame to submit the missing materials. Once the Board has received all required materials, Board staff will review the application against the statutory criteria and prepare a summary for the Board's expedited review. This summary includes a recommendation that the

<sup>3</sup> A.R.S. §§41-619.55(A) and 41-619.57(A).

Board either approve the exception or refer the applicant to an administrative hearing if the application does not provide sufficient evidence of rehabilitation.

At an expedited review, the Board can either grant the exception or refer the request to an administrative hearing to obtain further information from an applicant. The applicant is not present for this review, and the Board cannot deny an exception request unless it first holds an administrative hearing. Per A.R.S. §41-619.53(B), a majority plus an additional member of the members present must vote to grant an exception request.

- **Administrative hearing**—If the Board refers an applicant to an administrative hearing, Board staff will send the applicant a formal notice indicating the hearing date and time. Per statute, the hearing must be conducted within 45 days of the expedited review.<sup>4</sup> A Board-employed ALJ conducts the hearing, which applicants must attend and can present additional evidence and testimony to support his/her claim of being rehabilitated. The ALJ will consider the additional evidence using the same statutory criteria and develop a recommendation that the Board either approve or deny the exception request.
- **Board hearing**—After the ALJ makes a recommendation to the Board, Board staff will notify the applicant of the ALJ's recommendation and the date and time the Board will meet to consider the recommendation and make a final decision. Per A.R.S. §41-1061(A), the Board must give applicants this notice at least 20 days before the hearing. During that time, the applicant has a final opportunity to submit a written response and additional evidence before the Board hearing. The applicant does not have to attend but is entitled to be present at the Board hearing. Per Board policy, an applicant is not permitted to speak or present new evidence at that hearing because he/she was provided an opportunity to provide written comment and additional evidence prior to the hearing. Per statute, the Board must grant or deny an exception request within 80 days after the administrative hearing.<sup>5</sup> As with the expedited review, a majority plus an additional member of the members present must vote to grant an exception request, per A.R.S. §41-619.53(B). If denied an exception, an applicant can request either a rehearing by the Board or appeal to the Arizona Superior Court.

In accordance with statute, if the Board grants an exception for an applicant, it will send a letter to DPS or the hiring State agency notifying the agency that the exception has been granted.<sup>6</sup> The Board approved exceptions for nearly all the applications it received in calendar year 2018; fewer than 1 percent of applicants were denied an exception.

## Staffing and organization

Per A.R.S. §41-619.52, the Board comprises 1 representative from 6 agencies (for a total of 6 members): DCS, Arizona Department of Economic Security (DES), Arizona Department of Education (ADE), Arizona Department of Health Services (DHS), Arizona Department of Juvenile Corrections (ADJC), and Arizona Supreme Court.<sup>7</sup> Board members are appointed by, and serve at the pleasure of, the heads of each agency, and are required to have a valid fingerprint clearance card. Each agency may also designate an alternate member who may substitute for the designated member if he/she cannot perform his/her Board duties. As of June 2019, 3 agencies had designated alternate members: DCS, ADE, and DHS.

During fiscal year 2019, the Board had 5.5 full-time equivalent (FTE) staff positions, Board staff including an executive director (1 FTE), investigator (1 FTE), administrative assistant (1 FTE), and 3 ALJs (2.5 FTEs).

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<sup>4</sup> A.R.S. §§41-619.55(B) and 41-619.57(B).

<sup>5</sup> A.R.S. §§41-619.55(E) and 41-619.57(E).

<sup>6</sup> A.R.S. §§41-619.55(F) and 41-619.57(F).

<sup>7</sup> The 6 agencies that appoint members to the Board include the 5 agencies that required fingerprint clearance cards when the system was initially established and DCS, which had been part of DES until it was made a separate agency in 2014. Additional entities have since implemented fingerprint clearance card requirements such as the Arizona Department of Real Estate and the Arizona State Board of Pharmacy.

## Budget

The Board does not receive any State General Fund appropriations. Rather, its revenues consist entirely of a \$7 fee that DPS collects as part of the total \$67 application fee for a fingerprint clearance card. The Board's fee revenues are then transferred from DPS and deposited into the Board's fund. Monies in the fund are continuously appropriated, meaning the Board receives its revenues independent of any appropriation from the Legislature. As shown in Table 1, the Board's revenues totaled nearly \$1.2 million in fiscal year 2019. Most of the Board's expenditures are for personnel costs. As shown in Table 1, the Board's fund balance has been increasing, and its fiscal year 2019 ending fund balance totaled more than \$3.5 million (see Sunset Factor 2, page 9, for additional information about the Board's increasing fund balance and our recommendation that the Board review and adjust its fee, as needed). Laws 2019, Ch. 264, appropriated approximately \$2.7 million from the Board's fund to DPS in fiscal year 2020 for the construction of a radio communication tower and remote housing replacement.

**Table 1**  
**Schedule of revenues, expenditures, and changes in fund balance**  
**Fiscal years 2017 through 2019**  
(Unaudited)

	2017	2018	2019
<b>Revenues</b>			
Licensing fees <sup>1</sup>	\$1,031,709	\$1,135,337	\$1,194,697
<b>Total net revenues</b>	<b>1,031,709</b>	<b>1,135,337</b>	<b>1,194,697</b>
<b>Expenditures</b>			
Payroll and related benefits	481,079	480,620	452,197
Professional and outside services <sup>2</sup>	28,453	11,924	10,480
Other operating <sup>3</sup>	79,698	87,046	85,956
Furniture, equipment, and software	2,319	9,519	845
<b>Total expenditures</b>	<b>591,549</b>	<b>589,109</b>	<b>549,478</b>
Net change in fund balance	440,160	546,228	645,219
Fund balance, beginning of year	1,923,005	2,363,165	2,909,393
<b>Fund balance, end of year</b>	<b>\$2,363,165</b>	<b>\$2,909,393</b>	<b>\$3,554,612<sup>4</sup></b>

<sup>1</sup> Licensing fees comprise a \$7 fee charged to all applicants who apply for a fingerprint clearance card, in accordance with A.R.S. §41-619.53.

<sup>2</sup> Professional and outside services primarily include services the Board incurred for database upgrades and enhancements, document destruction, and security and language interpreters at Board meetings.

<sup>3</sup> Other operating expenditures comprise various expenditures such as rental, telecommunications, office supplies, postage, and data processing costs.

<sup>4</sup> Laws 2019, Ch. 264, appropriated approximately \$2.7 million from the Board's fund to DPS in fiscal year 2020 for the construction of a radio communication tower and remote housing replacement.

Source: Auditor General staff analysis of the Arizona Financial Information System *Accounting Event Transaction File* for fiscal years 2017 through 2019 and the *State of Arizona Annual Financial Report* for fiscal years 2017 and 2018.





In accordance with A.R.S. §41-2954, the Legislature should consider the following factors in determining whether to continue or terminate the Board. The sunset factor analysis includes 4 recommendations for the Board.

**Sunset factor 1: The objective and purpose in establishing the Board and the extent to which the objective and purpose are met by private enterprises in other states.**

The Board was established by Laws 1998, Ch. 270, to consider good-cause exceptions for individuals whose fingerprint clearance card the Arizona Department of Public Safety (DPS) has denied or suspended and who are trying to demonstrate that they are rehabilitated and not recidivists. Laws 2012, Ch. 188, extended the Board's authority to include considering central registry exceptions for individuals disqualified from employment based on substantiated allegations of child abuse or neglect and who are trying to demonstrate that they are rehabilitated and not recidivists. The Board's mission is to fairly, expeditiously, and responsibly determine good-cause and central registry exceptions for applicants.

We did not identify any states that met the Board's objective and purpose through private enterprises. Additionally, because dissemination of criminal history information is restricted, which is key information the Board uses to perform its duties, privatization of the Board's functions would require changes to State and federal laws.

**Sunset factor 2: The extent to which the Board has met its statutory objective and purpose and the efficiency with which it has operated.**

The Board has generally met its statutory objective and purpose but should improve in one area. Specifically, we found that the Board:

- **Granted or denied most exceptions we reviewed in accordance with statute and rule, although it lacked required documentation in some instances**—We reviewed the Board's documentation for 30 good-cause exception applications and 10 central registry exception applications it received in calendar year 2018.<sup>8</sup> Based on our review, the Board granted or denied 36 of 40 exceptions in accordance with its statutes and rules. However, 4 of the 40 exception applications lacked documentation of some required application materials (see the Introduction, page 3, for textbox of examples of application materials required by rule). Specifically:
  - 1 application for a good-cause exception was missing the last page of the application, which contains the applicant's notarized signature, and second letter of reference.
  - 1 application for a good-cause exception was missing a second letter of reference. The application included what appeared to be 2 letters of reference, one a reference form and the other a letter, but they were both from the same individual.
  - 2 applications were missing either court documentation or a written statement from the applicant regarding the status of meeting all obligations or sentencing conditions.

<sup>8</sup> To select this sample, we judgmentally selected a box of good-cause exception applications and a box of central registry applications the Board maintains. We reviewed the first 30 good-cause exception applications and 10 central registry exception applications from these records. The Board received 4,023 good-cause exception applications and 61 central registry exception applications in calendar year 2018.

- One of these applications was for a central registry exception from an individual who had previously been granted a good-cause exception for 2 misdemeanor marijuana possession convictions on the applicant's criminal record.
- The second application was for a good-cause exception from an individual who was in the process of meeting court obligations related to a drug-paraphernalia-possession conviction and who had no previous criminal record. Although documentation was missing, Board staff had noted in the Board's database that the applicant had met the court obligations. Board staff indicated this note may have resulted from an undocumented phone call to the applicant.

Although the Board did not have all required application materials for these 4 applications, it had documentation demonstrating that the applicants were rehabilitated and not recidivists. For example, for the 2 applications without a second letter of reference, the Board had criminal history reports, court documentation or written statements of meeting court obligations, written statements from the applicants explaining each criminal charge, and a letter of reference for each applicant. For the 2 applications without court documentation or written statements of meeting court obligations, the Board had criminal history reports, written statements from the applicants explaining each criminal charge, and 2 letters of reference for each applicant. The Board also had a central registry report and written statement of the incident leading to a substantiated allegation of abuse or neglect for the central registry exception application and a police report for the good-cause exception application. Although the Board made a determination for these 4 applications without all required application materials, it lacks a process to ensure it has received, reviewed, and retained all required application materials.

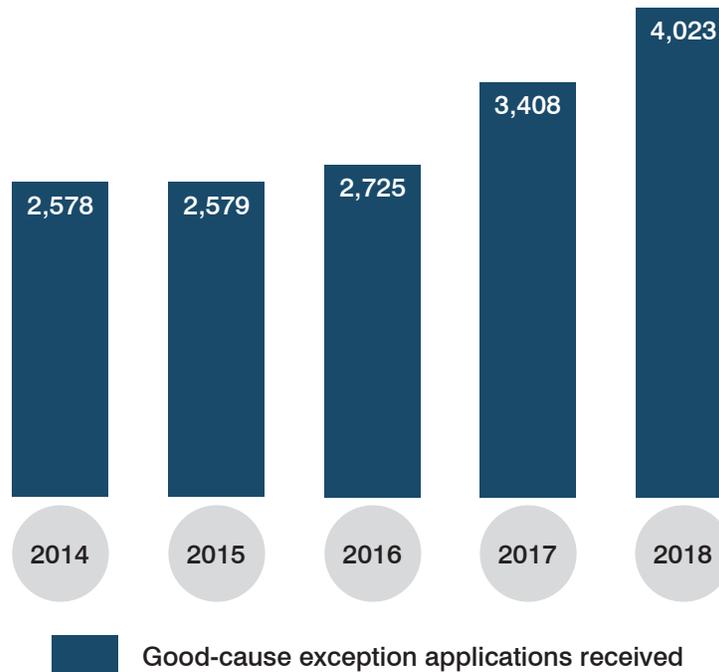
- **Granted or denied exceptions in accordance with statutory time frames for all but 1 of 40 applications we reviewed**—As discussed in the Introduction (see pages 1 through 5), statute prescribes specific time frames for various steps in the Board's review process. The Board met these time frames for all but 1 of the 40 applications we reviewed. For the 1 application that did not meet the time frame, the Board completed its expedited review of the application within 25 days rather than the required 20 days. According to Board staff, the staff member who prepares exception applications for expedited review was on leave, and the substitute staff member missed this application when preparing applications for the Board's next expedited review. Additionally, according to Board data, the Board met its time frames for 99.8 percent of exception applications it reviewed in calendar year 2018.
- **Met statutory annual reporting requirements for 2017 and 2018**—A.R.S. §41-619.54(D) requires the Board to report, on or before December 1 each year, the number of good-cause and central registry exceptions applied for and granted during the 12-month period ending September 30. Statute also specifies other requirements for this report, such as reporting information by the type of job/licensure for which a fingerprint clearance card is needed and the type of offense in the applicants' criminal histories. We reviewed the Board's 2017 and 2018 annual reports and found that the Board complied with all the statutory reporting requirements.

We also identified 2 recommendations for the Board. Specifically, the Board should:

- **Monitor and assess whether additional staff might be needed to handle its increasing workload**—As shown in Figure 2 (see page 9), the Board has experienced an increase in the number of good-cause exception applications in calendar years 2017 and 2018.<sup>9</sup> Although the Board has been able to meet its statutory time frames for reviewing applications, it reported that the increasing workload has been challenging for staff to keep up with and makes it difficult for staff to take annual leave. If the number of good-cause exception applications continues to increase, the Board should monitor the impact to its operations and assess whether additional staff are needed to handle its increasing workload and continue meeting its statutory time frames. The Board has sufficient revenues to hire additional staff if needed (see next bullet).

<sup>9</sup> This increase correlates with an increase in the annual number of fingerprint clearance card applications that DPS has received.

**Figure 2**  
**Number of good-cause exception applications received**  
**Calendar years 2014 through 2018**



Source: Auditor General staff analysis of Board data.

- Review and revise its fee, if necessary**—The Board has statutory authority to establish fees and charges a \$7 fee that DPS collects as part of the total \$67 application fee for a fingerprint clearance card. Prior to July 2008, the Board’s fee was \$3, but the Board voted to increase the fee in May 2008 because it had increased its staff, moved into a larger facility, incurred one-time and long-term costs associated with newly established statutory time frame requirements for reviewing applications, and had been operating at a deficit.

However, the Board collects more revenue than it needs to operate. For example, as shown in Table 1 on page 5, the Board’s revenues totaled nearly \$1.2 million in fiscal year 2019, while its total expenditures were approximately \$550,000. As a result, the Board’s fund balance has been growing. The Board’s fund balance grew from approximately \$1.3 million at the end of fiscal year 2013 to more than \$3.5 million at the end of fiscal year 2019. This increase in the Board’s fund balance indicates that the Board’s \$7 fee may be too high given the current number of applicants for a fingerprint clearance card and the Board’s costs for processing the applications it receives. This would likely be the case even if the Board were to hire additional staff to address its increasing workload, as discussed in the prior bullet. Government fee-setting standards and guidance state that user fees should be determined based on the costs of providing a service and that fees should be reviewed periodically to ensure they are aligned with program costs.<sup>10,11</sup>

**Recommendations**

The Board should:

1. Develop and implement a checklist for staff use to ensure that all required application materials are received, reviewed, and retained.

<sup>10</sup> Joint Legislative Committee on Performance Evaluation and Expenditure Review. (2002). *State agency fees: FY 2001 collections and potential new fee revenues*. Jackson, MS.

<sup>11</sup> U.S. Government Accountability Office. (2008). *Federal user fees: A design guide*. Washington, DC.

2. If the number of good-cause exception applications continues to increase, monitor the impact to its operations and assess whether additional staff are needed to handle its increasing workload and continue meeting its statutory time frames.
3. Analyze its current revenues and costs to determine whether the \$7 fee should be adjusted (and document its analysis and determination), and establish and implement a process for periodically reviewing the appropriateness of its fee.

**Board response:** As outlined in its [response](#), the Board agrees with the findings and will implement the recommendations.

### **Sunset factor 3: The extent to which the Board serves the entire State rather than specific interests.**

The Board serves the entire State by determining good-cause exceptions and central registry exceptions for applicants throughout Arizona.

However, the Board has not implemented policies and procedures for ensuring compliance with State laws that require public officers and employees of public agencies, including Board members, to avoid conflicts of interest that might influence or affect their official conduct.<sup>12</sup> These laws require certain interests to be disclosed in a public agency's official records, either through a signed document or the agency's official minutes. Public officers/employees must then refrain from participating in matters related to disclosed interests. In addition, public agencies are required to maintain a special file of all documents necessary to memorialize such disclosures and make this file available for public inspection. The Board does not have a process to address potential conflicts of interest in accordance with these laws.

### **Recommendation**

The Board should:

4. Develop and implement policies and procedures for addressing potential conflicts of interest in accordance with State laws, including requiring Board members and employees to disclose certain interests in the Board's official records, either through a signed document maintained in a special file or the Board's official minutes.

**Board response:** As outlined in its [response](#), the Board agrees with the finding and will implement the recommendation.

### **Sunset factor 4: The extent to which rules adopted by the Board are consistent with the legislative mandate.**

The Board's enabling statutes provide it with general authority to adopt rules to perform all its activities. Various statutes require the Board to adopt specific rules. Our review of these statutes and the Board's rules indicates that the Board has adopted rules when required to do so.

### **Sunset factor 5: The extent to which the Board has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.**

A.R.S. §41-619.53(A)(2) exempts the Board from the rulemaking requirements of the Administrative Procedures Act (APA). However, the Board reported that it has sought input on proposed rules and followed most of the APA's rulemaking requirements, such as providing opportunities for public input by publishing notices of proposed rulemaking in the Arizona Administrative Register, allowing the public to submit written comments on proposed rule changes for 30 days after it published the notice, and considering public comments received.

The Board's meetings for considering good-cause and central registry exception applications are exempt from the State's open meeting laws. Specifically, A.R.S. §41-619.54(A through C) make all good-cause and central registry exception documentation, determinations, and hearings confidential. The Board holds periodic business

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<sup>12</sup> A.R.S. §38-501 et seq.

meetings that are subject to open meeting laws, but we were unable to test the Board's compliance with these requirements because the Board did not hold any such meetings during this audit.

The Board also provides information to the public through its website, including the applications for exceptions, helpful resources for submitting applications, application status information for applicants, Board meeting agendas and minutes, and the Board's annual report.

**Sunset factor 6: The extent to which the Board has been able to investigate and resolve complaints that are within its jurisdiction.**

The Board has no statutory authority or responsibility to investigate and resolve complaints.

**Sunset factor 7: The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.**

The Attorney General serves as the Board's legal advisor and provides legal services as the Board requires, according to A.R.S. §41-192(A)(1).

**Sunset factor 8: The extent to which the Board has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.**

The Board reported that there are no deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate. According to the Board, it did not request any legislation during the 2019 legislative session.

**Sunset factor 9: The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in this sunset law.**

We did not identify any statutory changes that are necessary to help the Board adequately comply with the factors listed in the sunset law.

**Sunset factor 10: The extent to which the termination of the Board would significantly affect the public health, safety, or welfare.**

Terminating the Board would not significantly harm the general public health, safety, or welfare, although it might result in fewer people qualifying for certain jobs/licenses. Without the Board, individuals denied a fingerprint clearance card or disqualified after a central registry check would not have a process for demonstrating that they are rehabilitated and not recidivists, unless the Board's functions were transferred to 1 or more State agencies. However, as discussed in the Introduction (see textbox, page 1), the Board was created as part of the fingerprint clearance card system to consolidate and standardize the process for conducting employment or licensure-related criminal background checks. Prior to the creation of the card system, applicable State agencies were individually responsible for deciding how to treat the criminal records of people applying for licensure, certification, or employment to work with vulnerable populations and could apply different standards to determine whether to provide clearance to the applicant or to people with similar backgrounds.

**Sunset factor 11: The extent to which the level of regulation exercised by the Board compares to other states and is appropriate and whether less or more stringent levels of regulation would be appropriate.**

This factor does not apply because the Board is not a regulatory agency.

**Sunset factor 12: The extent to which the Board has used private contractors in the performance of its duties as compared to other states and how more effective use of private contractors could be accomplished.**

The Board does not use private contractors to perform its primary duties related to good-cause and central registry exceptions. However, it contracts for database services, document destruction, and security and language interpreters at Board meetings. We did not identify other states that had an agency similar to the Board and did not identify any additional areas where the Board should consider using private contractors.





## SUMMARY OF RECOMMENDATIONS

### Auditor General makes 4 recommendations to the Board

The Board should:

1. Develop and implement a checklist for staff use to ensure that all required application materials are received, reviewed, and retained (see Sunset Factor 2, pages 7 through 10, for more information).
2. If the number of good-cause exception applications continues to increase, monitor the impact to its operations and assess whether additional staff are needed to handle its increasing workload and continue meeting its statutory time frames (see Sunset Factor 2, pages 7 through 10, for more information).
3. Analyze its current revenues and costs to determine whether the \$7 fee should be adjusted (and document its analysis and determination), and establish and implement a process for periodically reviewing the appropriateness of its fee (see Sunset Factor 2, pages 7 through 10, for more information).
4. Develop and implement policies and procedures for addressing potential conflicts of interest in accordance with State laws, including requiring Board members and employees to disclose certain interests in the Board's official records, either through a signed document maintained in a special file or the Board's official minutes (see Sunset Factor 3, page 10, for more information).





## Objectives, scope, and methodology

The Office of the Auditor General has conducted a performance audit and sunset review of the Board pursuant to a September 19, 2018, resolution of the Joint Legislative Audit Committee. The audit was conducted as part of the sunset review process prescribed in A.R.S. §41-2951 et seq. This report addresses the statutory sunset factors and includes a review of the Board's processes for reviewing good-cause and central registry exception applications, setting its fee, disclosing conflicts of interest, and complying with annual reporting requirements.

We used various methods to study the issues in this audit. These methods included reviewing Board statutes, rules, policies and procedures, and the exception application forms; interviewing Board staff, the Board chair, and DPS staff; and reviewing information from the Board's website. In addition, we used the following methods to address the audit objectives:

- To determine whether the Board issued good-cause exceptions and central registry exceptions to qualified applicants in a timely manner, we reviewed samples of the 4,023 good-cause exception applications and 61 central registry exception applications the Board received in calendar year 2018. Specifically, we judgmentally selected a box of good-cause exception applications and a box of central registry exception applications maintained by the Board. We reviewed the first 30 good-cause exception applications and 10 central registry exception applications from these records. Additionally, we analyzed Board data to further check for compliance with statutorily required time frames for processing exception applications.
- To determine whether the Board appropriately established fees, we interviewed Board staff and reviewed Board meeting minutes and rulemaking packets. Additionally, we reviewed best practices for fee setting from the Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review and the U.S. Government Accountability Office.<sup>13,14</sup>
- To obtain other information for the Introduction, we reviewed Board records regarding the number of good-cause exception applications and central registry exception applications received in calendar year 2018. In addition, we compiled and analyzed unaudited information from the Arizona Financial Information System *Accounting Event Transaction File* for fiscal years 2017 through 2019 and the *State of Arizona Annual Financial Report* for fiscal years 2017 and 2018.
- Our work on internal controls included reviewing the Board's policies and procedures for ensuring compliance with Board statutes and rules and, where applicable, testing its compliance with these policies and procedures. Conclusions on this work are included in Sunset Factors 2 and 3 (see pages 7 through 10). In addition, we assessed the reliability of the Board's database information for performing audit work. Specifically, we interviewed Board staff, reviewed database controls, and compared information in the database against exception application files. Through this work, we determined that the Board's database was sufficiently reliable for audit purposes.

We conducted this performance audit and sunset review of the Board in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient,

<sup>13</sup> Joint Legislative Committee on Performance Evaluation and Expenditure Review. (2002). *State agency fees: FY 2001 collections and potential new fee revenues*. Jackson, MS.

<sup>14</sup> U.S. Government Accountability Office. (2008). *Federal user fees: A design guide*. Washington, DC.

appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We express our appreciation to the Board and its staff for their cooperation and assistance throughout the audit.

# BOARD RESPONSE

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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September 18, 2019

Ms. Lindsey Perry, Auditor General  
Office of the Auditor General  
2910 N 44<sup>th</sup> St., Suite 410  
Phoenix, AZ 85018

Dear Ms. Perry:

The Arizona Board of Fingerprinting (Board) respectfully submits its response to the performance audit and sunset review of the Board by the Office of the Auditor General (AG). We would like to thank the AG staff for their professional conduct and guidance offered to the Board staff during the audit process.

The Board concurs with the findings and recommendations resulting from the audit. We continually strive to perform at the highest levels possible and welcome any constructive feedback to help us to improve our processes. The Board will ensure that the findings and recommendations are addressed and implemented expeditiously.

The Board looks forward to building on our successes and providing outstanding service to the public and the State of Arizona. We will use the input from the audit to make improvements in our operations and maintain our very high standards.

Sincerely,

Matthew A. Scheller  
Executive Director

Enclosure

c: Board Members and Alternates

**Sunset Factor 2:** The extent to which the Board has met its statutory objective and purpose and the efficiency with which it has operated.

**Recommendation 1:** The Board should develop and implement a checklist for staff use to ensure that all required application materials are received, reviewed, and retained.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will create a checklist for staff to ensure that all required application materials are received, reviewed, and retained.

**Recommendation 2:** If the number of good-cause exception applications continues to increase, the Board should monitor the impact to its operations and assess whether additional staff are needed to handle its increasing workload and continue meeting its statutory time frames.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: As of July 1, 2019, the Board has created and filled an Office Manager position and filled its Administrative Assistant II position. Both of these positions will enable the Board to handle its increasing workload and ensure that the Board continues to meet its demanding statutory time frames.

**Recommendation 3:** The Board should analyze its current revenues and costs to determine whether the \$7 fee should be adjusted (and document its analysis and determination) and establish and implement a process for periodically reviewing the appropriateness of its fee.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is reviewing its Rules and the current fee that is collected as part of the application fee for a fingerprint clearance card. A process will be implemented to periodically review the appropriateness of the fee.

**Sunset Factor 3:** The extent to which the Board serves the entire State rather than specific interests.

**Recommendation 4:** The Board should develop and implement policies and procedures for addressing potential conflicts of interest in accordance with State laws, including requiring Board members and employees to disclose certain interests in the Board's official records, either through a signed document maintained in a special file or the Board's official minutes.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will develop a policy and procedure for addressing potential conflicts of interest in accordance with State laws.

