

Arizona Department of Public Safety Central Repository of Criminal History Records

Department and other criminal justice agencies share statutory responsibility for ensuring central repository includes accurate criminal history records, but incomplete records may potentially put public safety at risk

Performance Audit

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A Report to the Arizona Legislature

Lindsey A. Perry
Auditor General





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September 10, 2021

Members of the Arizona Legislature

The Honorable Doug Ducey, Governor

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Transmitted herewith is the Auditor General's report, *A Performance Audit of the Arizona Department of Public Safety—Central Repository of Criminal History Records*. 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 Department of Public Safety agrees with all but 1 finding and indicates that it will implement most of the recommendations directed to it.

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

Sincerely,

Lindsey A. Perry

Lindsey A. Perry, CPA, CFE
Auditor General

Arizona Department of Public Safety Central Repository of Criminal History Records

Department and other criminal justice agencies share statutory responsibility for ensuring central repository includes accurate criminal history records, but incomplete records may potentially put public safety at risk

Audit purpose

To determine if the Department complied with its statutory responsibility to maintain a complete collection of criminal history offense and disposition records in the Arizona central repository and that the records maintained in the central repository were consistent with statutory requirements.

Key findings

- The Department is statutorily required to collect, store, and disseminate complete and accurate criminal history records for any individual arrested and/or charged in Arizona with any felony offense or a misdemeanor offense only involving driving under the influence (DUI), a sexual offense, or domestic violence.
- Various criminal justice agencies in Arizona, other states, and the FBI rely on criminal history records in the central repository to help make decisions that impact public safety. For example:
 - Criminal justice agencies use criminal history records when making decisions that could help deter further offenses, such as decisions regarding plea bargains, and sentencing repeat offenders.
 - The Department uses criminal history records from the central repository, the FBI, and other states when determining to issue a fingerprint clearance card or when running a fingerprint-based criminal history records check.
- The Department and other criminal justice agencies share statutory responsibility for ensuring the central repository includes complete criminal history records, but the central repository is missing some fingerprint-based offense and disposition records and may be missing more records, which may potentially put public safety at risk. Specifically, 17 of 103, or approximately 17 percent, of felony offense records we reviewed from 4 law enforcement agencies in Arizona could not be found in the central repository. Four of the 17 felony offenses were for aggravated assault, including 1 aggravated assault with a deadly weapon and 2 aggravated assaults on a peace officer. Additionally, our review of a stratified random sample of 30 felony offense records in the central repository found that 12 offenses, or approximately 40 percent, had been adjudicated through the criminal justice process, but the disposition was missing from the central repository.
- The Department could unknowingly issue and has not suspended some fingerprint clearance cards because statutes do not require at least 28 misdemeanor offenses that would preclude an individual from obtaining a fingerprint clearance card to be reported to and included in the central repository.
- Despite not being expressly authorized by statute, the Department maintains thousands of misdemeanor offenses in the central repository and reported doing so for fingerprint clearance card, criminal justice, and employment purposes. However, inconsistently including these offenses may inequitably impact licensing and employment decisions.

Key recommendations

- The Department should maintain a complete criminal history records repository that includes all statutorily required offense records and their associated dispositions by continuing to research, correct, and/or enter offense records it has received; developing and implementing a formal process for regularly requesting missing offense records; and periodically sending a list of offense records missing dispositions and requesting criminal justice agencies report any dispositions they have to the central repository.
- The Legislature should consider whether all fingerprint clearance card precluding offenses and any additional misdemeanor offenses should be reported to and included in the central repository and modify A.R.S. §41-1750 accordingly.



TABLE OF CONTENTS

Introduction	1
Finding 1: Department’s incomplete criminal history records may potentially put public safety at risk	7
Department and other criminal justice agencies share statutory responsibility for ensuring central repository includes complete and accurate criminal history records	
Central repository is missing some fingerprint-based offense and disposition records and may be missing more records	
Incomplete criminal history records potentially put public safety at risk	
Criminal justice agencies have not reported and Department has not entered some offense and disposition records in central repository or taken some steps to improve the repository’s completeness	
Recommendations	
Finding 2: Department could unknowingly issue and has not suspended fingerprint clearance cards of ineligible individuals due to statutory omission	13
Department issues fingerprint clearance cards and suspends them based on precluding offenses reported in central repository	
Department could unknowingly issue and has not suspended some fingerprint clearance cards because of statutory omission	
Public could potentially be at risk when ineligible individuals have fingerprint clearance cards	
Recommendations	
Finding 3: Central repository contains misdemeanor offenses not expressly authorized by statute to be included, which provides additional criminal history information but increases risk of inequitable employment or licensure denials	17
Statute expressly authorizes all felonies and only misdemeanor offenses involving DUI, sexual offenses, or domestic violence to be included in central repository	
Despite not being expressly authorized by statute, Department maintains thousands of misdemeanor offenses in central repository and reported doing so for fingerprint clearance card, criminal justice, licensing, and employment purposes	
These misdemeanor offenses have been inconsistently reported to the central repository, increasing risk an individual charged with these offenses may be inequitably denied employment or licensure	
Recommendations	



TABLE OF CONTENTS

Finding 4: Some statutorily classified felony offenses were reduced to misdemeanor offenses and not reported to central repository, which increases risk of ineligible individuals receiving fingerprint clearance card, license, or employment 20

Some statutory felonies have been reduced to misdemeanors and were not reported to central repository

Department reduced some felony offenses to misdemeanor offenses because of guidance provided by Arizona county prosecutors, and other law enforcement agencies may be doing the same

Felony offenses reduced to misdemeanor offenses at time of arrest or citation are not reported to central repository and may result in ineligible individuals receiving fingerprint clearance card, license, or employment

Recommendations

Summary of recommendations: Auditor General makes 12 recommendations to the Department and 3 recommendations to the Legislature 24

Appendix A: Arizona State agencies, boards, and courts that require a fingerprint clearance card and/or fingerprint-based criminal history records check for professional licensure or employment, or to interact with vulnerable populations a-1

Appendix B: Scope and methodology b-1

Appendix C: Auditor General’s comments on Department response c-1

Department response

Figures

1 Overview of process to create and complete an offense record in central repository 5

2 Felony offenses reduced to misdemeanor offenses at time of arrest or citation are not reported to central repository and thus may not be available for performing fingerprint-based criminal history records checks 23

Tables

1 Listing of precluding misdemeanor offenses that are not statutorily required to be reported to central repository by fingerprint clearance card type
As of April 2021
(Unaudited) 14

2 Arizona State agencies, boards, and courts that require a fingerprint clearance card and/or fingerprint-based criminal history records check for licensing, employment, or to interact with vulnerable populations
As of March 31, 2021 a-2



The Arizona Auditor General has completed the first in a series of 2 audits of the Arizona Department of Public Safety (Department). This performance audit determined whether the Department complied with its statutory responsibility to maintain a complete collection of criminal history offense and disposition records in the Arizona central repository (central repository) and that the records maintained in the central repository were consistent with statutory requirements. The second and final audit report will determine whether the Department maintained the sex offender website in compliance with statutory requirements and provide responses to the statutory sunset factors.

Department is statutorily required to operate central repository of criminal history records and provide criminal history information to authorized entities to help make decisions that impact public safety

The Department is statutorily responsible for the collection, storage, and dissemination of complete and accurate criminal history records for any individual arrested and/or charged in Arizona with any felony offense or a misdemeanor offense only involving driving under the influence (DUI), a sexual offense, or domestic violence (hereinafter “reportable misdemeanors”) (see textbox).¹ Additionally, criminal justice agencies such as local,

Key terms

Criminal justice agency—In Arizona, these may include all local, county, and State law enforcement agencies, prosecution agencies, and courts.

Criminal history record—An individual’s criminal history record includes any offense for which the individual was fingerprinted at the time of arrest and/or charge and the disposition arising from those actions. A complete criminal history record requires both an offense record and disposition record for each offense for which an individual was arrested and/or charged. Specifically:

- **Offense record**—A record of an offense for which an individual is fingerprinted at the time of arrest and/or charge. If the individual was arrested and/or charged with multiple offenses, a separate central repository entry is created for each offense.
- **Disposition record**—A disposition record is the outcome of an offense record, such as a decision not to pursue the charge(s) or the results of a criminal proceeding, such as the individual being found guilty or not guilty.

Offense—Any conduct defined in federal, State, or local statutes and/or ordinances for which an individual could be sentenced to pay a fine or incarcerated. Offenses can be classified as a:

- **Felony**—A serious offense for which the offender could be sentenced to imprisonment in an Arizona Department of Corrections, Rehabilitation, and Reentry (ADCRR) facility.
- **Misdemeanor**—A less serious offense for which the offender could be fined or sentenced to imprisonment in a facility other than an ADCRR facility, such as a county jail.

Source: Auditor General staff review of A.R.S. §§13-105 and 41-1750 and Department records.

¹ Arizona Revised Statutes (A.R.S.) §41-1750(A)(1).

county, and State law enforcement agencies, prosecutors, and the courts are required by law to report criminal history records for all felonies and reportable misdemeanors to the central repository.²

The central repository is a component of the Arizona Criminal Justice Information System (ACJIS), which is a criminal justice information system that houses several databases, including records for wanted persons, missing persons, protection orders, stolen vehicles, and criminal history records. Information from ACJIS is accessible to authorized Arizona criminal justice agencies, the Federal Bureau of Investigation (FBI), and authorized criminal justice agencies in other states.

Criminal history records retained in the central repository are used by various criminal justice agencies in Arizona and nationally to help make decisions that impact public safety. For example:

- Criminal justice agencies use criminal history records when making decisions that could help deter further offenses, such as decisions regarding bail, plea bargains, and sentencing repeat offenders.
- The Department uses criminal history records from the central repository and the FBI's database of criminal history records from all 50 states when determining whether to issue a fingerprint clearance card to an applicant or when running a fingerprint-based criminal history records check (see textbox, page 3).
- The FBI uses criminal history records to conduct background checks to determine whether an individual can purchase a firearm from a federally licensed dealer, and the Department uses criminal history records to determine whether to issue an applicant a permit to carry a concealed weapon.

Department and criminal justice agencies responsible for creation of complete criminal history records

As previously discussed, the Department is statutorily responsible for collecting, storing, and disseminating complete criminal history records for statutorily reportable offenses. However, statute also places responsibilities on criminal justice agencies to provide the Department with the necessary information to initiate and complete an offense record. The following specific steps create a complete offense record:

- **Department or other criminal justice agency arrests and/or charges an individual with a reportable offense**—To initiate an offense record, the Department or other State or local criminal justice agency must arrest and/or charge an individual on suspicion of having committed a felony or a misdemeanor involving DUI, a sexual offense, or domestic violence.³
- **Criminal justice agency fingerprints the arrested and/or charged individual and reports the individual's fingerprints and associated booking information to the central repository, creating the offense record**—At the time of arrest and/or charge, a criminal justice agency is responsible for booking the individual, a process that can include obtaining the individual's name, contact information, photos or mug shot, and the nature of the alleged offense(s). The criminal justice agency responsible for booking the individual (booking agency) is responsible for fingerprinting the individual using either a paper fingerprint card or electronically using a Live Scan machine. If the individual was fingerprinted using a paper fingerprint card, the booking agency can either send the paper fingerprint card to the Department or scan the paper fingerprint card into an image scanner. Department staff should then scan any paper fingerprint cards received into the central repository. Department staff reported that if the individual was fingerprinted using a Live Scan

Offenses required to be reported to the central repository



- **Felony offenses**—All felony offenses
- **Misdemeanor offenses**—Only misdemeanor offenses involving DUI, sexual offenses, or domestic violence

² A.R.S. §41-1750(C).

³ An arrest occurs when an individual is taken into custody by a criminal justice agency on suspicion of committing an offense(s). A charge is the formal action where an individual is accused of committing an offense. An individual suspected of committing an offense can be charged without being arrested by a law enforcement agency. For example, the prosecution may review evidence that a law enforcement agency collected and decide to charge an individual with an offense(s) without the individual being arrested.

machine, depending on the type of Live Scan machine, the booking agency will electronically transmit or the Live Scan machine will automatically transmit the individual's fingerprints to the central repository.⁴

Department-provided fingerprint-based background checks using criminal history records in the central repository

Some State agencies that license and regulate professions (regulatory agencies) and State agency employers require individuals applying for licensure or employment to either obtain a Department-issued fingerprint clearance card or undergo a Department-provided fingerprint-based criminal history records check (see Appendix A, pages a-1 through a-9, for a list of these State agencies). The purpose of these checks is to allow the regulatory agency or State agency employer to determine an applicant's fitness to perform the duties for which they are seeking licensure or employment, such as applicants who will be working with children or other vulnerable populations.

Fingerprint clearance card—A Department-issued card indicating that the cardholder is not awaiting trial for or has not been convicted of committing certain precluding criminal offenses, such as sexual assault, forgery, and concealed weapon violations.¹ The Department issues 2 types of fingerprint clearance cards—a Level-1 fingerprint clearance card and a standard fingerprint clearance card. A Level-1 fingerprint card can be more difficult to obtain because it requires the applicant to not have been arrested or convicted of more precluding offenses than the standard fingerprint clearance card. Level-1 fingerprint clearance cards are required for certain professions and activities, including Arizona Department of Child Safety employees, foster home licensees, and childcare employees. Applicants for any profession or activity that does not require a Level-1 fingerprint card can apply for a standard fingerprint clearance card.

The Department can deny or issue a fingerprint clearance card based on its review of an applicant's criminal history record from the central repository and the FBI's database of criminal history records from all 50 states.² In order to receive a fingerprint clearance card, the applicant must list the agency—called the sponsoring agency—that is requiring the individual to obtain a card. The card is valid for 6 years; however, if a cardholder is subsequently arrested for a precluding offense during this 6-year period, the Department shall suspend the card and notify the cardholder and the sponsoring agency, if the agency is statutorily authorized to receive notification, that the card is suspended pending the outcome of the arrest.³

Fingerprint-based criminal history records check—Provides a complete listing of an individual's criminal history, both within the State and nationally, such as criminal charges, arrests, indictments, and detentions. Individuals undergoing a fingerprint-based criminal history records check must be fingerprinted. These fingerprints are then sent to the Department for comparison to fingerprint-based criminal history records in the central repository and the FBI's database of fingerprint-based criminal history records from all 50 states. The Department then provides a report of the individual's criminal history to the requesting regulatory agency or State agency employer.

¹ Precluding criminal offenses for fingerprint clearance cards are enumerated in A.R.S. §§[41-1758.03](#) and [41-1758.07](#).

² Statute allows applicants denied a card because of certain precluding offenses to petition the Arizona Board of Fingerprinting for a good cause exemption.

³ If a fingerprint clearance card holder leaves the sponsoring agency's employment and accepts a position with another agency that requires a fingerprint clearance card, there is no requirement for the cardholder or the new agency to notify the Department of the change. Therefore, should the cardholder be arrested for a precluding offense, the Department will only notify the original sponsoring agency.

Source: Auditor General staff analysis of A.R.S. §§41-1701, 41-1750, and 41-1758 et seq.; interviews with Department staff; and information provided by Arizona Board of Fingerprinting staff.

⁴ A Live Scan machine captures digital fingerprint and palmprint images and is integrated with the Department's ACJIS database.

The booking agency is then responsible for reporting the individual's fingerprints, the offense(s) for which the individual is charged, and the individual's personal identifying information to the central repository, thereby creating the offense record.⁵

- **Criminal justice agencies determine the disposition of each offense and report disposition to the central repository**—The disposition is determined once a charge has reached a conclusion within the criminal justice process (see textbox for examples of dispositions). The criminal justice agency determining the disposition is statutorily required to report the disposition of each offense to the central repository using either a paper disposition form or electronically through a portal that feeds into the central repository.⁶ If the criminal justice agency uses a paper disposition form to report the disposition, the criminal justice agency sends the paper disposition form to the Department. Department staff should then enter the disposition into the central repository.

Examples of dispositions

- **Not referred for prosecution**—Used when the arresting criminal justice agency decides that it will not take any further action on the offense for which the individual was arrested and/or charged.
- **Not filed**—Used when the prosecution decides that it will not take any further action on the offense for which the individual was arrested and/or charged.
- **Guilty**—Used when the courts find the individual guilty of committing the offense for which he/she was arrested and/or charged.
- **Not guilty**—Used when the courts find the individual not guilty of committing the offense for which he/she was arrested and/or charged.
- **Nolo contendere plea**—Used when the individual accepts guilt for all purposes of the immediate case.

Source: Auditor General staff review of A.R.S. §41-1750, *Black's Law Dictionary* (11th ed. 2019), and United States Courts' website.

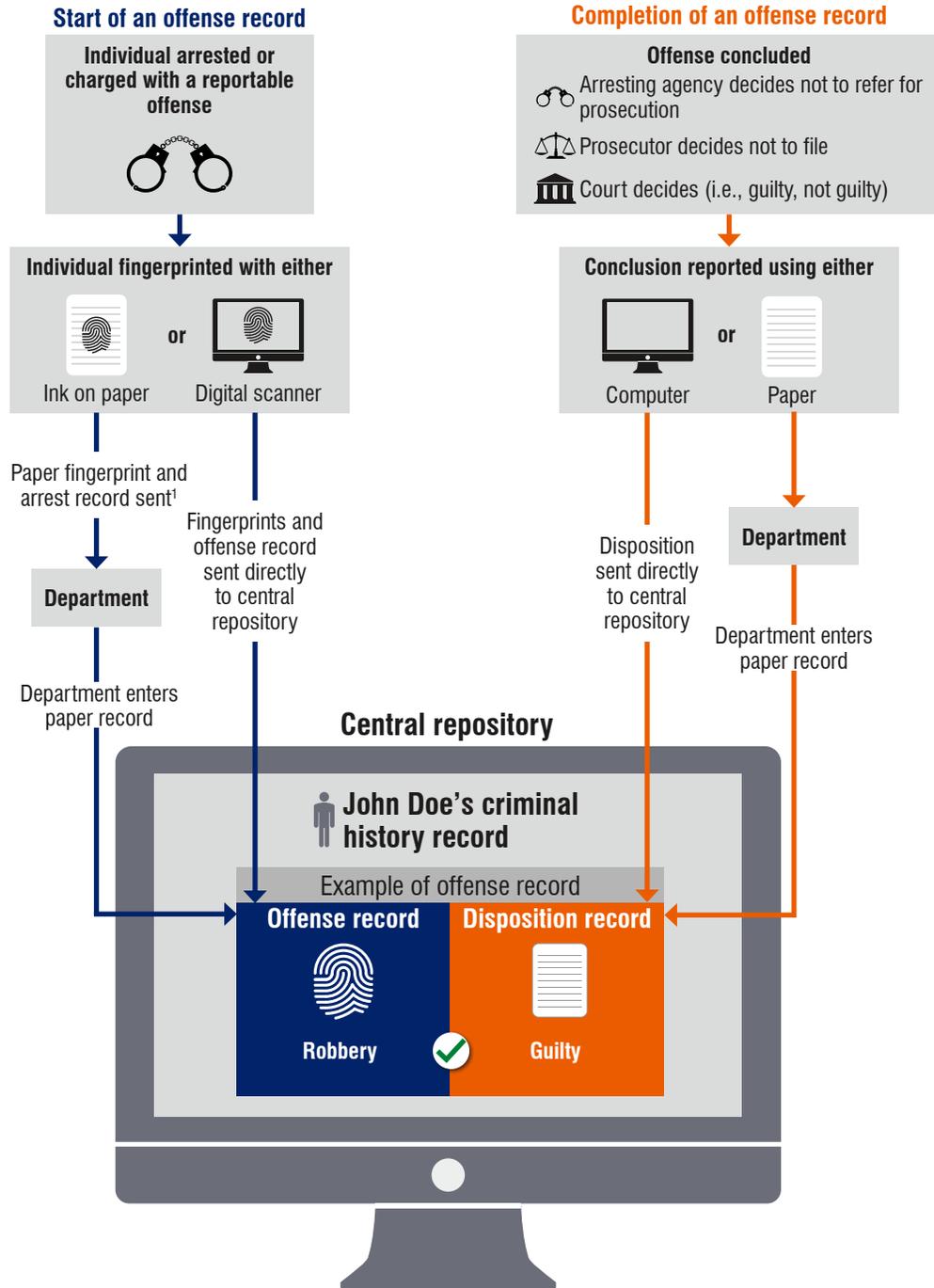
Once the disposition is entered in the central repository, this completes an offense record on an individual's criminal history record (see Figure 1, page 5, for an overview of the process for creating and completing an offense record in the central repository). Both the offense and disposition must be included to have a complete criminal history record.

In addition to ensuring the completeness of the central repository, the Department is also responsible for ensuring the accuracy of the criminal history records within the central repository. To determine if a record is incomplete or inaccurate, the Department, criminal justice agency, or record holder, which is the individual with a criminal history record (individual), must notice that the record is incomplete or inaccurate and inform the Department. If the individual's fingerprints and booking information were not reported to the central repository or the offense information is inaccurate, the Department has a process to research this information, including the individual's fingerprints and the offense, and gather enough information to create the missing offense record or correct the existing record. If the disposition is missing from the central repository or is inaccurate, the Department will similarly conduct research to gather enough information to input the disposition or correct the disposition in the central repository (see Finding 1, pages 7 through 12, for more information on missing offense and disposition records). The Department reported that as of July 9, 2021, it had approximately 65,900 offense and disposition records it needed to research, correct, and/or enter into the central repository.

⁵ A.R.S. §41-1750(U)(5) requires the booking agency to submit the fingerprints to the Department within 10 days of fingerprinting the individual.

⁶ A.R.S. §41-1750(U)(9)(10)(11) requires the criminal justice agency determining the disposition to report the disposition to the Department within 40 days of the disposition determination date.

Figure 1
Overview of process to create and complete an offense record in central repository



¹ If the criminal justice agency has an image scanner, the agency has the option to scan the paper fingerprint cards themselves instead of sending the paper fingerprint card to the Department.

Source: Auditor General staff analysis of statute and rule, review of Department documents, and interviews with Department staff.

Several Department units help manage central repository

The Department has the following 4 units that help manage the central repository. As of July 21, 2021, the Department reported that these units had 54 filled and 29 vacant FTE positions assigned. Specifically:

- **Criminal History Records Unit (17 FTE, 10 vacancies)**—This unit is responsible for operating the central repository and performs duties such as processing criminal history record corrections and paper dispositions. This unit is also responsible for updating and removing active arrest warrants and answering FBI requests for criminal history information on individuals seeking to purchase a firearm from federally licensed gun dealers within 3 business days of receipt. The Department reported that between December 2020 and January 2021, Department staff entered 557 warrants into ACJIS and removed 826 warrants. The Department also reported for the same time period that it processed 792 requests from the FBI seeking information on individuals seeking to purchase a firearm from federally licensed gun dealers.
- **Review & Challenge Unit (3 FTE, 5 vacancies)**—This unit handles requests to amend, modify, or challenge the information contained in an individual's criminal record.⁷ The Department reported that between December 2020 and January 2021, Department staff processed 102 challenges from individuals regarding their criminal history record.
- **Biometrics Identification Unit (26 FTE, 8 vacancies)**—This unit is responsible for entering paper fingerprint cards into the central repository. The unit also conducts research to determine if a missing offense record resulting from a missing fingerprint can be created using existing fingerprints for the individual and court documentation supporting the available booking information (see Finding 1, pages 7 through 12, for more information about missing fingerprint-based offense and disposition records).
- **Access Integrity Unit (8 FTE, 6 vacancies)**—This unit is responsible for managing system access to ACJIS by working with each agency's system security officer to help ensure that only authorized personnel are accessing ACJIS criminal justice information.⁸ The unit is also responsible for quality control of the records within ACJIS and conducts triennial audits of agencies that have access to the information in ACJIS (see Finding 1, page 11, for more information about these audits). As of June 2020, the Department reported 498 unique accounts with access to ACJIS for criminal justice agencies throughout the State.⁹

⁷ An individual may request to review his/her criminal history record. If the record holder believes the record is inaccurate, the record holder may submit a form to challenge the record. After receiving the challenge, Department staff will research the record and if they find evidence to support that the record is inaccurate, they will modify the record accordingly and notify the FBI of the change. Additionally, the Department must notify the individual of the results of the research. Further, within 35 days of receiving notification of the results, the record holder can request a hearing from the Office of Administrative Hearings to review the accuracy of his/her criminal history record.

⁸ A system security officer is assigned by their agency to act as a liaison with the Department and must provide the Department with a list of personnel who are authorized to receive information directly or indirectly from ACJIS. The system security officer is also responsible for ensuring agency personnel comply with all laws, rules, regulations, policies, and procedures governing ACJIS.

⁹ A criminal justice agency can have multiple unique accounts with access to ACJIS. For example, as of June 2020, the Department had 65 unique accounts with access to ACJIS.

Department’s incomplete criminal history records may potentially put public safety at risk

Department and other criminal justice agencies share statutory responsibility for ensuring central repository includes complete and accurate criminal history records

As discussed in the Introduction, pages 1 through 6, the Department is statutorily responsible for operating the central repository, which includes collecting, storing, and disseminating complete and accurate criminal history records—offense and disposition records—for offenses committed in Arizona. Arizona criminal justice agencies—which include law enforcement agencies such as local police departments and county sheriffs; prosecutors; and courts—are statutorily responsible for assisting the Department in its responsibility to operate a complete and accurate central repository. Specifically, criminal justice agencies are statutorily required to provide fingerprints and report offense and disposition records to the central repository for all felony offenses and only misdemeanor offenses involving DUI, sexual offenses, or domestic violence.¹⁰

Offenses required to be reported to the central repository



- **Felony offenses**—All felony offenses
- **Misdemeanor offenses**—Only misdemeanor offenses involving DUI, sexual offenses, or domestic violence

Central repository is missing some fingerprint-based offense and disposition records and may be missing more records

The central repository is missing some fingerprint-based offense and disposition records. For example, ADCRR staff reported that between 2007 and 2019, they notified the Department of over 1,300 inmates who did not have an offense and disposition record reflected in the central repository for the charge(s) for which they were imprisoned. Additionally, to further assess the extent of missing records from the central repository, we reviewed a sample of felony offenses from 4 law enforcement agencies; reviewed central repository data; and interviewed Department staff and found that the central repository either is or may be missing additional offense and disposition records. Specifically:

- **17 percent of felony offense records we reviewed could not be found in the central repository**—To assess whether additional offense records may be missing from the central repository, we analyzed and compared 103 felony offenses records, associated with 49 individuals, from 4 law enforcement agencies that occurred on June 14, 2019, to central repository records using personally identifiable information and determined that 17 of the 103, or approximately 17 percent of the felony offenses records from these



17 percent of felony offense records could not be found in the central repository

¹⁰ A.R.S. §41-1750(A)(1).

4 agencies, could not be found in the central repository.¹¹ Four of the 17 felony offenses were for aggravated assault, including 1 aggravated assault with a deadly weapon and 2 aggravated assaults on a peace officer. Other felony offenses that we could not find in the central repository included disorderly conduct, shoplifting, and offenses related to narcotics and dangerous drugs.

- **40 percent of felony offense records we reviewed were missing a disposition, and another 13 percent may be missing a disposition**—As of April 24, 2020, the central repository included approximately 158,000 fiscal year 2019 offense records that did not include a disposition, nearly half, or 77,400, of which were felony offense records resulting from approximately 33,000 arrests and/or charge events. The length of time it takes between when an individual is arrested and/or charged with an offense and when the outcome is decided can vary from a few days to years. As such, not all these offense records would have had a disposition reflected in the central repository at the time of our review because the offense for which the individual was arrested and/or charged had yet to be adjudicated through the criminal justice process. To assess whether any felony offense records resulting from approximately 33,000 fiscal year 2019 arrests and/or charge events had dispositions that were missing from the central repository, we reviewed a stratified random sample of 30 arrest and/or charge events and reviewed 1 felony offense record from each event and found that as of August 2020, 12 offenses, or approximately 40 percent, had been adjudicated through the criminal justice process and had associated dispositions, but the disposition was missing from the central repository.¹² For another 4 offense records, or approximately 13 percent, the Department contacted the responsible criminal justice agencies to determine if these offenses had a disposition or if court proceedings were still ongoing but was unable to obtain information to determine whether these offenses had a disposition that should have been reported to the central repository. As of August 2020, 8 of the 30 offenses did not yet have a disposition because court proceedings were ongoing and 6 had a disposition that had been reported to the central repository.



40 percent of felony offense records had a disposition that was missing from the central repository.

Finally, the Department has thousands of paper offense and disposition records that need to be researched, corrected, and/or entered into the central repository. First, the Department receives disposition records on a daily basis that it reviews and enters into the central repository. As of July 9, 2021, it had over 7,400 of these disposition records it needed to process, some of which date back more than 50 calendar days. In addition, the Department reported that it must also process and enter bulk submissions of paper offense and disposition records that it receives. As of July 9, 2021, the Department reported it had approximately 58,500 bulk submitted offense and disposition records, some of which date back more than 30 years, that needed to be researched, corrected, and/or entered into the central repository.

¹¹ We obtained data for 10,221 felony offenses that occurred between May 1, 2019 and June 30, 2019, from 4 judgmentally selected law enforcement agencies around the State (see Appendix B, page b-1, for more information about these 4 law enforcement agencies). We then judgmentally selected June 14, 2019, identifying a total of 103 felony offenses, associated with 49 individuals, from the 4 law enforcement agencies that the law enforcement agencies created on that date and compared the sampled felony offense records to records in the central repository. Although the results of our review should not be generalized to other law enforcement agencies or the offenses recorded by law enforcement agencies from days we did not review, the methods we used to conduct this work provide reasonable assurance that the problem we identified is not limited to these 4 law enforcement agencies or the date we reviewed.

¹² We found that of the approximate 158,000 fiscal year 2019 fingerprint offense records missing dispositions in the central repository as of April 24, 2020, nearly half, or 77,400, were felony offense records resulting from approximately 33,000 arrests and/or charge events. We selected a stratified random sample of 30 of the 33,000 fiscal year 2019 arrests and/or charge events and reviewed 1 felony offense record from each arrest and/or charge event, 15 from Maricopa County and 15 from other counties in Arizona. Although the results of our review should not be generalized to the population of offense records without dispositions, the methods we used to conduct this work provide reasonable assurance that the problem we identified is not limited to the sample of 30 we reviewed.

Incomplete criminal history records potentially put public safety at risk

When fingerprint-based offense and disposition records are missing from the central repository, criminal justice agencies may not have access to important information that is needed to protect the public. Specifically, missing criminal history records could possibly impact sentencing decisions that could help deter further offenses. Statute requires the courts and prosecutors to consider prior felony and misdemeanor convictions when making decisions to grant bail or reduce a certain felony to a misdemeanor and when sentencing repeat offenders. For example, statute requires the courts to increase the penalty for each subsequent DUI for which an individual is convicted within an 84-month period, such as requiring the court to revoke the individual's driving privileges for a year if the individual is convicted of a second DUI.¹³ If prior convictions are missing from the central repository, criminal justice agencies may not be able to consider these prior convictions when assessing the possible sentence, potentially allowing an individual with more than 1 DUI to continue operating a motor vehicle thereby possibly endangering the public when, according to statute, the offender's license should have been revoked.¹⁴

Similarly, missing records possibly impact criminal investigations because law enforcement officers may use criminal history records when investigating a crime. For example, according to a 2014 Arizona Criminal Justice Commission report, law enforcement officers can query criminal history records to identify potential persons of interest based on their past criminal activity.¹⁵ This information could help lead to the individual's arrest and potentially protect the public by assisting in solving the crime. However, if criminal history information is missing from the central repository, it may not be available to law enforcement agencies to assist in conducting their investigations.

Missing criminal history records can also result in ineligible individuals inappropriately being hired or granted professional licensure to work with the public when they instead should be denied employment or licensure. Individuals applying to work in or be licensed for certain professions must obtain a fingerprint clearance card and/or a fingerprint-based criminal history records check (see Introduction, page 3, for more information). This requirement helps protect the public, especially children and other vulnerable populations, from individuals who may be unfit to work with them. For example, per statute, applicants for a teaching certificate or employment at a childcare facility cannot have been convicted of offenses that might make them unfit to work with children, such as sexual assault and child abuse convictions (see Appendix A, pages a-1 through a-9, for a listing of State agencies, boards, and courts that require a fingerprint clearance card).^{16,17} However, if a fingerprint-based offense or disposition record is missing from the central repository, it could cause:

- The Department to unknowingly issue a fingerprint clearance card to an individual arrested and/or charged with offenses that would make them ineligible for a fingerprint clearance card.
- A public employer or State regulatory agency to unknowingly hire or issue a license to an applicant who possesses the fingerprint clearance card or was subject to a fingerprint-based criminal history records check but should have been denied the card or failed the check.

¹³ A.R.S. §28-1381 also specifies additional penalties for individuals convicted of DUI and escalating penalties for repeat DUI offenders.

¹⁴ According to a 2014 Arizona Criminal Justice Commission report, the courts may be able to use other sources, such as court records, to piece together criminal history records, but this can be time consuming and less reliable because these other records systems are tied only to name and date of birth instead of a unique set of fingerprints. See Arizona Criminal Justice Commission. (2014). *Arizona criminal records infrastructure improvement*. Retrieved 7/15/2020 from [Arizona_Criminal_Records_Infrastructure_Improvement.pdf \(azcjc.gov\)](#).

¹⁵ Arizona Criminal Justice Commission, 2014.

¹⁶ A.R.S. §15-501.01.

¹⁷ A.R.S. §36-883.02.

Criminal justice agencies have not reported and Department has not entered some offense and disposition records in central repository or taken some steps to improve the repository's completeness

According to the Department, offense and disposition records are or may be missing from the central repository, in part because the responsible criminal justice agency did not report these records to the central repository. Although the Department has taken some steps to help ensure missing offense and disposition records are reported to the central repository, some of these steps have increased Department staff workload and the Department has not pursued other opportunities to work with Arizona criminal justice agencies to improve the completeness of the central repository. Specifically, the Department:

- **Experiences backlogs of missing offense and disposition records it receives from other criminal justice agencies that it must enter into the central repository**—Criminal justice agencies can report an individual's offense record to the central repository electronically by using a Live Scan machine or by sending a paper offense record to the Department to manually enter in the central repository. According to the Department, in calendar year 2020, criminal justice agencies reported approximately 128,000 offense records using Live Scan machines, and approximately 12,000 paper offense records were sent to the Department to process and enter. In addition to processing paper offense records on a daily basis, the Department reported that it must also process and enter bulk submissions of paper offense records that it receives. For example, in response to a March 2018 letter the Department sent to all law enforcement agencies in the State asking these agencies to send any paper offense records that may not have been reported to the central repository, it received bulk submissions of paper offense records from 2 law enforcement agencies. Between July 2, 2021 and July 9, 2021, Department staff entered approximately 970 of these paper offense records. Further, as of July 9, 2021, the Department reported it had approximately 9,700 paper offense records and 56,200 disposition records, including more than 48,800 bulk submitted disposition records from 3 criminal justice agencies, that either needed to be entered into the central repository or the disposition in the repository needed to be corrected to match the paper disposition record.

Department officials reported that this backlog of missing disposition records exists in part because of its need to prioritize other responsibilities and the lack of sufficient staff and resources to enter the records. Specifically, in addition to researching and entering thousands of missing disposition records in the central repository, Criminal History Records Unit staff also have several other responsibilities. For example, within 3 business days, staff are required to enter active arrest warrants and answer FBI requests for criminal history information on individuals seeking to purchase a firearm from a federally licensed gun dealer.^{18,19} As of July 2021, the Department is also responsible for expunging marijuana possession offenses from individuals' criminal history records, as required by A.R.S. §36-2862.

Additionally, as reported in the Introduction, as of July 21, 2021, the Criminal History Records Unit had 10 vacant FTE positions; however, in June 2021, the Department reported it was recruiting to fill some of these positions. In fiscal years 2019 and 2020, the Department also applied for and received a total of approximately \$583,000 in federal grant monies from the United States Bureau of Justice to pay its staff for working overtime hours to enter backlogged disposition records and convert manual records to electronic records but cannot use these monies to fill vacant positions.²⁰

¹⁸ Brady Handgun Violence Prevention Act, H.R. 1025, 103rd Cong., (1993, November 30).

¹⁹ National Crime Information Center. (n.d.) *NCIC 2000 operating manual*. Washington, DC: Federal Bureau of Investigation.

²⁰ The National Criminal History Improvement Program (NCHIP) and the National Instant Criminal Background Check System Act Recovery Improvement Program (NARIP) grants are administered by the United States Bureau of Justice and provide states with funding and technical assistance to improve the quality, timeliness, and immediate accessibility of criminal history records and related information. In federal fiscal year 2020, Arizona received \$1,810,569 in NCHIP monies and \$758,614 in NARIP monies, which included approximately \$583,000 for the Department. The Department reported that as of April 2021, it had paid its staff approximately \$153,000 of the \$583,000 for the approximately 4,200 hours of overtime worked.

- **Does not have a formal process to regularly request criminal justice agencies send the Department missing offense records**—As previously mentioned, in March 2018, the Department sent a letter to all law enforcement agencies in the State asking these agencies to send any paper offense records that may not have been reported to the central repository, and the Department reported receiving thousands of paper offense records in response to this request. The Department reported that it sent this letter in response to unreported offenses that Department staff had identified at some criminal justice agencies. However, the Department has not regularly made such requests. For example, the Department could establish a process for sending such a letter seeking these paper offense records during its routine triennial audits of all criminal justice agencies (see textbox for additional information about the audits). This approach would require the Department to request that these agencies send missing paper offense records to it at least once every 3 years. Although these requests would potentially increase the Department’s workload, providing criminal justice agencies reminders to send in paper offense records could help ensure they are entered in the central repository. Specifically, Department staff would be able enter these records into the central repository as time and resources permit instead of the records remaining in storage at a criminal justice agency and going unreported to the central repository.

Department audits of criminal justice agencies

The FBI requires the Department to audit every criminal justice agency with access to ACJIS once every 3 years. The Department reported it has assigned each criminal justice agency to 1 of 3 regions, and each year, it audits the criminal justice agencies that are in 1 of the 3 regions. As part of the audit work for criminal justice agencies that are law enforcement agencies, Department staff review a sample of 20 felony offense records reported to the central repository by the law enforcement agency to assess the accuracy and completeness of these specific records, including whether these offense records have a disposition.

Source: Auditor General staff review of ACJIS and the FBI’s National Crime Information Center requirements and Department-provided information.

- **Does not proactively provide to all criminal justice agencies listings of offense records that are missing dispositions and request that they report them to the central repository**—Department staff reported that at a criminal justice agency’s request, the Department will provide the requesting agency a listing of the agency’s reported offense records that do not have a disposition in the central repository, which the agency can then use to help locate missing dispositions. The Department reported that in calendar year 2020, 3 of approximately 498 unique accounts with access to ACJIS for criminal justice agencies throughout the State requested such a listing. However, because the Department provides these listings only upon request, some criminal justice agencies may not be aware that they have not reported all dispositions to the central repository. During our audit, in February 2021, the Department reported that it was developing a report that shows the offenses that are missing dispositions that it would be able to provide to each criminal justice agency scheduled for a Department audit during a given year. The Department could then request that these agencies report the missing dispositions to the central repository.²¹
- **Does not inform prosecution and courts of missing disposition records identified during audits nor request that these agencies identify and report additional missing dispositions**—As noted in the textbox, the Department’s triennial audits include a review of a sample of 20 felony offense records generated by the audited law enforcement agency to determine the completeness of these records—both offense and disposition—in the central repository. As part of this review, the Department will trace the felony offense record from arrest and/or charge to disposition and may identify instances where a criminal justice agency, such as a prosecutor or court, failed to report a disposition. Although Department staff reported that the Department will provide information on the missing dispositions to the audited law enforcement agency, it does not similarly notify the applicable prosecutor or court that is responsible for reporting the disposition but failed to do so. As a result, the criminal justice agency may be unaware that it is not meeting its statutory requirement to report these records to the central repository. Additionally, depending on the

²¹ The Department reported that it reminds agencies to report dispositions to the central repository during monthly trainings offered to criminal justice personnel.

number of missing disposition records identified in the sample of 20 records that the Department reviews, the Department could request that the prosecuting agencies and courts undertake a more comprehensive review of their disposition records to ensure they have been reported to the central repository.

- **Does not use central repository data to identify criminal justice agencies that have the most offense records with missing dispositions and target its training to these agencies to improve their disposition reporting**—Department staff provide criminal history records training to criminal justice agencies only if requested to do so. This training addresses the importance of entering offense and disposition records into the central repository, procedures for taking fingerprints, and the process for submitting offense and/or disposition records to the Department. The Department reported that in calendar year 2019 it provided training to 14 criminal justice agencies. However, the Department can take a more risk-based, targeted approach using data from the central repository to focus its training efforts and limited resources on criminal justice agencies with high rates of missing dispositions. For example, based on our review of the Department's central repository data, criminal justice agencies in Gila County had the highest rate, 70 percent, of fiscal year 2019 offense records in the central repository without an associated disposition.²² A further analysis of this data indicated that criminal justice agencies within 2 specific municipalities within Gila County were responsible for 72 percent of the offense records that were missing dispositions. By performing such an analysis for other counties and criminal justice agencies, the Department could focus its training efforts and limited resources accordingly.

Recommendations

The Department should maintain a complete criminal history records repository that includes all applicable fingerprint-based offense records and their associated dispositions by:

1. Continuing its efforts to fill the 10 vacant FTE positions in its criminal history records unit.
2. Continuing to research, correct, and/or enter the backlogged offense and disposition records it has received.
3. Developing and implementing a formal process for regularly requesting missing offense records, such as sending a letter to the criminal justice agencies that will be audited in a given year, to request the agency send any paper offense records to the Department to be entered into the central repository.
4. Enhancing its audits of criminal justice agencies by establishing and implementing a process, policies, and procedures to:
 - a. Notify all criminal justice agencies at fault for not reporting a disposition record.
 - b. Depending on the severity of missing disposition records, request that the prosecuting agencies and courts undertake a more comprehensive review of their disposition records to ensure they meet the statutory requirement to report disposition records to the central repository.
5. Developing and implementing a process to periodically send all criminal justice agencies a list of offense records from their agency that do not have a disposition and request the criminal justice agency to report any dispositions they have to the central repository.
6. Developing and implementing a risk-based approach using calculated disposition reporting rates to identify criminal justice agencies that have the highest rate of missing dispositions and working with these criminal justice agencies to improve the completeness of the central repository by providing focused training and guidance to address gaps.

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

²²To identify criminal justice agencies within each Arizona county with the highest rate of offense records submitted in fiscal year 2019 without an associated disposition, we determined the number of offense records submitted by criminal justice agencies to the central repository in fiscal year 2019 and then identified the number of these records without an associated disposition.



Department could unknowingly issue and has not suspended fingerprint clearance cards of ineligible individuals due to statutory omission

Department issues fingerprint clearance cards and suspends them based on precluding offenses reported in central repository

Since 1998, statute has allowed the Department to issue fingerprint clearance cards to individuals if they have not been convicted of or are not awaiting trial for some offenses (precluding offenses), such as abuse of a vulnerable adult, first degree murder, child abuse, and shoplifting.²³ If a fingerprint clearance cardholder is subsequently arrested for a precluding offense, statute requires the Department to suspend the fingerprint clearance card and notify the fingerprint cardholder and the sponsoring agency. The Department reported it issued nearly 135,000 new fingerprint clearance cards in fiscal year 2020. To issue these fingerprint clearance cards, the Department reviews an applicant's criminal history record in its central repository to identify offenses that would preclude the applicant from receiving a card. The Department further reported that it suspended approximately 3,900 fingerprint clearance cards in fiscal year 2020. To identify which fingerprint clearance cards to suspend, the Department, upon notification of an arrest, reviews the criminal history records in its central repository to determine if the individual was arrested for a precluding offense.²⁴ If so, the Department reported it will then suspend the clearance card and notify the cardholder and the sponsoring agency of the reason for suspension (see textbox on page 3 of the Introduction for more information on notifying cardholders and sponsoring agencies). Our second audit report on the Department, which will provide responses to the statutory sunset factors, will include a recommendation regarding the notification of sponsoring agencies.

Department could unknowingly issue and has not suspended some fingerprint clearance cards because of statutory omission

The Department could unknowingly issue and has not suspended fingerprint clearance cards of ineligible individuals because statute does not require at least 28 precluding misdemeanor offenses to be reported to and included in the central repository (see Table 1, page 14, for a list of the 28 precluding misdemeanor offenses). Specifically, in 1999, statute was modified to authorize criminal justice agencies to report only felony offenses and misdemeanor offenses involving DUI, sexual offenses, and domestic violence to the central repository but

²³ Laws 1998, Ch. 270, §16, established the fingerprint clearance card and defined the offenses that would preclude an individual from receiving a fingerprint clearance card. Laws 2009, Ch. 8, §20, established the Level 1 fingerprint card and defined the offenses that preclude an individual from receiving a Level 1 fingerprint clearance card.

²⁴ The Department reported it also uses criminal history records from the FBI's database of fingerprint-based criminal history records from all 50 states, which is called the Interstate Identification Index, to assess the eligibility of fingerprint clearance card applicants and when determining whether to suspend an individual's fingerprint clearance card. The Interstate Identification Index is accessed through a computerized information system known as the National Crime Information Center.

Table 1**Listing of precluding misdemeanor offenses that are not statutorily required to be reported to central repository by fingerprint clearance card type¹****As of April 2021**

(Unaudited)

 Offense	Fingerprint clearance card	Level-1 fingerprint clearance card	Statute
Aiming a laser pointer at a peace officer or an occupied aircraft		●	A.R.S. §13-1213
Arson	●	●	A.R.S. §13-1703
Assault	●	●	A.R.S. §13-1203
Assault by vicious animals	●	●	A.R.S. §13-1208
Credit card transaction record theft	●	●	A.R.S. §13-2109
Criminal damage	●	●	A.R.S. §13-1602
Criminal offense involving criminal trespass under title 13, chapter 15	●	●	A.R.S. §13-1502 A.R.S. §13-1503 A.R.S. §13-1504
Cruelty to animals	●	●	A.R.S. §13-2910
Endangerment	●	●	A.R.S. §13-1201
Fraud by persons authorized to provide goods or services	●	●	A.R.S. §13-2108
Fraudulent use of a credit card	●	●	A.R.S. §13-2105
Keeping or residing in a house of prostitution or employment in prostitution	●	●	A.R.S. §13-3208
Manufacture of certain substances and drugs by certain means	●	●	A.R.S. §13-3459
Misconduct involving explosives	●	●	A.R.S. §13-3103
Misconduct involving weapons	●	●	A.R.S. §13-3102
Obtaining a signature by deception	●	●	A.R.S. §13-2005
Offenses involving child neglect	●	●	A.R.S. §13-3619
Offenses involving contributing to the delinquency of a minor	●	●	A.R.S. §13-3613
Portraying adult as a minor as prescribed in section A.R.S. §13-3555	●	●	A.R.S. §13-3555
Possession of any machinery, plate, or other contrivance or incomplete credit card	●	●	A.R.S. §13-2106
Possession or possession with intent to use an imitation controlled substance	●	●	A.R.S. §13-3456
Possession or possession with intent to use an imitation over-the-counter drug	●	●	A.R.S. §13-3458
Possession or possession with intent to use an imitation prescription-only drug	●	●	A.R.S. §13-3457
Prostitution	●	●	A.R.S. §13-3214
Receipt of anything of value obtained by fraudulent use of credit card	●	●	A.R.S. §13-2103
Shoplifting	●	●	A.R.S. §13-1805
Theft	●	●	A.R.S. §13-1802
Threatening or intimidating	●	●	A.R.S. §13-1202

¹ In addition to these 28 offenses, A.R.S. §41-1758.07(B)(47) states that any offense designated as a violent crime is a precluding offense. Violent crime itself is not an offense but rather a designation added to existing offenses if the action taken resulted in death or physical injury or involved the use of a deadly weapon or dangerous instrument. Because violent crime is a designation added to an offense, this could result in additional nonreportable misdemeanor offenses not listed in this table becoming precluding offenses.

Source: Auditor General staff analysis of Arizona Revised Statutes and Department records.

did not specifically include all precluding offenses.²⁵ Since these 28 precluding offenses are misdemeanor offenses that do not involve DUI, sexual offenses, or domestic violence, they are not required to be reported to the central repository. We reviewed fiscal year 2019 Department offense records for 29 precluding misdemeanor endangerment offenses, an offense that is not required to be reported to the central repository and involves an individual recklessly endangering another person with a substantial risk of physical injury.²⁶ Our review identified the following:

- 16 of these 29 offenses, involving 12 individuals, were not reported to the central repository.
- 3 of the 12 individuals had a fingerprint clearance card at the time they were charged with committing the endangerment offense(s); however, because these offenses were not reported to the central repository, the Department did not know the fingerprint clearance cardholders were charged with endangerment and therefore did not suspend their fingerprint clearance cards.²⁷
- Another 2 of the 12 individuals were found guilty of endangerment, but as of February 2021, the Department did not have any record of either individual applying for a fingerprint clearance card. Had either applied for a fingerprint clearance card, because the offenses were not reported to the central repository, the Department would not have known about the endangerment offense and could have unknowingly issued a fingerprint clearance card to an ineligible individual.

In June 2021, Department staff reported that the Department has processes for monitoring proposed legislation that may impact it, including what is required to be reported to the central repository. Monitoring proposed legislation that may impact what is required to be reported to the central repository will help ensure the Department modifies its processes as needed to conform with any legislative changes and has the information it needs to properly issue and/or suspend fingerprint clearance cards.

Public could potentially be at risk when ineligible individuals have fingerprint clearance cards

The public could potentially be at risk if the Department unknowingly grants a fingerprint clearance card to an ineligible individual and/or does not suspend an ineligible individual's card. For example, for the 3 individuals who had a fingerprint clearance card at the time they were charged with a precluding offense, the Department should have suspended their cards for between 4 and 6 months while the offenses were adjudicated and resolved. By not doing so, these individuals were allowed to work in a position for which they were no longer qualified. Additionally, the Department could unknowingly grant a fingerprint clearance card to individuals who work with vulnerable populations but have been convicted of precluding offenses that have not been reported to the central repository, such as a teacher convicted of child neglect.

Recommendations

7. The Legislature should consider whether all fingerprint clearance card precluding offenses should be required to be reported to and included in the central repository to ensure the Department considers all statutorily specified precluding offenses when it issues fingerprint clearance cards and suspends the fingerprint clearance cards of cardholders who are no longer eligible and modify A.R.S. §41-1750, accordingly.

²⁵ Laws 1999, Ch. 211, §45, modified A.R.S. §41-1750 to specify that felonies and only misdemeanors involving DUI, sexual offenses, and domestic violence are required to be reported to and included in the central repository. Previous statutory language required all persons arrested for or convicted of a felony or misdemeanor offense, except offenses for which incarceration or fingerprinting of a person did not occur, to be reported to and included in the central repository.

²⁶ We judgmentally selected all endangerment offenses classified as misdemeanors from the Department troopers' fiscal year 2019 offense records for a total of 29 misdemeanor endangerment offenses.

²⁷ None of these individuals were found guilty of endangerment.

8. The Department should provide information to the Legislature related to recommendation 7, including information regarding statutorily specified precluding offenses for fingerprint clearance cards it should consider when assessing whether to modify A.R.S. §41-1750.
9. The Department should continue to monitor proposed legislation that may impact what fingerprint clearance card precluding offenses are required to be reported to and included in the central repository and work with the Legislature as necessary to ensure the Department considers all statutorily specified precluding offenses when it issues fingerprint clearance cards and suspends the fingerprint clearance cards of cardholders who are no longer eligible.
10. If the Legislature modifies A.R.S. §41-1750 to require all fingerprint clearance card precluding offenses to be reported to and included in the central repository, the Department should:
 - a. Modify its practice to ensure all fingerprint clearance card precluding offenses are reported to and included in the central repository.
 - b. Notify its troopers and criminal justice agency liaisons of any changes to the fingerprint clearance card precluding offenses that are required to be reported to and included in the central repository.

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



Central repository contains misdemeanor offenses not expressly authorized by statute to be included, which provides additional criminal history information but increases risk of inequitable employment or licensure denials

Statute expressly authorizes all felonies and only misdemeanor offenses involving DUI, sexual offenses, or domestic violence to be included in central repository

Since 1999, statute has expressly authorized criminal justice agencies to report to the central repository all felony offenses and only misdemeanor offenses involving DUI, sexual offenses, or domestic violence and requires the Department to maintain complete and accurate records in the central repository.²⁸ Additional misdemeanor offenses are not expressly authorized by statute to be reported to or included in the central repository.²⁹

Misdemeanor offense categories required to be reported to the central repository



Only misdemeanors involving DUI, sexual offenses, or domestic violence

Despite not being expressly authorized by statute, Department maintains thousands of misdemeanor offenses in central repository and reported doing so for fingerprint clearance card, criminal justice, licensing, and employment purposes

Department maintains thousands of misdemeanor offenses in the central repository that it is not expressly authorized by statute to include—Our review of central repository offenses committed in fiscal year 2019 identified thousands of statutorily classified misdemeanor offenses in the central repository that were not expressly authorized for inclusion because they did not involve DUI, sexual offenses, or domestic violence. For example, our review of fiscal year 2019 central repository offense records without dispositions identified approximately 3,200 misdemeanor offenses for driving on a suspended, revoked, or canceled license (hereinafter referred to as “driving on a suspended license offense”)—a misdemeanor offense that is not expressly authorized to be included in the central repository. We also identified thousands of local ordinance misdemeanor offenses in the central repository, such as having a dog at large, having a barking or howling dog, camping in a city park, and failure to produce identification, which are also not expressly authorized to be included.

Department reported that it maintains these misdemeanors in the central repository for fingerprint clearance card, criminal justice, licensing, and employment purposes—A.R.S. §41-1750 does not expressly authorize all misdemeanor offenses to be reported to and retained in the central

²⁸ Laws 1999, Ch. 211, §45.

²⁹ A.R.S. §41-1750(A)(1) and (C).

repository. However, Department officials reported that they do not believe statute precludes the Department from maintaining in the central repository these additional misdemeanors. The Department has also trained other criminal justice agencies in the State to report these additional misdemeanor offenses to the central repository. The Department reported it has elected to include these additional misdemeanor offenses because it believes some of the offenses may be statutorily specified precluding offenses for fingerprint clearance cards or may be important for criminal justice, licensing, or employment purposes (see Finding 2, pages 13 through 16, for information about some fingerprint clearance card misdemeanor precluding offenses that are not statutorily required to be reported to or included in the central repository). It also reported disclosing the additional misdemeanor offenses as part of a fingerprint-based criminal history records check that is conducted pursuant to some employment or licensing application inquiries.

These misdemeanor offenses have been inconsistently reported to the central repository, increasing risk an individual charged with these offenses may be inequitably denied employment or licensure

Department and some other criminal justice agencies have not consistently reported these offenses to the central repository—Even though it has elected to include these additional misdemeanor offenses in the central repository, the Department and some other criminal justice agencies have not consistently reported these offenses. For example, Department troopers reported to the central repository only 4 of 18 fiscal year 2019 misdemeanor offenses for driving on a suspended license we reviewed.³⁰ Additionally, based on our review of a stratified random sample of 30 misdemeanor offense records for driving on a suspended license from 4 criminal justice agencies, only 1 of the 4 criminal justice agencies reported these offenses to the repository.³¹ This criminal justice agency reported 21 of 25 misdemeanor offenses we reviewed to the central repository.

Inconsistent inclusion of these misdemeanors may inequitably impact licensing and employment decisions—Because the Department and some law enforcement agencies have not consistently reported to the central repository misdemeanor offenses not expressly authorized by statute to be reported, individuals who have had these offenses reported to the central repository may be inequitably denied licensure or employment. Specifically, one individual might be denied employment or licensure because a misdemeanor offense not expressly authorized by statute to be included was on his/her criminal history record while another individual with the same misdemeanor offense that was not reported would not have this offense appear on his/her criminal history record.

Recommendations

11. The Legislature should consider whether additional misdemeanor offenses should be reported to and included in the central repository and modify A.R.S. §41-1750 accordingly.
12. The Department should provide information to the Legislature related to recommendation 11, including information regarding additional misdemeanor offenses it should consider when assessing whether to modify A.R.S. §41-1750.

³⁰ We judgmentally selected 1 day from fiscal year 2019 Department trooper offense records and reviewed all 18 misdemeanor driving on a suspended license offense records from that day. Although the results of our review should not be generalized to the offenses recorded by Department troopers from days we did not review, the methods we used to conduct this work provide reasonable assurance that the problem we identified is not limited to the date we reviewed.

³¹ We obtained 574 driving on a suspended license offenses that occurred between May 1, 2019 and June 30, 2019, from 4 judgmentally selected criminal justice agencies. We then selected a stratified random sample of 30 offense records—25 of 522 records from 1 criminal justice agency, 3 of 44 records from 1 criminal justice agency, 1 of 7 records from 1 criminal justice agency, and the only record from the remaining law enforcement agency—and compared them to records in the central repository. Although the stratified random sample was not designed to be generalized to the population of all driving on a suspended license offense records from these 4 agencies, the methods we used to select the sample provide reasonable assurance that the problem we identified is not isolated to the sample we reviewed.

13. The Department should:

- a. Modify its practice to include in the central repository only offenses expressly authorized by A.R.S. §41-1750, including any changes the Legislature makes as proposed in recommendation 11.
- b. Update its training so that criminal justice agencies are required to report only what is expressly authorized in statute.
- c. Notify its troopers and criminal justice agency liaisons of the change in which offenses will be reported to and included in the central repository.

Department response: As outlined in its [response](#), the Department agreed with the Finding and will implement recommendations 12 and 13c, but disagreed with the Finding and will not implement recommendations 13a and 13b.



Some statutorily classified felony offenses were reduced to misdemeanor offenses and not reported to central repository, which increases risk of ineligible individuals receiving fingerprint clearance card, license, or employment

Some statutory felonies have been reduced to misdemeanors and were not reported to central repository

Although the Legislature, through statute, has classified offenses as either a misdemeanor or a felony, law enforcement agencies have reduced statutorily classified felonies to misdemeanors, and therefore those felonies were not reported to the central repository. Specifically:

- A felony is a serious offense, for which the offender may be subject to imprisonment in an ADCRR facility. A law enforcement officer may physically arrest and take an individual to a law enforcement agency to be booked if the law enforcement officer has probable cause to believe that a felony has been committed and probable cause to believe that the individual to be arrested has committed the felony.³² The booking agency is then statutorily required to report the individual's felony offense to the central repository.³³
- A misdemeanor is a less serious offense than a felony, for which the individual could be fined or sentenced to a facility other than the ADCRR. Statute gives law enforcement officers the option of not arresting an individual suspected of committing a misdemeanor offense, and instead the officer can issue a citation to the individual to appear in court.³⁴ Further, statute requires only 3 types of misdemeanor offenses to be reported to the central repository—misdemeanor offenses involving DUI, sexual offenses, or domestic violence.

For example, if an individual is arrested or charged with obtaining a signature by deception, a statutorily classified misdemeanor offense, statute does not require the offense to be reported to the central repository. Conversely, if an individual is arrested or charged with armed robbery, a statutorily classified felony offense, statute requires the offense to be reported to the central repository.

However, some statutorily classified felony offenses have been reduced to misdemeanor offenses and were not reported to the central repository. Specifically, our review of Department trooper fiscal year 2019 offense record data for 44 statutorily classified felony offenses found that 28 of these offenses were reduced to misdemeanors

³² A.R.S. §13-3883.

³³ A.R.S. §41-1750.

³⁴ A.R.S. §13-3903.

and not reported to the central repository.³⁵ The Department reported that instead of arresting the individuals for felony offenses, its troopers reduced the statutorily classified felony offenses to misdemeanor offenses and issued the individuals a citation to appear in court. For example, a trooper reduced a statutorily classified felony offense—possession and use of drug paraphernalia (hereinafter “possession of drug paraphernalia”)—to a misdemeanor offense and issued a citation rather than arresting the individual. Because these 28 statutorily classified felony offenses were charged as misdemeanor offenses, they did not meet the requirements of a reportable misdemeanor offense and were not reported to the central repository.

Department reduced some felony offenses to misdemeanor offenses because of guidance provided by Arizona county prosecutors, and other law enforcement agencies may be doing the same

The Department reported that its troopers reduced the statutorily classified felony offenses to misdemeanor offenses in accordance with county prosecutors’ guidance. Specifically, the Department reported that it has received guidance from 14 of the 15 county prosecutors, 4 of which provided written guidance to reduce some statutorily classified felonies to misdemeanors when issuing a citation (see textbox for 1 county prosecutor’s explanation of this practice).³⁶ For example, the Department reported that guidance provided by 12 of the 14 county prosecutors allow law enforcement agencies in the State to reduce only 2 felony offenses to misdemeanor offenses—possession of marijuana and possession of drug paraphernalia.³⁷ However, another county prosecutor’s written guidance stated that law enforcement agencies could reduce 10 different felony offenses to misdemeanor offenses, such as theft, shoplifting, some cases of aggravated assault, and criminal damage when the value of the item or damage is less than \$2,000. Finally, the last county prosecutor’s written guidance allows law enforcement agencies to reduce all class 6 felony offenses to misdemeanor offenses, except for a prescribed list of class 6 felony offenses that law enforcement agencies cannot reduce to misdemeanors.

County prosecutor reported that the practice of reducing some class 6 felonies to misdemeanors at time of arrest or citation may increase judicial process efficiencies¹

Explaining this practice, 1 county prosecutor’s written guidance indicated that historically, offenders charged with certain class 6 felonies were offered a misdemeanor plea by the county prosecutor.² Therefore, recognizing an interest in the efficient use of resources, the written guidance indicates that allowing law enforcement officers to charge individuals with a misdemeanor offense with an expectation of a guilty plea avoids the presentation of the case to a grand jury and the appointment and cost of a publicly funded defense attorney when a law enforcement officer charges the individual with a felony offense.

¹ Statute assigns felony offenses to 1 of 6 classes depending on their seriousness, with class 1 being the most serious and class 6 the least serious.

² To be offered a misdemeanor plea, the county prosecutor reported that the offenders could not have any prior drug or felony convictions.

Source: Auditor General staff review of A.R.S. §§13-601, 13-1105, and 13-701 et seq. and written guidance provided by 1 county prosecutor.

³⁵ We judgmentally selected 5 days from fiscal year 2019 and reviewed all offenses that Department trooper data indicated were felonies. For offenses where the data did not indicate the classification of the offense, we reviewed the statutory classification and included those classified as felonies. This yielded a total of 44 offense records from the 5 days. Although the results of our review should not be generalized to the offense record data from days we did not review, the methods we used to conduct this work provide reasonable assurance that the problem we identified is not limited to the dates we reviewed.

³⁶ The Department reported that this guidance is consistent with A.R.S. §13-604(B)(2), which states that if a crime is punishable by a court as a class 6 felony, the offense should be considered a misdemeanor if the prosecution files a complaint in justice or municipal court designating the offense as a misdemeanor.

³⁷ In November 2020, voters passed Proposition 207, which allows limited marijuana possession, use, and cultivation by adults 21 or older.

The written guidance we obtained from 3 county prosecutors was addressed to all law enforcement agencies within their respective counties. Therefore, other Arizona law enforcement agencies may be similarly inconsistently reducing certain statutorily classified felony offenses to misdemeanor offenses and not reporting them to the central repository.

Felony offenses reduced to misdemeanor offenses at time of arrest or citation are not reported to central repository and may result in ineligible individuals receiving fingerprint clearance card, license, or employment

If felony offenses are reduced to misdemeanor offenses at the time the individual is arrested and/or charged and not reported to the central repository, the Department, who relies on the criminal history records in the central repository, could potentially issue, or not suspend, a fingerprint clearance card. Additionally, regulatory agencies and public employers could license or hire an ineligible individual because the fingerprint-based criminal history records check would not include an offense (see Figure 2, page 23). Specifically, as discussed in the Introduction (see textbox, page 3), individuals applying to work in or be licensed for certain professions must obtain a fingerprint clearance card and/or undergo a fingerprint-based criminal history records check. However, some of the statutorily classified felony offenses that may be reduced to misdemeanor offenses in accordance with county prosecutors' guidance are offenses that would preclude an individual from receiving a fingerprint clearance card (see Finding 2, pages 13 through 16, for more information on fingerprint clearance cards and precluding offenses). For example, 5 of the 10 statutorily classified felonies that 1 county prosecutor's guidance allowed law enforcement agencies to reduce to misdemeanors are precluding offenses for fingerprint clearance cards. When these offenses are reduced to misdemeanors and not reported to the central repository, this information is then not available as statutorily required for the purposes of issuing or suspending a fingerprint clearance card or performing a fingerprint-based criminal history records check. This could potentially result in the following situations:

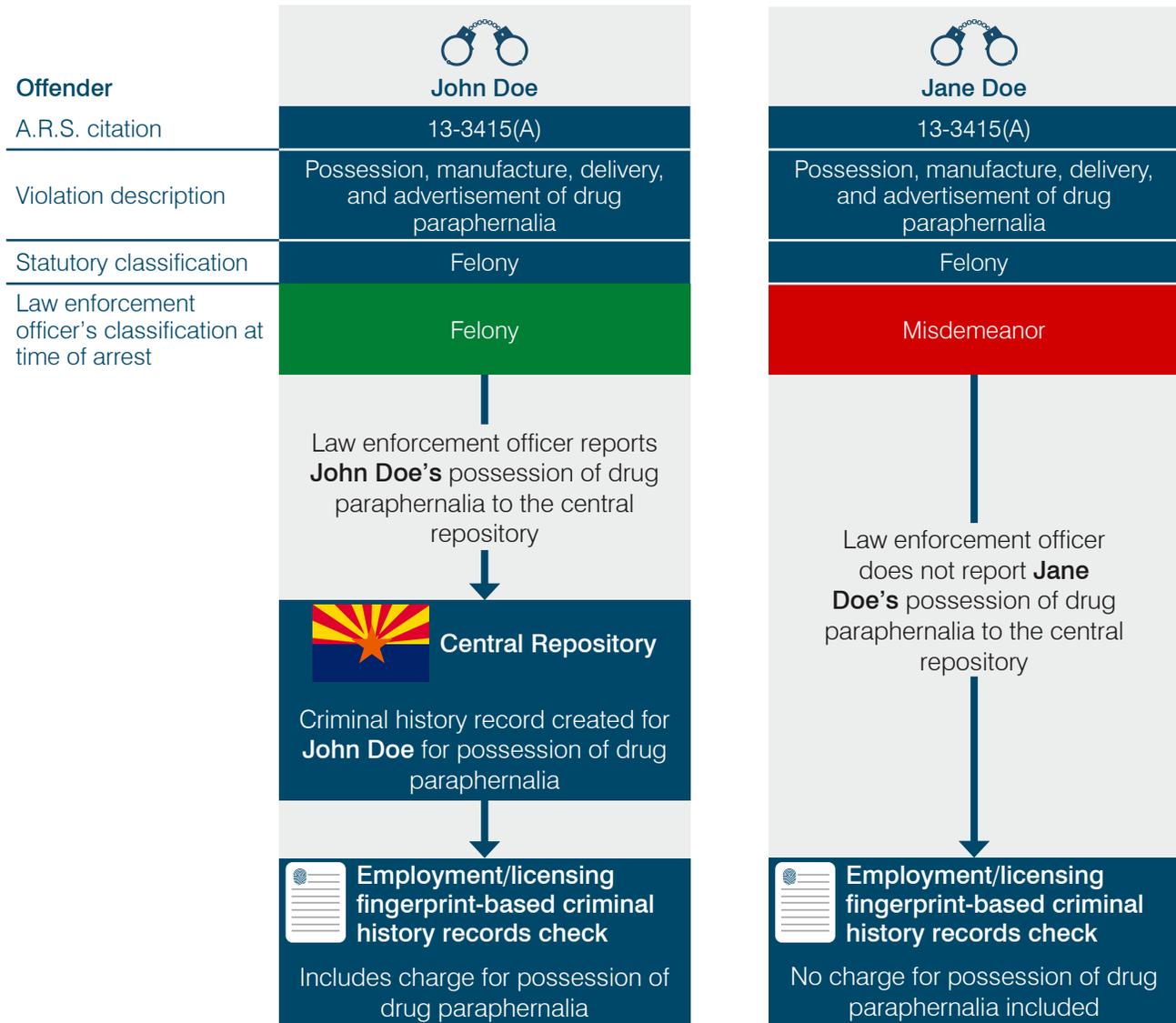
- The Department could unknowingly issue a fingerprint clearance card to an individual or not suspend an individual's fingerprint clearance card who has potentially committed a statutorily precluding felony offense, which would make them ineligible for a fingerprint clearance card. However, because that offense was reduced to a misdemeanor and not reported to the central repository, this information is not available to the Department in making its determination to issue or suspend a fingerprint clearance card. See Finding 2, page 15, for examples of the Department not suspending fingerprint clearance cards because statutorily precluding offenses had not been reported to the central repository.
- A public employer could hire or a State regulatory agency could issue a license to an ineligible applicant because the applicant, although ineligible, possesses a valid fingerprint clearance card, or the applicant's fingerprint-based criminal history records check is missing the precluding offense record.

The requirement for individuals to obtain a fingerprint clearance card and/or a fingerprint-based criminal history records check helps protect the public, especially children and other vulnerable populations, from individuals who may be unfit to work with them. For example, according to statute, applicants for a teaching certificate or employment at a childcare facility cannot have been convicted of offenses that might make them unfit to work with children, such as aggravated assault (see Appendix A, pages a-1 through a-9, for a listing of State agencies, boards, and courts that require a fingerprint clearance card).³⁸ Additionally, in order to become licensed to work in numerous professions in the State, such as a medical doctor, dentist, or occupational therapist, individuals must either obtain a fingerprint clearance card or undergo a fingerprint-based criminal history records check to help ensure they are qualified to work in these fields. However, changing precluding offenses to nonreportable offenses undermines the integrity of the fingerprint clearance card/fingerprint-based criminal records check process.

³⁸ Statute requires that applicants for these positions obtain fingerprint clearance cards, and aggravated assault is a precluding offense for a fingerprint clearance card.

Figure 2

Felony offenses reduced to misdemeanor offenses at time of arrest or citation are not reported to central repository and thus may not be available for performing fingerprint-based criminal history records checks



Source: Auditor General staff analysis of Department data and interviews with Department staff.

Recommendations

14. The Legislature should consider revising A.R.S. §41-1750 to require law enforcement agencies to report to the central repository offense records for statutorily classified felonies that are reduced to misdemeanors at the time of arrest or citation.
15. If statute is revised, the Department should communicate the statutory change to its troopers and criminal justice agency liaisons.

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



SUMMARY OF RECOMMENDATIONS

Auditor General makes 12 recommendations to the Department and 3 recommendations to the Legislature

The Department should maintain a complete criminal history records repository that includes all applicable fingerprint-based offense records and their associated dispositions by:

1. Continuing its efforts to fill the 10 vacant FTE positions in its criminal history records unit (see Finding 1, pages 7 through 12, for more information).
2. Continuing to research, correct, and/or enter the backlogged offense and disposition records it has received (see Finding 1, pages 7 through 12, for more information).
3. Developing and implementing a formal process for regularly requesting missing offense records, such as sending a letter to the criminal justice agencies that will be audited in a given year, to request the agency send any paper offense records to the Department to be entered into the central repository (see Finding 1, pages 7 through 12, for more information).
4. Enhancing its audits of criminal justice agencies by establishing and implementing a process, policies, and procedures to:
 - a. Notify all criminal justice agencies at fault for not reporting a disposition record.
 - b. Depending on the severity of missing disposition records, request that the prosecuting agencies and courts undertake a more comprehensive review of their disposition records to ensure they meet the statutory requirement to report disposition records to the central repository (see Finding 1, pages 7 through 12, for more information).
5. Developing and implementing a process to periodically send all criminal justice agencies a list of offense records from their agency that do not have a disposition and request the criminal justice agency to report any dispositions they have to the central repository (see Finding 1, pages 7 through 12, for more information).
6. Developing and implementing a risk-based approach using calculated disposition reporting rates to identify criminal justice agencies that have the highest rate of missing dispositions and working with these criminal justice agencies to improve the completeness of the central repository by providing focused training and guidance to address gaps (see Finding 1, pages 7 through 12, for more information).

The Department should:

7. Provide information to the Legislature related to legislative recommendation 1, including information regarding statutorily specified precluding offenses for fingerprint clearance cards it should consider when assessing whether to modify A.R.S. §41-1750 (see Finding 2, pages 13 through 16, for more information).
8. Continue to monitor proposed legislation that may impact what fingerprint clearance card precluding offenses are required to be reported to and included in the central repository and work with the Legislature as necessary to ensure the Department considers all statutorily specified precluding offenses when it issues fingerprint clearance cards and suspends the fingerprint clearance cards of cardholders who are no longer eligible (see Finding 2, pages 13 through 16, for more information).

9. If the Legislature modifies A.R.S. §41-1750 to require all fingerprint clearance card precluding offenses to be reported to and included in the central repository:
 - a. Modify its practice to ensure all fingerprint clearance card precluding offenses are reported to and included in the central repository.
 - b. Notify its troopers and criminal justice agency liaisons of any changes to the fingerprint clearance card precluding offenses that are required to be reported to and included in the central repository (see Finding 2, pages 13 through 16, for more information).
10. Provide information to the Legislature related to legislative recommendation 2, including information regarding additional misdemeanor offenses it should consider when assessing whether to modify A.R.S. §41-1750 (see Finding 3, pages 17 through 19, for more information).
11. The Department should:
 - a. Modify its practice to include in the central repository only offenses expressly authorized by A.R.S. §41-1750, including any changes the Legislature makes as proposed in legislative recommendation 2.
 - b. Update its training so that criminal justice agencies are required to report only what is expressly authorized in statute.
 - c. Notify its troopers and criminal justice agency liaisons of the change in which offenses will be reported to and included in the central repository (see Finding 3, pages 17 through 19, for more information).
12. If statute is revised, the Department should communicate the statutory changes to its troopers and criminal justice agency liaisons (see Finding 4, pages 20 through 23, for more information).

The Legislature should:

1. Consider whether all fingerprint clearance card precluding offenses should be required to be reported to and included in the central repository to ensure the Department considers all statutorily specified precluding offenses when it issues fingerprint clearance cards and suspends the fingerprint clearance cards of cardholders who are no longer eligible and modify A.R.S. §41-1750, accordingly (see Finding 2, pages 13 through 16, for more information).
2. Consider whether additional misdemeanor offenses should be reported to and included in the central repository and modify A.R.S. §41-1750 accordingly (see Finding 3, pages 17 through 19, for more information).
3. Consider revising A.R.S. §41-1750 to require law enforcement agencies to report to the central repository offense records for statutorily classified felonies that are reduced to misdemeanors at the time of arrest or citation (see Finding 4, pages 20 through 23, for more information).



Arizona State agencies, boards, and courts that require a fingerprint clearance card and/or fingerprint-based criminal history records check for professional licensure or employment, or to interact with vulnerable populations

As discussed in the report (see Introduction, pages 2 and 3, and Findings 1 through 4, pages 7 through 23), regulatory agencies and public employers rely on the criminal history records stored in the central repository to help determine whether individuals seeking licensure or employment in certain professions or who interact with vulnerable populations, such as those working with children and vulnerable adults, are fit to practice. A.R.S. §41-1750(G)(1)(2) requires the Department to share criminal history record information with authorized criminal justice and noncriminal justice agencies for the purpose of evaluating the fitness of current and prospective employees. Specifically, some agencies require an individual to obtain a fingerprint clearance card from the Department prior to employment or licensure. Additionally, statute authorizes many State agencies, boards, and courts to request and receive this information for prospective employees, volunteers, and licensees under their authority (see Introduction, textbox on page 3, for more information about fingerprint clearance cards and fingerprint-based criminal history records checks).

We reviewed Arizona statutes to identify State agencies, boards, and courts required to request and receive fingerprint clearance cards and/or fingerprint-based criminal history records checks (see Appendix B, page b-2, for more information on how we identified these State agencies, boards, and courts). Table 2, pages a-2 through a-9, lists the agencies we identified that are required to have applicants obtain a fingerprint clearance card and/or fingerprint-based criminal history records check for employment, licensure, or interacting with vulnerable populations.

Table 2

Arizona State agencies, boards, and courts that require a fingerprint clearance card and/or fingerprint-based criminal history records check for licensing, employment, or to interact with vulnerable populations¹

As of March 31, 2021

State agency/board/court	Applicant	Fingerprint clearance card	Criminal records check	Authorizing statute
Arizona Board of Athletic Training ²	Athletic trainer		●	32-4128(A)
Arizona Board of Fingerprinting	Board member	●		41-619.52(D)(3)
	Employee	●		41-619.53(C)
Arizona Board of Funeral Directors and Embalmers	Cremationist		●	32-1339
	Crematory establishment		●	32-1339
	Embalmer		●	32-1339
	Embalmer's assistant		●	32-1339
	Funeral director		●	32-1339
	Funeral establishment		●	32-1339
	Intern		●	32-1339
	Prearranged funeral salesperson		●	32-1339
Arizona Board of Homeopathic and Integrated Medicine Examiners	Board member		●	32-2902(B)
Arizona Board of Nursing Care Institution Administrators & Assisted Living Facility Managers	Assisted living facility manager	●		36-446.04(C)(5)
	Nursing care institution administrator	●		36-446.04(A)(4)
Arizona Board of Occupational Therapy Examiners	Board member		●	32-3402(B)
	Occupational therapist		●	32-3430(A)
	Occupational therapist assistant		●	32-3430(A)
Arizona Board of Osteopathic Examiners	Board member		●	32-1801(B)
	Osteopathic physician		●	32-1822(A)(9)
Arizona Board of Regents	University employee in a security or safety sensitive position		●	15-1649(A)
Arizona Commerce Authority	Board member		●	41-1502(C)
	Employee		●	44-1813(B)
Arizona Corporation Commission	Investment advisor		●	44-3153(C)(6)
	Investment advisor representative		●	44-3156(C)(3)
	Securities salesperson		●	44-1945(A)(8)
Arizona Department of Administration	IT personnel		●	41-710(A)
Arizona Department of Agriculture	Hemp grower transporter	●		03-314(D)
	Hemp harvester	●		03-314(D)
	Hemp processor	●		03-314(D)
	Hemp transporter	●		03-314(D)
	Pest control applicator		●	03-3614(C)

Table 2 continued

State agency/board/court	Applicant	Fingerprint clearance card	Criminal records check	Authorizing statute	
Arizona Department of Child Safety	Adoptive parents	●		08-105(D)	
	Adult members of adoptive parent household	●		08-105(D)	
	Adult members of a foster home parent's household	●		08-509(B)	
	Adult members of kinship foster care parent's household		●	08514.03(B), 46-141	
	Child placement—members of household		●	08-514.02, 46-141	
	Child safety worker	●		08-802(A)	
	Child welfare investigators	●		08-802(A)	
	Employees working with children	●		08-463(A)	
	Foster home parents	●		08-509(B)	
	Information technology contractor or subcontractor	●		08-463(A)	
	Information technology employees	●		08-463(A)	
	Kinship foster care parents		●	08-514.03, 46-141	
	Native American child custody—members of the emergency placement household		●	08-827(A)(2)&(B)	
	Permanent guardianship ²		●	08-872(F)	
	Arizona Department of Economic Security	Adult developmental home adult household member	●		36-594.02
Adult developmental home license		●		36-594.02	
Child care home provider		●		41-1967.01(B)	
Child care personnel in daycare home		●		41-1964(A)	
Child developmental home license		●		36-594.02	
Child developmental home license adult household member		●		36-594.02	
Community based service provider		●		36-594.01(A)(2)(C)	
Contractor with access to federal tax information		●		41-1969(A)	
Contractor working with juveniles or vulnerable adults		●		46-141(A)	
Division of developmental disabilities contractor		●		36-594.01(A)(1)(B)	
Division of developmental disabilities employee		●		36-594.01(A)(1)(B)	
Domestic violence service provider employee		●		36-3008(A)	
Domestic violence service provider volunteer		●		36-3008(A)	
Employee with access to federal tax information		●		41-1969(A)	
Employee working with children or vulnerable adults		●		41-1968	
Home-based service provider		●		36-594.01(A)(2)(C)	
Information technology employee		●		41-1969(A)	
Licensee working with juveniles or vulnerable adults		●		46-141(A)	
Arizona Department of Education		Child care food sponsor program child care provider	●		46-321(B)

Table 2 continued

State agency/board/court	Applicant	Fingerprint clearance card	Criminal records check	Authorizing statute
Arizona Department of Emergency and Military Affairs	Court of military appeals judge		●	26-1067(B)
	Employee		●	26-103(A)
	Military judge		●	26-1026(C)
Arizona Department of Gaming—Arizona Boxing Commission	Judges		●	5-228(C)
	Managers		●	5-228(C)
	Matchmakers		●	5-228(C)
	Promoters		●	5-228(C)
	Referees		●	5-228(C)
Arizona Department of Gaming—Arizona Racing Commission	Agent		●	5-107.01(E)
	Apprentice jockey		●	5-107.01(E)
	Driver		●	5-107.01(E)
	Exercise rider		●	5-107.01(E)
	Food and beverage concessionaire		●	5-107.01(E)
	Groom		●	5-107.01(E)
	Horse owner		●	5-107.01(E)
	Horseshoer		●	5-107.01(E)
	Jockey		●	5-107.01(E)
	Jockey's agent		●	5-107.01(E)
	Judge		●	5-107.01(E)
	Manager		●	5-107.01(E)
	Other race meeting participants/ staff		●	5-107.01(E)
	Racing permit		●	5-107.01(E)
	Stable foreman		●	5-107.01(E)
	Stable watchman		●	5-107.01(E)
	Starter		●	5-107.01(E)
	Steward		●	5-107.01(E)
	Timer		●	5-107.01(E)
	Trainer		●	5-107.01(E)
Valet		●	5-107.01(E)	
Veterinarian		●	5-107.01(E)	

Table 2 continued

State agency/board/court	Applicant	Fingerprint clearance card	Criminal records check	Authorizing statute
Arizona Department of Health Services	Child care facility	●		36-882(C)(2)
	Child care facility employee	●		36-883.02(A)
	Child care facility volunteer	●		36-883.02(A)
	Child care group home	●		36-897.01(M)(2)
	Child care group home employee	●		36-897.03(A)
	Child care group home volunteer	●		36-897.03(A)
	Children's behavioral health program employee	●		36-425.03(A)
	Children's behavioral health program volunteer	●		36-425.03(A)
	Contractor providing health services in a home health agency, nursing care institution, or resident care institution	●		36-411(A)
	Home health agency employee	●		36-411(A)
	Home health agency owner	●		36-411(A)
	Medical marijuana care giver		●	36-2819
	Medical marijuana dispensary agent		●	36-2819
	Medical marijuana principal officer		●	36-2819
	Medical marijuana independent third-party laboratory agent		●	36-2819
	Nursing care institution employee	●		36-411(A)
	Nursing care institution owner	●		36-411(A)
	Resident care institution employee	●		36-411(A)
Resident care institution owner	●		36-411(A)	
Arizona Department of Health Services—Arizona State Hospital	Employee or volunteer	●		36-207(A)
Arizona Department of Housing	Broker		●	41-4025(E)
	Dealer		●	41-4025(E)
	Installer		●	41-4025(E)
	Manufacturer		●	41-4025(E)
	Salesperson		●	41-4025(E)
Arizona Department of Insurance and Financial Institutions	Appraisal management company owner	●		32-3668(B)(2)
	Appraisal management company controlling person	●		32-3669(B)(3)
	Appraiser	●		32-3620(B)
	Bail bond agent		●	20-340.01(B)
	Bail recovery agent		●	20-340.04(B)
	Supervisory appraiser	●		32-3620(B)
	Trainee appraiser	●		32-3620(B)
Arizona Department of Juvenile Corrections	Contractor		●	41-2814(A)
	Employee		●	41-2814(A)
	Employee of contractor or licensee with direct contact with committed youth	●		41-2814(B)
Arizona Department of Liquor Licenses and Control	Employee		●	04-202(E)
	Liquor license applicant		●	04-202(B)(E))

Table 2 continued

State agency/board/court	Applicant	Fingerprint clearance card	Criminal records check	Authorizing statute
Arizona Department of Public Safety	Concealed weapons permit		●	13-3112(G)
	Criminal justice employee		●	41-1750(G)(1)
	Firearms instructor		●	32-2623(A)(2)
	Private investigator business		●	32-2423(A)(7)
	Private investigator employee registration		●	32-2442(A)(4)
	Private security guard service		●	32-2613(A)(5)
	School bus driver	●		28-3228(D)
	Security guard employee		●	32-2623(A)(2)
	Security guard instructor		●	32-2623(A)(2)
	Unarmed security guard instructor		●	32-2623(A)(2)
Arizona Department of Real Estate	Real estate license	●		32-2108.01(C)
Arizona Department of Transportation	Authorized third-party service provider employee with access to personal information or monies collected on behalf of the State		●	28-5105(B)(1)
	Authorized third-party service provider owner ⁴		●	28-5105(A)(1)
	Automotive recycler owner ⁴		●	28-4361(C)(1)
	Driver training school owner	●		32-2371(C)
	Employee		●	28-376(A)
	Traffic survival school owner ⁵	●		28-3413(C)
	Vehicle dealer branch owner ⁴		●	28-4361(C)(1)
	Vehicle dealer owner ⁴		●	28-4361(C)(1)
	Vehicle distributor branch owner ⁴		●	28-4361(C)(1)
	Vehicle distributor owner ⁴		●	28-4361(C)(1)
	Vehicle factory branch owner ⁴		●	28-4361(C)(1)
	Vehicle importer owner ⁴		●	28-4361(C)(1)
	Vehicle manufacturer owner ⁴		●	28-4361(C)(1)
	Wholesale motor vehicle dealer owner ⁴		●	28-4361(C)(1)
	Arizona Finance Authority	Board member		●
Arizona Game and Fish Department	Employee working with children or vulnerable adults	●		17-215
	Volunteer working with children or vulnerable adults	●		17-215
Arizona Juvenile Court	Juvenile probation officer		●	41-1750(G)
Arizona Medical Board	License to practice medicine		●	32-1422(A)(12)
Arizona Naturopathic Physicians Medical Board	Board member		●	32-1502(B)
	Engage in a clinical training program		●	32-1524(H)
	Engage in an internship training program		●	32-152(H)
	Engage in a preceptorship training program		●	32-1524(H)
	Naturopathic medical assistant		●	32-1524(A)
	Naturopathic physician		●	32-1524(A)
Arizona Office of the Governor	Employee		●	41-101(D)
	Governor-appointed or nominated State office holder ⁶		●	38-211(H)

Table 2 continued

State agency/board/court	Applicant	Fingerprint clearance card	Criminal records check	Authorizing statute
Arizona Peace Officer Standards and Training Board	Board member		●	41-1821(B)
Arizona Regulatory Board of Physician Assistants	Board member		●	32-2502(B)
Arizona State Board for Charter Schools	Charter school		●	15-183(C)(4)
	Charter school applicant with direct contact with students	●		15-183(C)(4)
	Charter school personnel	●		15-183(C)(5)
Arizona State Board of Behavioral Health Examiners	Behavioral health professional ²		●	32-3280(A)
	Board member		●	32-3252(B)
Arizona State Board of Dental Examiners	Board member		●	32-1203(B)
	Dental hygienist	●		32-1284(A)
	Dental laboratory technician	●		32-1297.01(A)
	Dental therapist	●		32-1276.01(B)(5)
	Dentist	●		32-1232(B)
	Denture technology	●		32-1297.01(A)
	Denturist	●		32-1297.01(A)
Arizona State Board of Dispensing Opticians	Board member		●	32-1672(B)
Arizona State Board of Education	Noncertified personnel who work with students without the supervision of a certificated employee		●	15-512(B)
	Not paid school district employees who work with students without the supervision of a certificated employee		●	15-512(B)
	Surrogate parent of child with disabilities	●		15-763.01(C)(4)
	Teacher	●		15-501.01(A)
	Teacher prep program	●		15-534(G)
	Tutor	●		15-534(G)
	Vocational program student who is over 22 years of age	●		15-782.02(B)
Arizona State Board of Massage Therapy	Massage therapist		●	32-4222(A)(10)
Arizona State Board of Nursing	Board member		●	32-1602(B)
	Clinical nurse specialist		●	32-1606(B)(16)
	Medication assistant		●	32-1606(B)(16)
	Nurse anesthetist		●	32-1606(B)(16)
	Nursing assistant		●	32-1606(B)(16)
	Practical nurse		●	32-1606(B)(16)
	Registered nurse		●	32-1606(B)(16)
Arizona State Board of Optometry	Board member		●	32-1702(B)
	Optometrist		●	32-1730(A)

Table 2 continued

State agency/board/court	Applicant	Fingerprint clearance card	Criminal records check	Authorizing statute
Arizona State Board of Pharmacy	Intern	●		32-1904(A)(6)
	Pharmacist	●		32-1904(A)(6)
	Pharmacy technician	●		32-1904(A)(6)
	Pharmacy technician trainee	●		32-1904(A)(6)
	Third-party logistics provider representative	●		32-1941(F)
	Full-service wholesale permittee		●	32-1982(C)
Arizona State Board of Physical Therapy	Physical therapist	●		32-2022(A)(6)&(B)(10)
	Physical therapy assistant	●		32-2022(D)(6)
Arizona State Board of Podiatry Examiners	Board member		●	32-802(B)
Arizona State Board of Respiratory Care Examiners	Board member		●	32-3502(B)
	Respiratory care practitioner		●	32-3504(A)(6)
Arizona State Board of Technical Registration	Alarm agent	●		32-122.06(B)
	Alarm business owner	●		32-121(2)
	Home inspector	●		32-122.02(A)(5)
Arizona State Schools for the Deaf and the Blind	Certified personnel	●		15-1330(A)
	Noncertified personnel		●	15-1330(B)
	Nonpaid personnel		●	15-1330(B)
	Superintendent	●		15-1330(A)
Arizona Superior Court	Court-appointed guardian—minor		●	14-5206(B)
	Court-appointed investigator		●	14-5308(E)
	Superior court judge		●	12-3152(A)
Arizona Supreme Court	Appointed paid position in a noncriminal justice agency		●	12-102(B)
	Juvenile probation services contract provider	●		08-322(G)
	Practice law		●	12-323(B)
	Private process server		●	12-3301(B)
	Confidential intermediary		●	08-134(K)
Board of Certified Reporters	Certified court reporter		●	32-4005(B)(5)
Industrial Commission of Arizona	Division of occupational safety and health review board members		●	23-422(B)
Public Safety Personnel Retirement System	Board of trustees board member		●	38-848(B)
State of Arizona Acupuncture Board of Examiners	Acupuncturist		●	32-3924(3)
	Auricular acupuncturist		●	32-3922(A)(4)
	Board member		●	32-3902(B)
State of Arizona Board of Chiropractic Examiners	Board member		●	32-901(B)

¹ This table includes those State agencies, boards, or courts that are authorized by statute as of March 31, 2021, to require applicants for licensure, certification, employment, or individuals who work with vulnerable populations, such as foster care parents and school teachers, to obtain a fingerprint clearance card issued by the Department or to submit fingerprints for a criminal history records background check. This table does not include agencies, boards, and/or courts that are authorized to request background checks at its discretion or those authorized to request this information pursuant to an executive order.

² To satisfy the background check requirement, an applicant may submit a valid fingerprint clearance card issued by the Department instead of a full set of fingerprints for the purpose of a criminal history records check.

Table 2 continued

- ³ A.R.S. §32-1904(A)(6) gives the Arizona State Board of Pharmacy discretion to approve an application for licensure despite the denial of a valid fingerprint clearance card if the Board determines that the applicant's criminal history information on which the denial was based does not alone disqualify the applicant from licensure.
- ⁴ An owner, partner, or stockholder who owns 20 percent or more of an entity must submit a full set of fingerprints for the purposes of obtaining a fingerprint-based criminal history records check.
- ⁵ An owner, partner, or stockholder who owns 20 percent or more of an entity must submit a valid fingerprint clearance card.
- ⁶ A.R.S. §38-211(H) specifies that before nomination or appointment by the Governor, the prospective nominee shall submit a full set of fingerprints for the purpose of obtaining a fingerprint-based criminal history records check. In addition to this statute, some boards have authorizing statutes requiring a fingerprint-based criminal history records check within their own statutes. This table includes those boards with requirements within their own statutes but does not include any board that, per A.R.S. §38-211, only requires its members to submit a full set of fingerprints based on certain Governor nominations approved by the Senate.

Source: Auditor General staff review of statutes, Arizona Board of Fingerprinting records, Department records, and interviews with Department staff.



Scope and methodology

The Arizona Auditor General has conducted this performance audit of the Department's compliance with requirements to maintain a complete central repository of criminal history records consistent with statutory requirements 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.

We used various methods to address the audit's objectives. These methods included reviewing Department statutes and rules and interviewing and observing Department staff. In addition, we used the following specific methods to meet the audit objectives:

- To assess the completeness of the Department's central repository, we reviewed and/or analyzed:
 - Offense data for all 103 felony offenses from 4 law enforcement agencies that occurred on June 14, 2019, and compared these offenses to fiscal year 2019 central repository records.^{39,40}
 - A stratified, random sample of 30 of approximately 33,000 arrests and/or charge events with felony offense records without dispositions—15 from Maricopa County and 15 from other counties in Arizona—and reviewed 1 felony offense record from each event. With the Department's help, we identified whether the arrest had a disposition that had not been reported to the central repository.
 - Fiscal year 2019 offense record data to calculate the count and percentage of missing dispositions for each county.
 - ACJIS and NCIC manuals, ACJIS audit questionnaires, audit templates, and audit reports issued by the Department's Access Integrity Unit.
 - Department reports, records, and training materials.
 - A 2014 Arizona Criminal Justice Commission report.⁴¹
- We interviewed ADCRR staff.
- To determine whether the central repository includes all statutory precluding offenses the Department needs to guide its issuance of fingerprint clearance cards, we reviewed a judgmental sample of all 29 endangerment offenses—a precluding misdemeanor offense—from the Department troopers' fiscal year 2019 offense records and compared it to data from the central repository. Additionally, we compared A.R.S. §§41-1758.03

³⁹ We judgmentally selected 4 law enforcement agencies from the 498 unique accounts with access to ACJIS for criminal justice agencies in the State with access to ACJIS as of June 2020 and obtained 10,221 felony offense records that occurred between May 1, 2019 and June 30, 2019. We then judgmentally selected June 14, 2019, identifying a total of 103 felony offense records from the 4 law enforcement agencies on that date.

⁴⁰ We compared the sample of 103 felony offenses from the 4 law enforcement agency records to 2 sets of Department-provided data of felony and misdemeanor offense records with offense dates in fiscal year 2019 from the central repository using various personally identifiable information data points, such as name, date of birth, date of offense, offense, and law enforcement agency to assess whether an offense record had been reported to the central repository. To perform this comparison, we reviewed approximately 158,000 offense records that did not have a disposition as of April 24, 2020; and 250,500 offense records with a disposition as of June 23, 2020.

⁴¹ Arizona Criminal Justice Commission (2014). *Arizona Criminal Records Infrastructure Improvement*. Retrieved 3/12/21 from [Arizona_Criminal_Records_Infrastructure_Improvement.pdf \(azcjc.gov\)](https://www.azcjc.gov/Records_Infrastructure_Improvement.pdf).

and 41-1758.07, which define precluding offenses for fingerprint clearance cards, to A.R.S. §41-1750, which defines the offenses required to be reported to the central repository.

- To determine whether the Department maintains misdemeanor offenses in the central repository that are not expressly authorized by statute to be included, we reviewed:
 - Fiscal year 2019 driving on a suspended license offense records without dispositions in the central repository as of April 24, 2020.
 - A stratified random sample of 30 of the 574 misdemeanor offense records for driving on a suspended license from 4 judgmentally selected criminal justice agencies—25 of 522 records from 1 criminal justice agency, 3 of 44 records from 1 criminal justice agency, 1 of 7 records from 1 criminal justice agency, and the only record from the remaining criminal justice agency—that occurred between May 1, 2019 and June 30, 2019.
 - All 18 misdemeanor driving on a suspended license offense records from fiscal year 2019 Department trooper offense records from 1 judgmentally selected day.
 - Department-provided reports on offenses reported to the central repository.
- To determine whether statutorily designated felonies were reported to the central repository, we judgmentally selected 5 days from fiscal year 2019 and reviewed all 44 offenses Department trooper data indicated were felonies and compared them to data in the central repository.⁴² We also reviewed written guidance documents issued by 4 of 15 county prosecutors and Department-reported guidance from an additional 10 counties. Further, we reviewed A.R.S. §13-604 and Proposition 207.
- To identify Arizona agencies, boards, and courts that require a fingerprint clearance card and/or fingerprint-based criminal history records check for professional licensure applicants, employees, or persons who interact with vulnerable populations, we reviewed various Arizona Revised Statutes as of March 31, 2021. We also compared the agencies, boards, and courts we identified in our review to lists maintained by the Department and the Arizona Board of Fingerprinting.⁴³
- Our work on internal controls included reviewing Department records, policies, and procedures and, where applicable, testing compliance with statutory and rule requirements. We also assessed the reliability of the data by reviewing the Department's internal controls related to logical access to ACJIS. Our work included reviewing the following components of internal control:
 - Control activities related to criminal justice agencies' logical access to ACJIS.
 - Control environment related to the Department's oversight of the central repository, including overseeing criminal justice agencies that are responsible for reporting fingerprint records—offense and disposition—to the central repository in accordance with statute.
 - Risk assessment related to the Department's oversight of the central repository to identify, analyze, and respond to risks related to criminal justice agencies not reporting required information to the central repository.
 - Information and communication related to the use of and retention of complete criminal history record information.
 - Monitoring activities related to reporting criminal history records to the central repository.

We reported our conclusions on applicable internal controls in Findings 1, 2, and 3 (see pages 7 through 19).

⁴² For offenses where the Department's trooper data did not indicate the classification of the offense, we reviewed the statutory classification and included those classified as felonies. This yielded 44 offense records from the 5 days..

⁴³ We excluded any agencies, boards, or courts that had statutory authority but are not required to obtain criminal history records checks.

We selected our audit samples to provide sufficient evidence to support our findings, conclusions, and recommendations. Unless otherwise noted, the results of our testing using these samples were not intended to be projected to the entire population.

We conducted this performance audit of the Department in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, 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 Department Director and staff for their cooperation and assistance throughout the audit.



Auditor General’s comments on Department response

We appreciate the Department’s response. However, the Department has included a statement in its response that necessitates clarification.

Specifically, the Department makes the following statement related to Finding 3 (see Department’s response, page 5):

“The Department’s current training accurately reflects the statutory mandate.”

Although the Department asserts that its current training accurately reflects the statutory mandate, as stated in Finding 3 (see pages 17 through 19), A.R.S. §41-1750 does not expressly authorize all misdemeanor offenses to be reported to and retained in the central repository. However, Department officials reported that they do not believe statute precludes the Department from maintaining in the central repository these additional misdemeanors. As such, the Department has trained other criminal justice agencies in the State to report these additional misdemeanor offenses to the central repository.

Even though it has elected to include these additional misdemeanor offenses in the central repository, the Department and some other criminal justice agencies have not consistently reported these offenses. Because the Department and some law enforcement agencies have not consistently reported to the central repository misdemeanor offenses not expressly authorized by statute to be reported, individuals who have had these offenses reported to the central repository may be inequitably denied licensure or employment.

DEPARTMENT RESPONSE



ARIZONA DEPARTMENT OF PUBLIC SAFETY

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“Courteous Vigilance”

DOUGLAS A. DUCEY
Governor

HESTON SILBERT
Director

August 10, 2021

Ms. Lindsey A. Perry, Auditor General
Arizona Auditor General’s Office
2910 N. 44th St., Ste. 410
Phoenix, AZ 85018

Dear Ms. Perry:

As requested, enclosed is the Department’s response to the 2021 Central Repository of Criminal History Records Audit. The responses address the findings outlined in the preliminary report draft as well as the decision to implement the recommendation made by the Arizona Auditor General’s Office.

Sincerely,

Heston Silbert, Colonel
Director

Enclosure

Finding 1: Department's incomplete criminal history records may potentially put public safety at risk

Recommendation 1: The Department should maintain a complete criminal history records repository that includes all applicable fingerprint-based offense records and their associated dispositions by continuing its efforts to fill the 10 vacant FTE positions in its criminal history records unit.

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

Recommendation 2: The Department should maintain a complete criminal history records repository that includes all applicable fingerprint-based offense records and their associated dispositions by continuing to research, correct, and/or enter the backlogged offense and disposition records it has received.

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

Recommendation 3: The Department should maintain a complete criminal history records repository that includes all applicable fingerprint-based offense records and their associated dispositions by developing and implementing a formal process for regularly requesting missing offense records, such as sending a letter to the criminal justice agencies that will be audited in a given year, to request the agency send any paper offense records to the Department to be entered into the central repository.

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

Recommendation 4: The Department should maintain a complete criminal history records repository that includes all applicable fingerprint-based offense records and their associated dispositions by enhancing its audits of criminal justice agencies by establishing and implementing a process, policies, and procedures to:

Recommendation 4a: Notify all criminal justice agencies at fault for not reporting a disposition record.

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

Recommendation 4b: Depending on the severity of missing disposition records, request that the prosecuting agencies and courts undertake a more comprehensive review of their disposition records to ensure they meet the statutory requirement to report disposition records to the repository.

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

Recommendation 5: The Department should maintain a complete criminal history records repository that includes all applicable fingerprint-based offense records and their associated

dispositions by developing and implementing a process to periodically send all criminal justice agencies a list of offense records from their agency that do not have a disposition and request the criminal justice agency to report any dispositions they have to the central repository.

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

Recommendation 6: The Department should maintain a complete criminal history records repository that includes all applicable fingerprint-based offense records and their associated dispositions by developing and implementing a risk-based approach using calculated disposition reporting rates to identify criminal justice agencies that have the highest rate of missing dispositions and working with these criminal justice agencies to improve the completeness of the central repository by providing focused training and guidance to address gaps.

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

Finding 2: Department could unknowingly issue and has not suspended fingerprint clearance cards of ineligible individuals due to statutory omission

Recommendation 7: The Legislature should consider whether all fingerprint clearance card precluding offenses should be required to be reported and included in the central repository to ensure the Department considers all statutorily specified precluding offenses when it issues fingerprint clearance cards and suspends the fingerprint clearance cards of cardholders who are no longer eligible and modify A.R.S. §41-1750, accordingly.

Response explanation: A Department response is not required since the recommendation is to the Legislature.

Recommendation 8: The Department should provide information to the Legislature related to recommendation 7, including information regarding statutorily specified precluding offenses for fingerprint clearance cards it should consider when assessing whether to modify A.R.S. §41-1750.

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

Recommendation 9: The Department should continue to monitor proposed legislation that may impact what fingerprint clearance card precluding offenses are required to be reported to and included in the central repository and work with the Legislature as needed to ensure the Department considers all statutorily specified precluding offenses when it issues fingerprint clearance cards and suspends the fingerprint clearance cards of cardholders who are no longer eligible.

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

Recommendation 10: If the Legislature modifies A.R.S. §41-1750 to require all fingerprint clearance card precluding offenses to be reported to and included in the central repository, the Department should:

Recommendation 10a: Modify its practice to ensure all fingerprint clearance card precluding offenses are reported to and included in the central repository.

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

Recommendation 10b: Notify its troopers and criminal justice agency liaisons of any changes to the fingerprint clearance card precluding offenses that are required to be reported to and included in the central repository.

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

Finding 3: Central repository contains misdemeanor offenses not expressly authorized to be included, which provides additional criminal history information but increases risk of inequitable employment or licensure denials

Recommendation 11: The Legislature should consider whether additional misdemeanor offenses should be reported to and included in the central repository and modify A.R.S. §41-1750, accordingly.

Response explanation: A Department response is not required since the recommendation is to the Legislature.

Recommendation 12: The Department should provide information to the Legislature related to recommendation 11, including information regarding additional misdemeanor offenses it should consider when assessing whether to modify A.R.S. §41-1750.

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

Recommendation 13: The Department should:

Recommendation 13a: Modify its practice to include in the central repository only offenses expressly authorized by A.R.S. §41-1750, including any changes the Legislature makes as proposed in recommendation 11.

Department response: The finding of the Auditor General is not agreed to and the recommendation will not be implemented.

Response explanation: Limiting the reporting requirements to the four mandatory reportable offenses will not accurately portray one's criminal history and will have an adverse impact to public safety and the criminal justice system as a whole. There are numerous misdemeanor offenses which precludes an individual from obtaining a fingerprint clearance card license or employment with vulnerable populations. Arizona's criminal justice system relies on the full range of offenses listed in the central repository

for sentencing, charging and licensing decisions. Additionally, the Department will modify its practices to align with any future changes to the law(s).

Recommendation 13b: Update its training so that criminal justice agencies are required to report only what is expressly authorized in statute.

Department response: The finding of the Auditor General is not agreed to and the recommendation will not be implemented.

Response explanation: The Department's current training accurately reflects the statutory mandate.

Recommendation 13c: Notify its troopers and criminal justice agency liaisons of the change in which offenses will be reported to and included in the central repository.

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

Finding 4: Some statutorily classified felony offenses were reduced to misdemeanor offenses and not reported to central repository, which increases risk of ineligible individuals receiving fingerprint clearance card, license, or employment

Recommendation 14: The Legislature should consider revising A.R.S. §41-1750 to require law enforcement agencies to report to the central repository offense records for statutorily classified felonies that are reduced to misdemeanors at the time of arrest or citation.

Response explanation: A Department response is not required since the recommendation is to the Legislature.

Recommendation 15: If statute is revised, the Department should communicate the statutory change to its troopers and criminal justice agency liaisons.

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

