

REFERENCE TITLE: **fingerprinting; aiding conviction**

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1090

Introduced by
Senator Gray L

AN ACT

AMENDING SECTION 41-1758.03, ARIZONA REVISED STATUTES; RELATING TO THE FINGERPRINTING DIVISION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-1758.03, Arizona Revised Statutes, is amended to
3 read:

4 41-1758.03. Fingerprint clearance cards; issuance; immunity

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

11 B. A person who is subject to registration as a sex offender in this
12 state or any other jurisdiction or who is awaiting trial on or who has been
13 convicted of committing or attempting, soliciting, facilitating, AIDING or
14 conspiring to commit one or more of the following offenses in this state or
15 the same or similar offenses in another state or jurisdiction is precluded
16 from receiving a fingerprint clearance card:

- 17 1. Sexual abuse of a vulnerable adult.
- 18 2. Incest.
- 19 3. First or second degree murder.
- 20 4. Sexual assault.
- 21 5. Sexual exploitation of a minor.
- 22 6. Sexual exploitation of a vulnerable adult.
- 23 7. Commercial sexual exploitation of a minor.
- 24 8. Commercial sexual exploitation of a vulnerable adult.
- 25 9. Child prostitution as prescribed in section 13-3212.
- 26 10. Child abuse.
- 27 11. Abuse of a vulnerable adult.
- 28 12. Sexual conduct with a minor.
- 29 13. Molestation of a child.
- 30 14. Molestation of a vulnerable adult.
- 31 15. A dangerous crime against children as defined in section 13-604.01.
- 32 16. Exploitation of minors involving drug offenses.
- 33 17. Taking a child for the purposes of prostitution as prescribed in
34 section 13-3206.
- 35 18. Neglect or abuse of a vulnerable adult.
- 36 19. Sex trafficking.
- 37 20. Sexual abuse.
- 38 21. Production, publication, sale, possession and presentation of
39 obscene items as prescribed in section 13-3502.
- 40 22. Furnishing harmful items to minors as prescribed in section
41 13-3506.
- 42 23. Furnishing harmful items to minors by internet activity as
43 prescribed in section 13-3506.01.
- 44 24. Obscene or indecent telephone communications to minors for
45 commercial purposes as prescribed in section 13-3512.

- 1 25. Luring a minor for sexual exploitation.
- 2 26. Enticement of persons for purposes of prostitution.
- 3 27. Procurement by false pretenses of person for purposes of
4 prostitution.
- 5 28. Procuring or placing persons in a house of prostitution.
- 6 29. Receiving earnings of a prostitute.
- 7 30. Causing one's spouse to become a prostitute.
- 8 31. Detention of persons in a house of prostitution for debt.
- 9 32. Keeping or residing in a house of prostitution or employment in
10 prostitution.
- 11 33. Pandering.
- 12 34. Transporting persons for the purpose of prostitution, polygamy and
13 concubinage.
- 14 35. Portraying adult as a minor as prescribed in section 13-3555.
- 15 36. Admitting minors to public displays of sexual conduct as prescribed
16 in section 13-3558.
- 17 C. A person who is awaiting trial on or who has been convicted of
18 committing or attempting, soliciting, facilitating, **AIDING** or conspiring to
19 commit one or more of the following offenses in this state or the same or
20 similar offenses in another state or jurisdiction is precluded from receiving
21 a fingerprint clearance card, except that the person may petition the board
22 of fingerprinting for a good cause exception pursuant to section 41-619.55:
- 23 1. Manslaughter.
- 24 2. Endangerment.
- 25 3. Threatening or intimidating.
- 26 4. Assault.
- 27 5. Unlawfully administering intoxicating liquors, narcotic drugs or
28 dangerous drugs.
- 29 6. Assault by vicious animals.
- 30 7. Drive by shooting.
- 31 8. Assaults on officers or fire fighters.
- 32 9. Discharging a firearm at a structure.
- 33 10. Indecent exposure.
- 34 11. Public sexual indecency.
- 35 12. Aggravated criminal damage.
- 36 13. Theft.
- 37 14. Theft by extortion.
- 38 15. Shoplifting.
- 39 16. Forgery.
- 40 17. Criminal possession of a forgery device.
- 41 18. Obtaining a signature by deception.
- 42 19. Criminal impersonation.
- 43 20. Theft of a credit card or obtaining a credit card by fraudulent
44 means.

- 1 21. Receipt of anything of value obtained by fraudulent use of a credit
2 card.
- 3 22. Forgery of a credit card.
- 4 23. Fraudulent use of a credit card.
- 5 24. Possession of any machinery, plate or other contrivance or
6 incomplete credit card.
- 7 25. False statement as to financial condition or identity to obtain a
8 credit card.
- 9 26. Fraud by persons authorized to provide goods or services.
- 10 27. Credit card transaction record theft.
- 11 28. Misconduct involving weapons.
- 12 29. Misconduct involving explosives.
- 13 30. Depositing explosives.
- 14 31. Misconduct involving simulated explosive devices.
- 15 32. Concealed weapon violation.
- 16 33. Possession and sale of peyote.
- 17 34. Possession and sale of a vapor-releasing substance containing a
18 toxic substance.
- 19 35. Sale of precursor chemicals.
- 20 36. Possession, use or sale of marijuana, dangerous drugs or narcotic
21 drugs.
- 22 37. Manufacture or distribution of an imitation controlled substance.
- 23 38. Manufacture or distribution of an imitation prescription-only drug.
- 24 39. Manufacture or distribution of an imitation over-the-counter drug.
- 25 40. Possession or possession with intent to use an imitation controlled
26 substance.
- 27 41. Possession or possession with intent to use an imitation
28 prescription-only drug.
- 29 42. Possession or possession with intent to use an imitation
30 over-the-counter drug.
- 31 43. Manufacture of certain substances and drugs by certain means.
- 32 44. Adding poison or other harmful substance to food, drink or
33 medicine.
- 34 45. A criminal offense involving criminal trespass and burglary under
35 title 13, chapter 15.
- 36 46. A criminal offense under title 13, chapter 23.
- 37 47. Child neglect.
- 38 48. Misdemeanor offenses involving contributing to the delinquency of a
39 minor.
- 40 49. Offenses involving domestic violence.
- 41 50. Arson.
- 42 51. Kidnapping.
- 43 52. Felony offenses involving sale, distribution or transportation of,
44 offer to sell, transport or distribute or conspiracy to sell, transport or
45 distribute marijuana, dangerous drugs or narcotic drugs.

- 1 53. Robbery.
- 2 54. Aggravated assault.
- 3 55. Felony offenses involving contributing to the delinquency of a
- 4 minor.
- 5 56. Negligent homicide.
- 6 57. Criminal damage.
- 7 58. Misappropriation of charter school monies as prescribed in section
- 8 13-1818.
- 9 59. Taking identity of another person or entity.
- 10 60. Aggravated taking identity of another person or entity.
- 11 61. Trafficking in the identity of another person or entity.
- 12 62. Cruelty to animals.
- 13 63. Prostitution.
- 14 64. Sale or distribution of material harmful to minors through vending
- 15 machines as prescribed in section 13-3513.
- 16 65. Welfare fraud.
- 17 D. A person who is awaiting trial on or who has been convicted of
- 18 committing or attempting or conspiring to commit a violation of section
- 19 28-1381, 28-1382 or 28-1383 in this state or the same or similar offense in
- 20 another state or jurisdiction within five years from the date of applying for
- 21 a fingerprint clearance card is precluded from driving any vehicle to
- 22 transport employees or clients of the employing agency as part of the
- 23 person's employment. The division shall place a notation on the fingerprint
- 24 clearance card that indicates this driving restriction. This subsection does
- 25 not preclude a person from driving a vehicle alone as part of the person's
- 26 employment.
- 27 E. Notwithstanding subsection C of this section, on receiving written
- 28 notice from the board of fingerprinting that a good cause exception was
- 29 granted pursuant to section 41-619.55, the division shall issue a fingerprint
- 30 clearance card to the person.
- 31 F. If the division denies a person's application for a fingerprint
- 32 clearance card pursuant to subsection C of this section and a good cause
- 33 exception is requested pursuant to section 41-619.55, the division shall
- 34 release, on request by the board of fingerprinting, the person's criminal
- 35 history record to the board of fingerprinting.
- 36 G. A person shall be granted a fingerprint clearance card if either of
- 37 the following applies:
- 38 1. An agency granted a good cause exception before August 16, 1999 and
- 39 no new precluding offense is identified. The fingerprint clearance card
- 40 shall specify only the program that granted the good cause exception. On the
- 41 request of the applicant, the agency that granted the prior good cause
- 42 exception shall notify the division in writing of the date on which the prior
- 43 good cause exception was granted and the date of the conviction and the name
- 44 of the offense for which the good cause exception was granted.

1 2. The board granted a good cause exception and no new precluding
2 offense is identified. The fingerprint clearance card shall specify the
3 programs for which the board granted the good cause exception.

4 H. The licensee or contract provider shall assume the costs of
5 fingerprint checks and may charge these costs to persons required to be
6 fingerprinted.

7 I. A person who is under eighteen years of age or who is at least
8 ninety-nine years of age is exempt from the fingerprint clearance card
9 requirements of this section. At all times the person shall be under the
10 direct visual supervision of personnel who have valid fingerprint clearance
11 cards.

12 J. The division may conduct periodic state criminal history records
13 checks for the purpose of updating the clearance status of current
14 fingerprint clearance card holders and may notify the board of fingerprinting
15 and the agency employing the person of the results of the records check.

16 K. The division shall revoke a person's fingerprint clearance card on
17 receipt of a written request for revocation from the board of fingerprinting
18 pursuant to section 41-619.55.

19 L. The division shall not issue a fingerprint clearance card to a
20 person if the division cannot determine, within thirty business days after
21 receipt of the person's state and federal criminal history record
22 information, whether the person is awaiting trial on or has been convicted of
23 committing any of the offenses listed in subsection B or C of this section.
24 If the division is unable to make the determination required by this section
25 and does not issue a fingerprint clearance card to a person, the person may
26 request a good cause exception pursuant to section 41-619.55.

27 M. Except as provided in subsection N of this section, if after
28 conducting a state and federal criminal history record check the division
29 determines that it is not authorized to issue a fingerprint clearance card to
30 a person, the division shall notify the agency that licenses or employs the
31 person that the division is not authorized to issue a fingerprint clearance
32 card. This notice shall include the criminal history information on which
33 the denial was based. This criminal history information is subject to
34 dissemination restrictions pursuant to section 41-1750 and Public Law 92-544.

35 N. If, after conducting a state and federal criminal history record
36 check on a person who requests a fingerprint clearance card pursuant to
37 section 15-1881, the division determines that it is not authorized to issue a
38 fingerprint clearance card to the person, the division shall not notify the
39 agency. The division shall notify the person who requested the card that the
40 division is not authorized to issue a fingerprint clearance card.

41 O. The division is not liable for damages resulting from:

42 1. The issuance of a fingerprint clearance card to a person who is
43 later found to have been ineligible to receive a fingerprint clearance card
44 at the time the card was issued.

1 2. The denial of a fingerprint clearance card to a person who is later
2 found to have been eligible to receive a fingerprint clearance card at the
3 time issuance of the card was denied.

4 P. The issuance of a fingerprint clearance card does not entitle a
5 person to employment.