House Engrossed

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JANICE K. BREWER
SECRETARY OF STATE

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CHAPTER 63

HOUSE BILL 2073

AN ACT

AMENDING SECTIONS 8-802, 41-619.51, 41-1758, 41-1758.01 AND 46-141, ARIZONA REVISED STATUTES; RELATING TO FINGERPRINTING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 8-802, Arizona Revised Statutes, is amended to read:

8-802. Child protective services worker; fingerprint clearance cards; powers and duties; alteration of files; violation; classification

A. The department OF ECONOMIC SECURITY shall employ child protective services workers. ALL PERSONS WHO ARE EMPLOYED AS CHILD PROTECTIVE SERVICES WORKERS SHALL HAVE A VALID FINGERPRINT CLEARANCE CARD THAT IS ISSUED PURSUANT TO TITLE 41, CHAPTER 12, ARTICLE 3.1 OR SHALL APPLY FOR A FINGERPRINT CLEARANCE CARD WITHIN SEVEN WORKING DAYS OF EMPLOYMENT. A CHILD PROTECTIVE SERVICES WORKER SHALL CERTIFY ON FORMS THAT ARE PROVIDED BY THE DEPARTMENT OF ECONOMIC SECURITY AND THAT ARE NOTARIZED WHETHER THE WORKER IS AWAITING TRIAL ON OR HAS EVER BEEN CONVICTED OF ANY OF THE CRIMINAL OFFENSES LISTED IN SECTION 41-1758.03, SUBSECTIONS B AND C IN THIS STATE OR SIMILAR OFFENSES IN ANOTHER STATE OR JURISDICTION. ~~The department shall not hire a person as a child protective services worker if the person has been convicted of an offense described in section 41-1758.03, subsection B or C.~~

B. The department may cooperate with county agencies and community social services agencies to achieve the purposes of this section.

C. A child protective services worker shall:

1. Promote the safety and protection of children.

2. Accept, screen and assess reports of abuse or neglect pursuant to section 8-817.

3. Receive reports of dependent, abused or abandoned children and be prepared to provide temporary foster care for such children on a twenty-four hour basis.

4. Receive from any source oral or written information regarding a child who may be in need of protective services. A worker shall not interview a child without the prior written consent of the parent, guardian or custodian of the child unless either:

(a) The child initiates contact with the worker.

(b) The child who is interviewed is the subject of or is the sibling of or living with the child who is the subject of an abuse or abandonment investigation pursuant to paragraph 5, subdivision (b) of this subsection.

5. After the receipt of any report or information pursuant to paragraph 2, 3 or 4 of this subsection, immediately do both of the following:

(a) Notify the municipal or county law enforcement agency.

(b) Make a prompt and thorough investigation of the nature, extent and cause of any condition that would tend to support or refute the allegation that the child should be adjudicated dependent and the name, age and condition of other children in the home. An extremely serious conduct allegation shall be investigated according to the protocols established pursuant to section 8-817 with the appropriate municipal or county law enforcement agency as provided in section 8-817.

6. Take a child into temporary custody as provided in section 8-821. Law enforcement officers shall cooperate with the department to remove a child from the custody of the child's parents, guardian or custodian when necessary.

7. After investigation, evaluate conditions created by the parents, guardian or custodian that would support or refute the allegation that the child should be adjudicated dependent. The child protective services worker shall then determine whether any child is in need of protective services.

8. Offer to the family of any child who is found to be a child in need of protective services those services that are designed to correct unresolved problems that would indicate a reason to adjudicate the child dependent.

9. Submit a written report of the worker's investigation to:

(a) The department's case management information system within twenty-one days after receipt of the initial information except as provided in section 8-811. If the investigation involves allegations regarding a child who at the time of the alleged incident was in the custody of a child welfare agency licensed by the department of economic security under this title, a copy of the report and any additional investigative or other related reports shall be provided to the board of directors of the agency or to the administrative head of the agency unless the incident is alleged to have been committed by the person. The department shall excise all information with regard to the identity of the source of the reports.

(b) The appropriate court forty-eight hours before a dependency hearing pursuant to a petition of dependency or within twenty-one days after a petition of dependency is filed, whichever is earlier. On receipt of the report the court shall make the report available to all parties and counsel.

10. Accept a child into voluntary placement pursuant to section 8-806.

D. No child shall remain in temporary custody for a period exceeding seventy-two hours, excluding Saturdays, Sundays and holidays, unless a dependency petition is filed. If no petition is filed and the child is released to the child's parent, guardian or custodian, the worker shall file a report of removal with the central registry within seventy-two hours of the child's release. The report shall include:

1. The dates of previous referrals, investigations or temporary custody.

2. The dates on which other children in the family have been taken into temporary custody.

E. The department shall provide child protective services workers who investigate allegations of abuse and neglect with training in forensic interviewing and processes, the protocols developed pursuant to section 8-817 and relevant law enforcement procedures. All child protective services workers shall be trained in their duty to protect the legal rights of children and families from the time of the initial contact through treatment. The training for child protective services workers shall also include

instruction on the legal rights of parents and the requirements for legal search and seizure by law enforcement officers.

F. Any person who alters a client file for the purpose of fraud or misrepresentation is guilty of a class 2 misdemeanor.

Sec. 2. Section 41-619.51, Arizona Revised Statutes, is amended to read:

41-619.51. Definitions

In this article, unless the context otherwise requires:

1. "Agency" means the supreme court, the department of economic security, the department of education, the department of health services or the department of juvenile corrections.

2. "Board" means the board of fingerprinting.

3. "Expedited review" means an examination, in accordance with board rule, of the documents an applicant submits by the board or its hearing officer without the applicant being present.

4. "Facility" or "program" means state facilities or programs that provide direct services to adults with developmental disabilities or to juveniles.

5. "Good cause exception" means the issuance of a fingerprint clearance card to an employee pursuant to section 41-619.55.

6. "Person" means a person who is required to be fingerprinted pursuant to any of the following:

(a) Section 8-322.

(b) SECTION 8-802.

(c) SECTION 15-183.

~~(b)~~ (d) Section 15-512.

~~(c)~~ (e) Section 15-534.

~~(d)~~ (f) Section 15-1330.

~~(e)~~ (g) Section 36-425.03.

~~(f)~~ (h) Section 36-594.01.

~~(g)~~ (i) Section 36-882.

~~(h)~~ (j) Section 36-883.02.

~~(i)~~ (k) Section 36-897.01.

~~(j)~~ (l) Section 36-897.03.

~~(k)~~ (m) Section 36-3008.

~~(l)~~ (n) Section 41-1964.

~~(m)~~ (o) Section 41-1967.01.

~~(n)~~ (p) Section 41-2814.

~~(o)~~ (q) Section 46-141, subsection A.

~~(p)~~ (r) Section 46-321.

Sec. 3. Section 41-1758, Arizona Revised Statutes, is amended to read:

41-1758. Definitions

In this article, unless the context otherwise requires:

1. "Agency" means the supreme court, the department of economic security, the department of education, the department of health services or the department of juvenile corrections.

2. "Division" means the fingerprinting division in the department of public safety.

3. "Facility or program" means state facilities or programs that provide direct services to adults with developmental disabilities or to juveniles.

4. "Good cause exception" means the issuance of a fingerprint clearance card to an employee pursuant to section 41-619.55.

5. "Person" means a person who is required to be fingerprinted pursuant to any of the following:

(a) Section 8-322.

(b) SECTION 8-802.

~~(b)~~ (c) Section 15-183.

~~(c)~~ (d) Section 15-512.

~~(d)~~ (e) Section 15-534.

~~(e)~~ (f) Section 15-1330.

~~(f)~~ (g) Section 36-425.03.

~~(g)~~ (h) Section 36-594.01.

~~(h)~~ (i) Section 36-882.

~~(i)~~ (j) Section 36-883.02.

~~(j)~~ (k) Section 36-897.01.

~~(k)~~ (l) Section 36-897.03.

~~(l)~~ (m) Section 36-3008.

~~(m)~~ (n) Section 41-1964.

~~(n)~~ (o) Section 41-1967.01.

~~(o)~~ (p) Section 41-2814.

~~(p)~~ (q) Section 46-141, subsection A.

~~(q)~~ (r) Section 46-321.

6. "Vulnerable adult" has the same meaning prescribed in section 13-3623.

Sec. 4. Section 41-1758.01, Arizona Revised Statutes, is amended to read:

41-1758.01. <u>Fingerprinting division; duties</u>

The fingerprinting division is established in the department of public safety and shall:

1. Conduct fingerprint background checks for persons and applicants who are seeking employment with licensees, contract providers and state agencies that require fingerprint background checks pursuant to sections 8-322, 8-802, 15-183, 15-534, 15-1330, 36-411, 36-425.03, 36-594.01, 36-882, 36-883.02, 36-897.01, 36-897.03, 36-3008, 41-1964, 41-1967.01 and 41-2814, section 46-141, subsection A and section 46-321.

2. Issue fingerprint clearance cards. On issuance, a fingerprint clearance card becomes the personal property of the cardholder and the cardholder shall retain possession of the fingerprint clearance card.

3. On submission of an application for a fingerprint clearance card, collect the fees established by the board of fingerprinting pursuant to section 41-619.53 and deposit, pursuant to sections 35-146 and 35-147, the monies collected in the board of fingerprinting fund.

4. Inform in writing each person who submits fingerprints for a fingerprint background check of the person's right to petition the board of fingerprinting for a good cause exception pursuant to section 41-1758.03.

5. Administer and enforce this article.

Sec. 5. Section 46-141, Arizona Revised Statutes, is amended to read:

46-141. Criminal record information checks; fingerprinting employees and applicants

A. Each license granted by the department of economic security and each contract entered into between the department of economic security and any contract provider for the provision of services to juveniles shall provide that, as a condition of employment, personnel who are employed by the licensee or contractor, whether paid or not, and who are required or allowed to provide services directly to juveniles shall have a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1 or shall apply for a fingerprint clearance card within seven working days of employment.

B. The licensee or contractor shall assume the costs of fingerprint checks and may charge these costs to its fingerprinted personnel. The department may allow all or part of the costs of fingerprint checks to be included as an allowable cost in a contract.

C. A service contract or license with any contract provider or licensee that involves the employment of persons who have contact with juveniles shall provide that the contract or license may be canceled or terminated immediately if a person certifies pursuant to subsections F and G of this section that the person is awaiting trial on or has been convicted of any of the offenses listed in subsections F and G of this section in this state or similar offenses in another state or jurisdiction or if the person does not possess or is denied issuance of a valid fingerprint clearance card.

D. A contract provider or licensee may avoid cancellation or termination of the contract or license under subsection C of this section if a person who does not possess or has been denied issuance of a valid fingerprint clearance card or who certifies pursuant to subsections F and G of this section that the person has been convicted of or is awaiting trial on any of the offenses listed in section 41-1758.03, subsection B is immediately prohibited from employment or service with the contract provider or licensee in any capacity requiring or allowing contact with juveniles.

E. A contract provider or licensee may avoid cancellation or termination of the contract or license under subsection C of this section if

a person who does not possess or has been denied issuance of a valid fingerprint clearance card or who certifies pursuant to subsections F and G of this section that the person has been convicted of or is awaiting trial on any of the offenses listed in section 41-1758.03, subsection C is immediately prohibited from employment or service with the contract provider or licensee in any capacity requiring contact with juveniles unless the person is granted a good cause exception pursuant to section 41-619.55.

F. Personnel who are employed by any contract provider or licensee, whether paid or not, and who are required or allowed to provide services directly to juveniles shall certify on forms provided by the department of economic security and notarized whether they are awaiting trial on or have ever been convicted of any of the criminal offenses listed in section 41-1758.03, subsections B and C in this state or similar offenses in another state or jurisdiction.

G. Personnel who are employed by any contract provider or licensee, whether paid or not, and who are required or allowed to provide services directly to juveniles shall certify on forms provided by the department of economic security and notarized whether they have ever committed any act of sexual abuse of a child, including sexual exploitation and commercial sexual exploitation, or any act of child abuse.

H. Federally recognized Indian tribes or military bases may submit and the department of economic security shall accept certifications that state that personnel who are employed or who will be employed during the contract term have not been convicted of, have not admitted committing or are not awaiting trial on any offense under subsection F of this section.

I. A person who applies to the department of economic security for a license or certificate or for paid or unpaid employment, including contract services, and who will provide direct services to juveniles or vulnerable adults shall submit a full set of fingerprints to the department for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

J. The special services unit of the department of economic security may use the department of public safety automated system to update all criminal history record information in order to ensure, to the maximum extent reasonably possible, complete disposition information. The department of economic security may deny employment or issuance or renewal of the contract or license applied for in these cases if it determines that the criminal history record information indicates that such employee, applicant or contractor is not qualified or suitable.

K. Volunteers who provide services to juveniles under the direct visual supervision of the contractor's or licensee's employees are exempt from the fingerprinting requirements of this section.

L. The department of economic security shall notify the department of public safety if the department of economic security receives credible

evidence that a person who possesses a valid fingerprint clearance card pursuant to subsection A of this section either:

1. Is arrested for or charged with an offense listed in section 41-1758.03, subsection B.

2. Falsified information on the form required by subsection F of this section.

M. SUBSECTION I DOES NOT APPLY TO PERSONS WHO SUBMIT FINGERPRINTS PURSUANT TO SECTION 8-802.

Sec. 6. Applicability

Notwithstanding section 8-802, Arizona Revised Statutes, as amended by this act, the department of economic security may employ a person who does not have a valid fingerprint clearance card as a child protective services worker if:

1. The person is employed by the department of economic security as a child protective services worker on the effective date of this act, the person applies for a fingerprint clearance card within sixty days after the effective date of this act and the person's application has not been denied.

2. The person begins employment as a child protective services worker after the effective date of this act and the person applies for a fingerprint clearance card on or before the seventh day following the date the person was hired and the person's application has not been denied.

APPROVED BY THE GOVERNOR APRIL 8, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 2004.