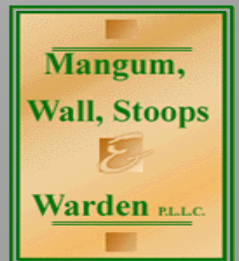




# Fingerprinting

## Ensuring Students' Safety Through the Law and Science

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# Just What *Is* a Fingerprint, Anyway?

A fingerprint is:

- an impression of the “friction ridges” on your fingertips,
- unique to each person--even identical twins,
- unchanged throughout a person’s life, and
- classifiable and, therefore, identifiable.

# Is Fingerprinting Really Reliable?

**Yes!**

- Fingerprinting is a science, known as dactyloscopy.
- Even if you cut your fingertips, the skin will grow back in the same pattern.
- If you *permanently* scar your fingertips, the scarring is still be identifiable.

# **A.R.S. § 15-512**

## **Non-Certificated Personnel**

### **Fingerprinting**

A.R.S. § 15-512 applies to:

- Non-certificated personnel
- Personnel who are not paid who are
  - required or allowed to provide direct services to students without the supervision of a certificated employee, and
  - initially hired after January 1, 1990.

# **A.R.S. § 15-512(A)**

## **Definition of Supervision**

“Under the direction of and, except for brief periods of time during a school day or a school activity, within sight of a certificated employee when providing direct services to pupils.”

# A.R.S. § 15-512

## Non-Certificated Personnel

### Fingerprinting

A.R.S. § 15-512 does NOT apply to:

- a volunteer who is the parent or guardian of a current student,
- an employee fingerprinted for licensure that is required for employment with the district,
- a former district employee who returned within one year,
- a person, such as a tutor, who is instructing a student not on school property and with the written consent of the parent or guardian, and
- current students employed by the district.

# **A.R.S. § 15-512**

## **Non-Certificated Personnel Fingerprinting**

- New employees **MUST** submit fingerprints to the district within 20 days after the date they begin work.
- All employees **MUST** certify that they are not awaiting trial for, have not pled guilty to, have not admitted in court to committing, and have not been convicted of a variety of criminal offenses.
- A district may terminate an employee if a fingerprint check reveals information the employee did not disclose on the certification form.

# **A.R.S. § 15-512**

## **Non-Certificated Personnel Fingerprinting**

- The district must initially pay for employee fingerprints, but can require *paid* employees to reimburse the actual costs.
- The district may ask any applicant or employee (paid or unpaid) not required to be fingerprinted, to undergo fingerprinting at district cost.



# **A.R.S. § 15-512(D)**

## **Non-Certificated Personnel Fingerprinting**

**Districts can refuse to hire or can terminate an employee who has been convicted of, or who has admitted committing, the following crimes:**

- Sexual abuse of a minor
- Incest
- First- or second-degree murder
- Kidnapping
- Arson
- Sexual assault
- Sexual exploitation of a minor
- Felony offenses involving contributing to the delinquency of a minor
- Commercial sexual exploitation of a minor
- Misdemeanor offenses involving possession or use of marijuana or dangerous drugs
- Felony offenses involving possession or use of marijuana or dangerous or narcotic drugs
- Felony offenses involving sale or distribution of marijuana or dangerous or narcotic drugs
- Burglary in the first, second, or third degree
- Robbery
- Aggravated or armed robbery
- Dangerous crimes against children (A.R.S. § 13-604.01)
- Child abuse
- Sexual conduct with a minor
- Molestation of a child
- Manslaughter
- Aggravated assault
- Assault
- Exploitation of minors involving drug offenses

# **A.R.S. § 15-512(E)**

## **Non-Certificated Personnel**

### **Fingerprinting**

If a district is considering the termination of an employee based on a conviction on or admission to one of the listed offenses, the district governing board must hold a hearing.

# **A.R.S. § 15-512(E)**

## **Non-Certificated Personnel**

### **Fingerprinting**

At the hearing, the board reviews:

- the nature of the crime and the potential for future crimes against children;
- whether the offense was committed as a minor and later adjudicated in juvenile or adult court;
- whether the offense was expunged, or the person was pardoned or had their sentence commuted;
- the person's employment record, *if* the crime was committed more than 10 years previously; and
- the reliability of the evidence of the person's admission of a crime.

The board *does not* review the underlying offense itself.

# **A.R.S. § 15-512**

## **Non-Certificated Personnel Fingerprinting**

“Personnel who are not paid employees” must be fingerprinted and certify that they have not been convicted of and are not awaiting trial on any of the listed crimes.

**Districts *do not* need to hold a hearing to dismiss volunteers.**

# **A.R.S. § 15-512(K)**

## **Non-Certificated Personnel Fingerprinting**

A district can hire non-certificated personnel before receiving fingerprint check results, *if the district:*

- documents the need for hiring and placement;
- ensures that DPS completes a statewide criminal history check every 120 days;
- obtains references from current, and if necessary, the two most recent employers over the past five years;
- provides general supervision; and
- makes regular reports to the Superintendent of Public Instruction pursuant to A.R.S. § 15-512(K)(2)(d).

# **A.R.S. § 15-512(K)**

## **Non-Certificated Personnel**

### **Fingerprinting**

Ideally, it is not recommended to have an individual start work before the results of the fingerprint check are received.

- The risk of harm to a child is just too great.
- The potential for liability for the district is too high.
- Once the person is hired, if the fingerprint check is less than 100% positive, the district may have to go through a specific process in order to terminate them.

# **A.R.S. § 15-512(K)**

## **Non-Certificated Personnel Fingerprinting**

### **Remember:**

- Use the process infrequently and very carefully.
- Don't neglect your gut instincts.

# **A.R.S. § 15-534**

## **Fingerprinting of Certificated Employees**

- A fingerprint clearance card, or proof of application submission, is required to apply for an ADE certificate or renewal.
- If an applicant has been denied a fingerprint clearance card, they need to provide proof of qualification for a good cause exception hearing.
- The certificated person has the duty to maintain a valid fingerprint clearance card.



# **A.R.S. § 15-534**

## **Fingerprinting of Certificated Employees**

- Schools must verify the fingerprint status of applicants for certificated positions prior to the person's employment.
- ADE may issue a conditional certification, at the request of the district, prior to receipt of a fingerprint clearance card.
- ADE may revoke a conditional certificate if: (1) the application is incomplete or false; (2) the applicant is denied a clearance card; or (3) the applicant uses the certificate to work in another district.

# **A.R.S. § 15-534**

## **Fingerprinting of Certificated Employees**

For a conditional certificate, the district must:

- ensure that hiring the person is necessary;
- ensure that DPS conducts a statewide criminal records check every 120 days;
- complete a criminal records search in all local jurisdictions outside of the state of Arizona in which the applicant has lived in the previous five years;
- obtain references from the current employer and the two most recent employers (or most recent only, if the applicant worked there 5 years); and
- provide general supervision.

# **A.R.S. § 15-534**

## **Fingerprinting of Certificated Employees**

“ADE must notify DPS if ADE receives credible evidence that a person who possesses a valid fingerprint clearance card either: (1) is arrested for or charged with an offense listed in § 41-1758.03(b), or (2) falsified information on the form required [to apply for a certificate].”

# **New Legislation: House Bill 2042**

## **Signed by Governor on May 20, 2008**

### **Revises A.R.S. § 15-550**

#### **Penalty for unprofessional conduct**

- The applicant or employee must report an arrest or charge for any nonappealable offense.
- If not reported, the applicant will be excluded from employment, and the employee will be immediately dismissed.

# **New Legislation: House Bill 2042**

## **Signed by Governor on May 20, 2008**

### **Revises A.R.S. § 15-550**

#### **Penalty for unprofessional conduct**

An applicant or employee convicted of a nonappealable offense must immediately:

- surrender any certificates issued by ADE,
- notify the district,
  - notify DPS, and
  - surrender the fingerprint clearance card.

# **New Legislation: House Bill 2042**

## **Signed by Governor on May 20, 2008**

**Revises A.R.S. § 41-1750**  
**DPS duties**

- DPS will notify the district if an employee or volunteer has been arrested or convicted of a nonappealable offense and their fingerprint clearance card has been suspended or revoked.
- ADE must provide current school e-mail addresses to DPS.

# **New Legislation: House Bill 2042**

## **Signed by Governor on May 20, 2008**

### **Revises A.R.S. § 15-203**

### **Powers and duties of the**

### **State Board of Education**

- Prohibit a person who violates the notification requirement from obtaining certification until no longer charged or acquitted.
- Prohibit a person who violates the notification requirement, certification surrender requirement, or fingerprint clearance card surrender requirement from obtaining certification for “at least 10 years” after the date of violation.

# **New Legislation: House Bill 2694**

## **Signed by Governor on May 20, 2008**

**Revises A.R.S. § 15-512**

### **Fingerprinting of school personnel**

- Fingerprints will be used to conduct state and national criminal records checks.
- DPS may exchange fingerprint data with the FBI.
- Under certain circumstances, third-party contractors and their employees must receive fingerprint clearance.



# **New Legislation: House Bill 2694**

## **Signed by Governor on May 20, 2008**

### **Revises A.R.S. § 15-512 (H)**

### **Fingerprinting of school personnel**

- The legislation requires the submission of a full set of fingerprints for any (sub)contractor or vendor, or their employee, who provides services on a “regular basis” on school property.
- “Regular basis” is defined as providing services at least five times each month.
- The district may charge the (sub)contractor or vendor for fingerprint checks.

# **New Legislation: House Bill 2694**

## **Signed by Governor on May 20, 2008**

### **Revises A.R.S. § 15-512(H)**

### **Fingerprinting of school personnel**

- The district governing board must adopt policies. As part of the policy, they may choose to *exempt persons* who are *not likely* to have direct, unsupervised contact with students from the fingerprinting requirements.
- The district, governing board, and council members and employees are exempt from civil liability for the consequences of adoption and implementation of policies and procedures, unless they are guilty of gross negligence or intentional misconduct.

# **New Legislation: House Bill 2566**

## **Signed by Governor on April 28, 2008**

**Revises A.R.S. § 15-534**  
**Certificated employees**

Student teachers or tutors contracted by districts must have a fingerprint clearance card.

# **Good Cause Exception**

**A.R.S. § 15-534**

**Fingerprinting; review and disciplinary action;  
violation; classification**

- A first-time applicant must meet requirements for a “tier one” card, unless the applicant receives a “good cause exception”.
- “Good cause exception” means approval for a clearance card despite a criminal history.

# **Good Cause Exception**

**A.R.S. § 15-534**

**Fingerprinting; review and disciplinary action;  
violation; classification**

- It takes two to three weeks from the request submission for an expedited review.
- After the review, the board either grants the card or schedules a hearing.
- Timelines vary; a card may be issued--or not.

# **What is IAFIS?**

## **Integrated Automated Fingerprint Identification System**

- FBI-maintained national fingerprint and criminal history system.
- Largest biometric database in the world—with information on more than 55 million individuals.
- Voluntarily provided by state, local, and federal law enforcement agencies.
- Automated fingerprint search capabilities with 24-hour response time.

# **What is AZAFIS?**

## **Arizona Automated Fingerprint Identification System**

- This is a DPS-maintained, statewide fingerprint and criminal history system.
- After the fingerprint check is complete, DPS issues fingerprint clearance cards, which are valid for six years.

# Lessons from the Trenches

- Never accept a photocopy; always review the laminated fingerprint clearance card.
- Call DPS at (602) 223-2279 or use ADE's online Investigative Unit site to verify fingerprint card validity.
- Develop a system for issuing renewal reminders to current employees.



# **Why is Fingerprinting So Important?**

Backgrounding can have its limitations, including:

- human error,
- lack of good faith recommendations,
- inexperienced personnel performing background checks, and
- failure to identify criminal records.

# **Why is Fingerprinting so Important?**

***Use all the resources you have available  
as educators to ensure the safety of our  
students.***

# The Future of Fingerprinting?

- Some schools are now using fingerprint scanning in their lunch lines.
- Issues relating to student privacy have been raised.
- SB 1216, signed on May 12, 2008, prohibits schools from collecting “biometric information about students unless parents receive specific notice and give written permission.”

# The Future of Fingerprinting?

- Held in conference committee at the end of the last legislative session, HB 2727 prohibits a school district from hiring, and requires it to terminate, a classified employee who has been convicted of an offense listed in A.R.S. § 15-512, ***eliminating school discretion***.
- ASBA opposed the bill.
- The bill has been amended to be prospective only, not retrospective, and to apply only to those nonappealable offenses in § 41-1758.03.



If you have questions please contact:

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