REFERENCE TITLE: parenting time; court-ordered supervisors

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

SB 1176

Introduced by
Senator Gray

AN ACT

AMENDING SECTIONS 13-3620, 25-403.03 AND 41-619.51, ARIZONA REVISED STATUTES; AMENDING SECTION 41-1758, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2011, CHAPTER 177, SECTION 2 AND CHAPTER 203, SECTION 3; REPEALING SECTION 41-1758, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2011, CHAPTER 190, SECTION 32; AMENDING SECTION 41-1758.07, ARIZONA REVISED STATUTES; BLENDING MULTIPLE ENACTMENTS; RELATING TO CHILD CUSTODY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 13-3620, Arizona Revised Statutes, is amended to read:

13-3620. Duty to report abuse, physical injury, neglect and denial or deprivation of medical or surgical care or nourishment of minors; medical records; exception; violation; classification; definitions

A. Any person who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect that appears to have been inflicted on the minor by other than accidental means or that is not explained by the available medical history as being accidental in nature or who reasonably believes there has been a denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death of an infant who is protected under section 36-2281 shall immediately report or cause reports to be made of this information to a peace officer or to child protective services in the department of economic security, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only. A member of the clergy, christian science practitioner or priest who has received a confidential communication or a confession in that person's role as a member of the clergy, A christian science practitioner or a priest in the course of the discipline enjoined by the church to which the member of the clergy, christian science practitioner or priest belongs may withhold reporting of the communication or confession if the member of the clergy, christian science practitioner or priest determines that it is reasonable and necessary within the concepts of the religion. This exemption applies only to the communication or confession and not to personal observations the member of the clergy, christian science practitioner or priest may otherwise make of the minor. For the purposes of this subsection, "person" means:

1. Any physician, physician's assistant, optometrist, dentist, osteopath, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor or social worker who develops the reasonable belief in the course of treating a patient.

2. Any peace officer, member of the clergy, priest or christian science practitioner.

3. The parent, stepparent or guardian of the minor.

4. School personnel or domestic violence victim ~~advocate~~ ADVOCATES who develop the reasonable belief in the course of their employment.

5. A PERSON WHO IS AUTHORIZED BY THE COURT TO SUPERVISE PARENTING TIME PURSUANT TO TITLE 25, CHAPTER 4, ARTICLE 1.

~~5.~~ 6. Any other person who has responsibility for the care or treatment of the minor.

B. A report is not required under this section for conduct prescribed by sections 13-1404 and 13-1405 if the conduct involves only minors who are fourteen, fifteen, sixteen or seventeen years of age and there is nothing to indicate that the conduct is other than consensual.

C. If a physician, psychologist or behavioral health professional receives a statement from a person other than a parent, stepparent, guardian or custodian of the minor during the course of providing sex offender treatment that is not court ordered or that does not occur while the offender is incarcerated in the state department of corrections or the department of juvenile corrections, the physician, psychologist or behavioral health professional may withhold the reporting of that statement if the physician, psychologist or behavioral health professional determines it is reasonable and necessary to accomplish the purposes of the treatment.

D. Reports shall be made immediately by telephone or in person and shall be followed by a written report within seventy-two hours. The reports shall contain:

1. The names and addresses of the minor and the minor's parents or the person or persons having custody of the minor, if known.

2. The minor's age and the nature and extent of the minor's abuse, child abuse, physical injury or neglect, including any evidence of previous abuse, child abuse, physical injury or neglect.

3. Any other information that the person believes might be helpful in establishing the cause of the abuse, child abuse, physical injury or neglect.

E. A health care professional who is regulated pursuant to title 32 and who, after a routine newborn physical assessment of a newborn infant's health status or following notification of positive toxicology screens of a newborn infant, reasonably believes that the newborn infant may be affected by the presence of alcohol or a drug listed in section 13-3401 shall immediately report this information, or cause a report to be made, to child protective services in the department of economic security. For the purposes of this subsection, "newborn infant" means a newborn infant who is under thirty days of age.

F. Any person other than one required to report or cause reports to be made under subsection A of this section who reasonably believes that a minor is or has been a victim of abuse, child abuse, physical injury, a reportable offense or neglect may report the information to a peace officer or to child protective services in the department of economic security, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only.

G. A person who has custody or control of medical records of a minor for whom a report is required or authorized under this section shall make the records, or a copy of the records, available to a peace officer or child protective services worker investigating the minor's neglect, child abuse, physical injury or abuse on written request for the records signed by the peace officer or child protective services worker. Records disclosed

pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report required or authorized under this section.

H. When telephone or in-person reports are received by a peace officer, the officer shall immediately notify child protective services in the department of economic security and make the information available to ~~them~~ CHILD PROTECTIVE SERVICES. Notwithstanding any other statute, when child protective services receives these reports by telephone or in person, it shall immediately notify a peace officer in the appropriate jurisdiction.

I. Any person who is required to receive reports pursuant to subsection A of this section may take or cause to be taken photographs of the minor and the vicinity involved. Medical examinations of the involved minor may be performed.

J. A person who furnishes a report, information or records required or authorized under this section, or a person who participates in a judicial or administrative proceeding or investigation resulting from a report, information or records required or authorized under this section, is immune from any civil or criminal liability by reason of that action unless the person acted with malice or unless the person has been charged with or is suspected of abusing or neglecting the child or children in question.

K. Except for the attorney client privilege or the privilege under subsection L of this section, no privilege applies to any:

1. Civil or criminal litigation or administrative proceeding in which a minor's neglect, dependency, abuse, child abuse, physical injury or abandonment is an issue.

2. Judicial or administrative proceeding resulting from a report, information or records submitted pursuant to this section.

3. Investigation of a minor's child abuse, physical injury, neglect or abuse conducted by a peace officer or child protective services in the department of economic security.

L. In any civil or criminal litigation in which a child's neglect, dependency, physical injury, abuse, child abuse or abandonment is an issue, a member of the clergy, a christian science practitioner or a priest shall not, without his consent, be examined as a witness concerning any confession made to him in his role as a member of the clergy, a christian science practitioner or a priest in the course of the discipline enjoined by the church to which he belongs. ~~Nothing in~~ This subsection ~~discharges~~ DOES NOT DISCHARGE a member of the clergy, a christian science practitioner or a priest from the duty to report pursuant to subsection A of this section.

M. If psychiatric records are requested pursuant to subsection G of this section, the custodian of the records shall notify the attending psychiatrist, who may excise from the records, before they are made available:

1. Personal information about individuals other than the patient.

2. Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending psychiatrist certifies in writing that release of the information would be detrimental to the patient's health or treatment.

N. If any portion of a psychiatric record is excised pursuant to subsection M of this section, a court, ~~upon~~ ON application of a peace officer or child protective services worker, may order that the entire record or any portion of the record that contains information relevant to the reported abuse, child abuse, physical injury or neglect be made available to the peace officer or child protective services worker investigating the abuse, child abuse, physical injury or neglect.

O. A person who violates this section is guilty of a class 1 misdemeanor, except if the failure to report involves a reportable offense, the person is guilty of a class 6 felony.

P. For the purposes of this section:

1. "Abuse" has the same meaning prescribed in section 8-201.

2. "Child abuse" means child abuse pursuant to section 13-3623.

3. "Neglect" has the same meaning prescribed in section 8-201.

4. "Reportable offense" means any of the following:

(a) Any offense listed in chapters 14 and 35.1 of this title or section 13-3506.01.

(b) Surreptitious photographing, videotaping, filming or digitally recording ~~of~~ OR VIEWING a minor pursuant to section 13-3019.

(c) Child prostitution pursuant to section 13-3212.

(d) Incest pursuant to section 13-3608.

Sec. 2. Section 25-403.03, Arizona Revised Statutes, is amended to read:

25-403.03. Domestic violence and child abuse

A. Notwithstanding subsection D of this section, joint custody shall not be awarded if the court makes a finding of the existence of significant domestic violence pursuant to section 13-3601 or if the court finds by a preponderance of the evidence that there has been a significant history of domestic violence.

B. The court shall consider evidence of domestic violence as being contrary to the best interests of the child. The court shall consider the safety and well-being of the child and of the victim of the act of domestic violence to be of primary importance. The court shall consider a perpetrator's history of causing or threatening to cause physical harm to another person.

C. To determine if a person has committed an act of domestic violence the court, subject to the rules of evidence, shall consider all relevant factors including the following:

1. Findings from another court of competent jurisdiction.

2. Police reports.

3. Medical reports.

4. Child protective services records.
5. Domestic violence shelter records.
6. School records.
7. Witness testimony.

D. If the court determines that a parent who is seeking custody has committed an act of domestic violence against the other parent, there is a rebuttable presumption that an award of custody to the parent who committed the act of domestic violence is contrary to the child's best interests. This presumption does not apply if both parents have committed an act of domestic violence. For the purposes of this subsection, a person commits an act of domestic violence if that person does any of the following:

1. Intentionally, knowingly or recklessly causes or attempts to cause sexual assault or serious physical injury.
2. Places a person in reasonable apprehension of imminent serious physical injury to any person.
3. Engages in a pattern of behavior for which a court may issue an ex parte order to protect the other parent who is seeking child custody or to protect the child and the child's siblings.

E. To determine if the parent has rebutted the presumption the court shall consider all of the following:

1. Whether the parent has demonstrated that being awarded sole custody or joint physical or legal custody is in the child's best interests.
2. Whether the parent has successfully completed a batterer's prevention program.
3. Whether the parent has successfully completed a program of alcohol or drug abuse counseling, if the court determines that counseling is appropriate.
4. Whether the parent has successfully completed a parenting class, if the court determines that a parenting class is appropriate.
5. If the parent is on probation, parole or community supervision, whether the parent is restrained by a protective order that was granted after a hearing.
6. Whether the parent has committed any further acts of domestic violence.

F. If the court finds that a parent has committed an act of domestic violence, that parent has the burden of proving to the court's satisfaction that parenting time will not endanger the child or significantly impair the child's emotional development. If the parent meets this burden to the court's satisfaction, the court shall place conditions on parenting time that best protect the child and the other parent from further harm. The court may:

1. Order that an exchange of the child must occur in a protected setting as specified by the court.

2. Order that an agency specified by the court must supervise parenting time. If the court allows a family or household member to supervise parenting time, the court shall establish conditions that this person must follow during parenting time. THE COURT SHALL REQUIRE PERSONS WHO SUPERVISE PARENTING TIME FOR COMPENSATION TO HAVE A VALID FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO SECTION 41-1758.07.

3. Order the parent who committed the act of domestic violence to attend and complete, to the court's satisfaction, a program of intervention for perpetrators of domestic violence and any other counseling the court orders.

4. Order the parent who committed the act of domestic violence to abstain from possessing or consuming alcohol or controlled substances during parenting time and for twenty-four hours before parenting time.

5. Order the parent who committed the act of domestic violence to pay a fee to the court to defray the costs of supervised parenting time.

6. Prohibit overnight parenting time.

7. Require a bond from the parent who committed the act of domestic violence for the child's safe return.

8. Order that the address of the child and the other parent remain confidential.

9. Impose any other condition that the court determines is necessary to protect the child, the other parent and any other family or household member.

G. The court shall not order joint counseling between a victim and the perpetrator of domestic violence. The court may refer a victim to appropriate counseling and shall provide a victim with written information about available community resources related to domestic violence.

H. The court may request or order the services of the division of children and family services in the department of economic security if the court believes that a child may be the victim of child abuse or neglect as defined in section 8-201.

I. In determining whether the absence or relocation of a parent shall be weighed against that parent in determining custody or parenting time, the court may consider whether the absence or relocation was caused by an act of domestic violence by the other parent.

Sec. 3. 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, the department of juvenile corrections, the department of emergency and military affairs, the department of transportation, the state real estate department or the board of examiners of nursing care institution administrators and assisted living facility managers.

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. "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 this article and any of the following:

(a) Section 8-105.

(b) Section 8-322.

(c) Section 8-509.

(d) Section 8-802.

(e) Section 15-183.

(f) Section 15-534.

(g) Section 15-782.02.

(h) Section 15-1330.

(i) Section 15-1881.

(j) Section 17-215.

(k) SECTION 25-403.03.

~~(k)~~ (l) Section 26-103.

~~(l)~~ (m) Section 32-2108.01.

~~(m)~~ (n) Section 32-2123.

~~(n)~~ (o) Section 32-2371.

(p) SECTION 36-207.

~~(o)~~ (q) Section 36-411.

~~(p)~~ (r) Section 36-425.03.

~~(q)~~ (s) Section 36-446.04.

~~(r)~~ (t) Section 36-594.01.

~~(s)~~ (u) Section 36-594.02.

~~(t)~~ (v) Section 36-882.

~~(u)~~ (w) Section 36-883.02.

~~(v)~~ (x) Section 36-897.01.

~~(w)~~ (y) Section 36-897.03.

~~(x)~~ (z) Section 36-3008.

~~(y)~~ (aa) Section 41-619.53.

~~(z)~~ (bb) Section 41-1964.

~~(aa)~~ (cc) Section 41-1967.01.

~~(bb)~~ (dd) Section 41-1968.

~~(cc)~~ (ee) Section 41-1969.

~~(dd)~~ (ff) Section 41-2814.

~~(ee)~~ (gg) Section 46-141, subsection A.

~~(ff)~~ (hh) Section 46-321.

Sec. 4. Section 41-1758, Arizona Revised Statutes, as amended by Laws 2011, chapter 177, section 2 and chapter 203, section 3, 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, the department of juvenile corrections, the department of emergency and military affairs, THE DEPARTMENT OF TRANSPORTATION, the state real estate department, the board of fingerprinting or the board of examiners of nursing care institution administrators and assisted living facility managers.

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

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

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

(a) Section 8-105.
(b) Section 8-322.
(c) Section 8-509.
(d) Section 8-802.
(e) Section 15-183.
(f) Section 15-503.
(g) Section 15-512.
(h) Section 15-534.
(i) Section 15-782.02.
(j) Section 15-1330.
(k) Section 15-1881.
(l) SECTION 17-215.
(m) SECTION 25-403.03.
~~(l)~~ (n) Section 26-103.
~~(m)~~ (o) Section 32-2108.01.
~~(n)~~ (p) Section 32-2123.
(q) SECTION 32-2371.
~~(o)~~ (r) Section 36-207.
~~(p)~~ (s) Section 36-411.
~~(q)~~ (t) Section 36-425.03.
~~(r)~~ (u) Section 36-446.04.
~~(s)~~ (v) Section 36-594.01.
~~(t)~~ (w) Section 36-594.02.
~~(u)~~ (x) Section 36-882.
~~(v)~~ (y) Section 36-883.02.
~~(w)~~ (z) Section 36-897.01.
~~(x)~~ (aa) Section 36-897.03.
~~(y)~~ (bb) Section 36-3008.
~~(z)~~ (cc) Section 41-619.52.

~~(aa)~~ (dd) Section 41-619.53.
~~(bb)~~ (ee) Section 41-1964.
~~(cc)~~ (ff) Section 41-1967.01.
~~(dd)~~ (gg) Section 41-1968.
~~(ee)~~ (hh) Section 41-1969.
~~(ff)~~ (ii) Section 41-2814.
~~(gg)~~ (jj) Section 46-141, subsection A.
~~(hh)~~ (kk) Section 46-321.

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

Sec. 5. Repeal

Section 41-1758, Arizona Revised Statutes, as amended by Laws 2011, chapter 190, section 32, is repealed.

Sec. 6. Section 41-1758.07, Arizona Revised Statutes, is amended to read:

41-1758.07. Level I fingerprint clearance cards; definitions

A. On receiving the state and federal criminal history record of a person who is required to be fingerprinted pursuant to this section, the fingerprinting division in the department of public safety shall compare the record with the list of criminal offenses that preclude the person from receiving a level I fingerprint clearance card. If the person's criminal history record does not contain any of the offenses listed in subsections B and C of this section, the fingerprinting division shall issue the person a level I fingerprint clearance card.

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

1. Sexual abuse of a vulnerable adult.
2. Incest.
3. Homicide, including first or second degree murder, manslaughter and negligent homicide.
4. Sexual assault.
5. Sexual exploitation of a minor.
6. Sexual exploitation of a vulnerable adult.
7. Commercial sexual exploitation of a minor.
8. Commercial sexual exploitation of a vulnerable adult.
9. Child prostitution as prescribed in section 13-3212.
10. Child abuse.
11. Felony child neglect.
12. Abuse of a vulnerable adult.
13. Sexual conduct with a minor.
14. Molestation of a child.

15. Molestation of a vulnerable adult.
16. Dangerous crimes against children as defined in section 13-705.
17. Exploitation of minors involving drug offenses.
18. Taking a child for the purpose of prostitution as prescribed in section 13-3206.
19. Neglect or abuse of a vulnerable adult.
20. Sex trafficking.
21. Sexual abuse.
22. Production, publication, sale, possession and presentation of obscene items as prescribed in section 13-3502.
23. Furnishing harmful items to minors as prescribed in section 13-3506.
24. Furnishing harmful items to minors by internet activity as prescribed in section 13-3506.01.
25. Obscene or indecent telephone communications to minors for commercial purposes as prescribed in section 13-3512.
26. Luring a minor for sexual exploitation.
27. Enticement of persons for purposes of prostitution.
28. Procurement by false pretenses of person for purposes of prostitution.
29. Procuring or placing persons in a house of prostitution.
30. Receiving earnings of a prostitute.
31. Causing one's spouse to become a prostitute.
32. Detention of persons in a house of prostitution for debt.
33. Keeping or residing in a house of prostitution or employment in prostitution.
34. Pandering.
35. Transporting persons for the purpose of prostitution, polygamy and concubinage.
36. Portraying adult as a minor as prescribed in section 13-3555.
37. Admitting minors to public displays of sexual conduct as prescribed in section 13-3558.
38. Any felony offense involving contributing to the delinquency of a minor.
39. Unlawful sale or purchase of children.
40. Child bigamy.
41. Any felony offense involving domestic violence as defined in section 13-3601 except for a felony offense only involving criminal damage in an amount of more than two hundred fifty dollars but less than one thousand dollars if the offense was committed before June 29, 2009.
42. Any felony offense in violation of title 13, chapter 12 if committed within five years before the date of applying for a level I fingerprint clearance card.
43. Felony drug or alcohol related offenses if committed within five years before the date of applying for a level I fingerprint clearance card.

44. Felony indecent exposure.
45. Felony public sexual indecency.
46. Terrorism.
47. Any offense involving a violent crime as defined in section 13-901.03.

C. A person who is awaiting trial on or who has been convicted of committing or attempting, soliciting, facilitating or conspiring to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction is precluded from receiving a level I fingerprint clearance card, except that the person may petition the board of fingerprinting for a good cause exception pursuant to section 41-619.55:

1. Any misdemeanor offense in violation of title 13, chapter 12.
2. Misdemeanor indecent exposure.
3. Misdemeanor public sexual indecency.
4. Aggravated criminal damage.
5. Theft.
6. Theft by extortion.
7. Shoplifting.
8. Forgery.
9. Criminal possession of a forgery device.
10. Obtaining a signature by deception.
11. Criminal impersonation.
12. Theft of a credit card or obtaining a credit card by fraudulent means.
13. Receipt of anything of value obtained by fraudulent use of a credit card.
14. Forgery of a credit card.
15. Fraudulent use of a credit card.
16. Possession of any machinery, plate or other contrivance or incomplete credit card.
17. False statement as to financial condition or identity to obtain a credit card.
18. Fraud by persons authorized to provide goods or services.
19. Credit card transaction record theft.
20. Misconduct involving weapons.
21. Misconduct involving explosives.
22. Depositing explosives.
23. Misconduct involving simulated explosive devices.
24. Concealed weapon violation.
25. Misdemeanor possession and misdemeanor sale of peyote.
26. Felony possession and felony sale of peyote if committed more than five years before the date of applying for a level I fingerprint clearance card.
27. Misdemeanor possession and misdemeanor sale of a vapor-releasing substance containing a toxic substance.

28. Felony possession and felony sale of a vapor-releasing substance containing a toxic substance if committed more than five years before the date of applying for a level I fingerprint clearance card.

29. Misdemeanor sale of precursor chemicals.

30. Felony sale of precursor chemicals if committed more than five years before the date of applying for a level I fingerprint clearance card.

31. Misdemeanor possession, misdemeanor use or misdemeanor sale of marijuana, dangerous drugs or narcotic drugs.

32. Felony possession, felony use or felony sale of marijuana, dangerous drugs or narcotic drugs if committed more than five years before the date of applying for a level I fingerprint clearance card.

33. Misdemeanor manufacture or misdemeanor distribution of an imitation controlled substance.

34. Felony manufacture or felony distribution of an imitation controlled substance if committed more than five years before the date of applying for a level I fingerprint clearance card.

35. Misdemeanor manufacture or misdemeanor distribution of an imitation prescription-only drug.

36. Felony manufacture or felony distribution of an imitation prescription-only drug if committed more than five years before the date of applying for a level I fingerprint clearance card.

37. Misdemeanor manufacture or misdemeanor distribution of an imitation over-the-counter drug.

38. Felony manufacture or felony distribution of an imitation over-the-counter drug if committed more than five years before the date of applying for a level I fingerprint clearance card.

39. Misdemeanor possession or misdemeanor possession with intent to use an imitation controlled substance.

40. Felony possession or felony possession with intent to use an imitation controlled substance if committed more than five years before the date of applying for a level I fingerprint clearance card.

41. Misdemeanor possession or misdemeanor possession with intent to use an imitation prescription-only drug.

42. Felony possession or felony possession with intent to use an imitation prescription-only drug if committed more than five years before the date of applying for a level I fingerprint clearance card.

43. Misdemeanor possession or misdemeanor possession with intent to use an imitation over-the-counter drug.

44. Felony possession or felony possession with intent to use an imitation over-the-counter drug if committed more than five years before the date of applying for a level I fingerprint clearance card.

45. Misdemeanor manufacture of certain substances and drugs by certain means.

46. Felony manufacture of certain substances and drugs by certain means if committed more than five years before the date of applying for a level I fingerprint clearance card.

47. Adding poison or other harmful substance to food, drink or medicine.

48. A criminal offense involving criminal trespass and burglary under title 13, chapter 15.

49. A criminal offense under title 13, chapter 23, except terrorism.

50. Misdemeanor offenses involving child neglect.

51. Misdemeanor offenses involving contributing to the delinquency of a minor.

52. Misdemeanor offenses involving domestic violence as defined in section 13-3601.

53. Felony offenses involving domestic violence if the offense only involved criminal damage in an amount of more than two hundred fifty dollars but less than one thousand dollars and the offense was committed before June 29, 2009.

54. Arson.

55. Felony offenses involving sale, distribution or transportation of, offer to sell, transport or distribute or conspiracy to sell, transport or distribute marijuana, dangerous drugs or narcotic drugs if committed more than five years before the date of applying for a level I fingerprint clearance card.

56. Criminal damage.

57. Misappropriation of charter school monies as prescribed in section 13-1818.

58. Taking identity of another person or entity.

59. Aggravated taking identity of another person or entity.

60. Trafficking in the identity of another person or entity.

61. Cruelty to animals.

62. Prostitution, as prescribed in section 13-3214.

63. Sale or distribution of material harmful to minors through vending machines as prescribed in section 13-3513.

64. Welfare fraud.

65. Any felony offense in violation of title 13, chapter 12 if committed more than five years before the date of applying for a level I fingerprint clearance card.

66. Kidnapping.

67. Robbery, aggravated robbery or armed robbery.

D. A person who is awaiting trial on or who has been convicted of committing or attempting to commit a misdemeanor violation of section 28-1381, 28-1382 or 28-1383 in this state or the same or a similar offense in another state or jurisdiction within five years from the date of applying for a level I fingerprint clearance card is precluded from driving any vehicle to transport employees or clients of the employing agency as part of the

person's employment. The division shall place a notation on the level I fingerprint clearance card that indicates this driving restriction. This subsection does not preclude a person from driving a vehicle alone as part of the person's employment.

E. Notwithstanding subsection C of this section, on receiving written notice from the board of fingerprinting that a good cause exception was granted pursuant to section 41-619.55, the fingerprinting division shall issue a level I fingerprint clearance card to the applicant.

F. If the fingerprinting division denies a person's application for a level I fingerprint clearance card pursuant to subsection C of this section and a good cause exception is requested pursuant to section 41-619.55, the fingerprinting division shall release, on request by the board of fingerprinting, the person's criminal history record to the board of fingerprinting.

G. A person shall be granted a level I fingerprint clearance card pursuant to this section if either of the following applies:

1. An agency granted a good cause exception before August 16, 1999 and no new precluding offense is identified. The fingerprint clearance card shall specify only the program that granted the good cause exception. On the request of the applicant, the agency that granted the prior good cause exception shall notify the fingerprinting division in writing of the date on which the prior good cause exception was granted, the date of the conviction and the name of the offense for which the good cause exception was granted.

2. The board granted a good cause exception and no new precluding offense is identified.

H. The licensee or contract provider shall assume the costs of fingerprint checks conducted pursuant to this section and may charge these costs to persons required to be fingerprinted.

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

J. The fingerprinting division may conduct periodic state criminal history records checks for the purpose of updating the clearance status of current level I fingerprint clearance cardholders pursuant to this section and may notify the board of fingerprinting and the agency of the results of the records check.

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

L. The fingerprinting division shall not issue a level I fingerprint clearance card to an applicant if the division cannot determine, within thirty business days after receipt of the person's state and federal criminal history record information, whether the person is awaiting trial on or has

been convicted of committing any of the offenses listed in subsection B or C of this section. If the division is unable to make the determination required by this section and does not issue a level I fingerprint clearance card to a person, the person may request a good cause exception pursuant to section 41-619.55.

M. If after conducting a state and federal criminal history records check the fingerprinting division determines that it is not authorized to issue a level I fingerprint clearance card to an applicant, the division shall notify the agency that the fingerprinting division is not authorized to issue a level I fingerprint clearance card. This notice shall include the criminal history information on which the denial was based. This criminal history information is subject to dissemination restrictions pursuant to section 41-1750 and Public Law 92-544.

N. The fingerprinting division is not liable for damages resulting from:

1. The issuance of a level I fingerprint clearance card to an applicant who is later found to have been ineligible to receive a level I fingerprint clearance card at the time the card was issued.

2. The denial of a level I fingerprint clearance card to an applicant who is later found to have been eligible to receive a level I fingerprint clearance card at the time issuance of the card was denied.

O. Notwithstanding any law to the contrary, an individual may apply for and receive a level I fingerprint clearance card pursuant to this section to satisfy a requirement that the person have a valid fingerprint clearance card issued pursuant to section 41-1758.03.

P. Notwithstanding any law to the contrary, except as prescribed pursuant to subsection Q of this section, an individual who receives a level I fingerprint clearance card pursuant to this section also satisfies a requirement that the individual have a valid fingerprint clearance card issued pursuant to section 41-1758.03.

Q. Unless a cardholder commits an offense listed in subsection B or C of this section after June 29, 2009, a fingerprint clearance card issued pursuant to section 41-1758.03 before June 29, 2009 and its renewals are valid for all requirements for a level I fingerprint clearance card except those relating to the requirements of section 8-105 or 8-509. A fingerprint clearance card issued before June 29, 2009 to meet the requirements of section 8-105 or 8-509 and its renewals are valid after June 29, 2009 to meet all requirements for a level I fingerprint clearance card, including the requirements of section 8-105 or 8-509, if the cardholder has been certified by the court to adopt or has been issued a foster home license before June 29, 2009.

R. The issuance of a level I fingerprint clearance card does not entitle a person to employment.

S. For the purposes of this section:

1. "Person" means a person who is fingerprinted pursuant to:

(a) Section 8-105, 8-509, 8-802, 25-403.03, 36-207, 36-594.01, 36-594.02, 36-882, 36-883.02, 36-897.01, 36-897.03, 41-619.52, 41-619.53, 41-1964, 41-1967.01, 41-1968, 41-1969 or 46-141.

(b) Subsection O of this section.

2. "Renewal" means the issuance of a fingerprint clearance card to an existing fingerprint clearance cardholder who applies before the person's existing fingerprint clearance card expires.