

NOTICE OF PROPOSED EXPEDITED RULEMAKING
TITLE 13. PUBLIC SAFETY
CHAPTER 12. PRIVATE INVESTIGATOR AND SECURITY GUARD HEARING
BOARD

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R13-12-103 | Amend |
| R13-12-104 | Amend |
| R13-12-105 | Amend |
| R13-12-106 | Amend |
- 2. Citations to the agency’s statutory authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. § 17-231(A)(1)
Implementing statute: A.R.S. § 32-2405(A)(4)
- 3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
Notice of Rulemaking Docket Opening pending delivery of letters pursuant to A.R.S. § 41-1027(B).
- 4. The agency’s contact person who can answer questions about the rulemaking:**
Name: Major John Philpot, Logistics Bureau Manager
Address: Arizona Department of Public Safety
POB 6638, MD1220
Phoenix, AZ 85005-6638
Telephone:(602) 223-2500
E-mail: jphilpot@azdps.gov
- 5. An agency’s justification and reason why the rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**
The Department is amending the rules to:
- Ameliorate a regulatory burden on the public while achieving the same regulatory

objective.

- Eliminating sections of rules that are outdated and no longer necessary for the operation of state government.
- Reduces or consolidates steps, procedures or processes in the rules.
- Implementing a course of action proposed in a five-year review report approved by the Governor's Regulatory Review Council pursuant to A.R.S. § 41-1056 on October 5, 2021.

The Board does not enforce the timeframe and form requirements in Rule 103 in the interest of facilitating the application process and imposing the least burden on the public when possible. The Board includes information on the criteria of good-cause exception in the letter of denial and instructs individuals of the opportunity to request a good-cause exception hearing. An applicant need only inform the Board that a good-cause exception hearing is wanted.

The Board does not enforce the timeframe in Rule 104 in the interest of facilitating the hearing process. The Board allows an applicant to bring written materials to the hearing without having submitted them before the hearing in most cases. The Board recognizes that A.R.S. §§ 32-2412(C) and 32-2609(C) require the applicant to submit to the Board any evidence the applicant will be presenting at the hearing at least five days before the hearing; however, the Board feels that timeframe can hamper the procedure and does not want the hearing to be adversarial. By striking 104(D), the rule will not contradict nor duplicate statutory text eliminating the condition where the Board is not enforcing the rule.

The Board does not enforce the timeframe in Rule 105 in the interest of facilitating the hearing process. The Board allows an applicant to make an oral request that a hearing be rescheduled as late as the day of the scheduled hearing when possible.

The Board does not enforce the cost repayment in Rule 106 in the interest of facilitating the hearing process. The Board does not charge the applicant for the costs resulting from a telephonic appearance.

6. A reference to any study relevant to the rule that the agency reviewed and proposes to

either rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not rely on any study.

7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

The rulemaking does not diminish grants of authority of political subdivisions.

8. The preliminary summary of the economic, small business, and consumer impact:

Under A.R.S. § 41-1027, the expedited rulemaking is exempt from this requirement.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

See Item #8.

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: Pending delivery of letters pursuant to A.R.S. § 41-1027(B).

Time: Pursuant to ARS 41-1027 will be posted to the agency website and Register.

Location:

Close of record:

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used, and if not, the reason why a general permit is not used:

These rules do not require a permit. The Department of Public Safety is the licensing authority. The Board will review cases when a member of the public has requested a good-cause exception hearing and will decide if the person will be issued the license or not.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:

There is no applicable federal law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

The Department did not receive any such analysis.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

There are no incorporated by reference items.

13. The full text of the rules follows:

TITLE 13. PUBLIC SAFETY

CHAPTER 12. PRIVATE INVESTIGATOR AND SECURITY GUARD HEARING BOARD

ARTICLE 1, PRIVATE INVESTIGATOR AND SECURITY GUARD HEARING BOARD

Section

R13-12-103, Application for a Good-cause Exception

R13-12-104, Hearing on Good-cause Exception

R13-12-105, Vacating, Rescheduling, or Continuing a Hearing

R13-12-106, Telephonic Testimony

R13-12-103. Application for a Good-cause Exception

A. To apply for a good-cause exception, an applicant may at any time shall submit inform the Board a good-cause exception hearing is requested. ~~eight copies of the following materials to the Board within 60 days from the date on the Department's notice:~~

1. ~~A good-cause exception application form, which is available from the Department, that includes the following information about the applicant:~~
 - a. ~~Full legal name;~~
 - b. ~~Any other names ever used;~~
 - c. ~~Date of birth;~~
 - d. ~~Mailing address;~~
 - e. ~~Home and daytime telephone numbers;~~
 - f. ~~List of all of applicant's felony arrests not listed on the Department's notice;~~
 - g. ~~Detailed description of all of applicant's felony arrests including:~~
 - i. ~~Circumstances leading to the arrest;~~
 - ii. ~~Who else was involved in the event leading to the arrest;~~
 - iii. ~~Where and when the event occurred;~~
 - iv. ~~Mitigating circumstances, if any;~~
 - v. ~~Disposition of the charge;~~
 - vi. ~~Terms of sentencing, if any; and~~

- ~~vii. Whether the sentencing terms have been completed satisfactorily; and~~
 - ~~h. Applicant's notarized signature certifying that the information provided is true and correct;~~
 - ~~2. Two letters of reference, on a form prescribed by the Board, that attest to the applicant's rehabilitation and meet the following requirements:~~
 - ~~a. Both letters of reference are from individuals who have known the applicant at least one year; and~~
 - ~~b. At least one letter of reference is from the applicant's current or former employer or an individual who has known the applicant at least three years;~~
 - ~~3.1.~~ If the Department's notice indicates that the Department was unable to determine the disposition of a felony charge, a copy of documents from the appropriate court showing the disposition of the felony charge or showing that records regarding the felony charge against the applicant either do not exist or have been purged; and
 - ~~4.2.~~ For every felony conviction, regardless of whether the conviction is listed on the Department's notice, a copy of documents from the appropriate court showing that the applicant met all judicially imposed sentencing terms or that records regarding the applicant either do not exist or have been purged.
- B.** An applicant may in advance or at the time of the hearing submit ~~other~~ documents that the applicant wants the Board to consider in determining whether to grant a good-cause exception.

R13-12-104. Hearing on Good-cause Exception

- A.** The Board shall schedule a hearing regarding a good-cause exception for an applicant to occur within 60 days after receiving the materials described in R13-12-103.
- B.** The Board shall provide the applicant with at least 30 days notice of the date, time, and location of the hearing on the applicant's application for a good-cause exception.
- C.** The applicant may be represented at the hearing.
- ~~**D.** If the applicant plans to present written evidence at the hearing that was not included with the application, the applicant shall submit the written evidence to the Board through the Department at least five days before the hearing.~~
- E.D.** The Board shall conduct the hearing in an informal manner without adherence to the rules of evidence required in a judicial proceeding.

F.E. At the hearing, the applicant shall show to the Board's satisfaction that the applicant:

1. Has never been convicted of an offense listed in A.R.S. § 41-1758.03(B), and
2. Is not awaiting trial on an offense listed in A.R.S. § 41-1758.03(B).

G.F. At the hearing, the applicant has the burden of persuading the Board that the applicant should be granted a good-cause exception.

H.G. In deciding whether to grant a good-cause exception, the Board shall consider:

1. The extent of the applicant's criminal record;
2. The length of time that has elapsed since the most recent offense was committed;
3. The nature of the offense;
4. Evidence supporting any applicable mitigating circumstances;
5. Evidence supporting the degree to which the applicant participated in the offense; and
6. Evidence supporting the extent of the applicant's rehabilitation, including:
 - a. Completion of probation, parole, or community supervision;
 - b. Whether the applicant paid restitution or other compensation for the offense;
 - c. Evidence of positive action to change criminal behavior such as completing a drug-treatment program or counseling; and
 - d. Personal references attesting to the applicant's rehabilitation.

R13-12-105. Vacating, Rescheduling, or Continuing a Hearing

A. Vacating a hearing. If an applicant withdraws the applicant's application for a good-cause exception, the Board shall vacate the hearing regarding the application.

B. Rescheduling a hearing. The Board shall reschedule a hearing if the applicant ~~submits a written request to~~ informs the Board, ~~at least 48 hours before the scheduled hearing that demonstrates~~ The timeframe to request a hearing reschedule may occur before and up to including the day of the originally scheduled hearing and demonstrates:

1. Appearance at the hearing by the applicant or applicant's witness' will cause undue hardship or is impossible using reasonable diligence; and Attending the scheduled hearing is impossible using reasonable diligence or will cause undue hardship; and
2. Rescheduling the hearing will avoid prejudice.

C. Continuing a hearing. The Board shall continue a hearing if the continuance will serve administrative convenience, expedience, or economy and avoid prejudice.

R13-12-106. Telephonic Testimony

The Board shall allow an applicant or a witness for the applicant to provide telephonic testimony at the hearing on the applicant's application for a good-cause exception if:

1. ~~The~~ the applicant submits a written request to the Board at least 48 hours before the scheduled hearing that demonstrates:
 - a. 1. Personal appearance at the hearing by the applicant or applicant's witness will cause undue hardship, and
 - b. 2. Telephonic presence will not cause prejudice, ~~and~~
2. ~~The applicant pays all costs resulting from the telephonic appearance.~~