

A-Engrossed
House Bill 2228

Ordered by the House April 23
Including House Amendments dated April 23

Sponsored by Representatives HOYLE, GILLIAM; Representative NATHANSON (at the request of Oregon Elder Abuse Prevention Work Group) (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires Department of State Police to establish voluntary program through which department retains fingerprint cards or creates facsimiles of fingerprints received from Federal Bureau of Investigation, or created during state criminal records check, for purpose of notifying agencies and districts that subscribe to program of receipt of fingerprints or other identifying information by department for reasons related to administration of criminal justice. **Requires department to provide facsimiles of fingerprints created during state criminal records check to Federal Bureau of Investigation.**

Requires department to destroy fingerprint cards and facsimiles of fingerprints upon receiving information that individual is no longer participating in program and to inform Federal Bureau of Investigation that individual is no longer participating in program.

A BILL FOR AN ACT

1
2 Relating to retention of fingerprint information; creating new provisions; amending ORS 181.533,
3 181.534 and 267.237; and repealing ORS 181.545.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1)(a) The Department of State Police shall establish a voluntary fingerprint**
6 **retention program through which the department:**

7 (A) **Retains fingerprint cards, facsimiles of fingerprints received from the Federal Bureau**
8 **of Investigation or facsimiles of fingerprints created during a state criminal records check**
9 **under ORS 181.533, 181.534, 181.537 or 267.237, for the purpose of providing information as**
10 **described in subsection (4) of this section; and**

11 (B) **Provides facsimiles of fingerprints created during a state criminal records check un-**
12 **der ORS 181.533, 181.534, 181.537 or 267.237 to the Federal Bureau of Investigation.**

13 (b) **The department may not use fingerprint cards or facsimiles of fingerprints retained**
14 **pursuant to paragraph (a) of this subsection for any purpose other than the purpose of pro-**
15 **viding information as described in subsection (4) of this section.**

16 (2) **An authorized agency as defined in ORS 181.533 or 181.534, an agency listed in ORS**
17 **181.537 (2), or a district as defined in ORS 267.237 may subscribe to the fingerprint retention**
18 **program.**

19 (3)(a) **If an authorized agency, agency or district subscribes to the fingerprint retention**
20 **program, the authorized agency, agency or district must inform an individual subject to a**
21 **criminal records check under ORS 181.533, 181.534, 181.537 or 267.237 about the program in**
22 **a form and manner prescribed by the authorized agency, agency or district, provided that the**
23 **authorized agency, agency or district includes as part of that information notice of the fol-**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **lowing:**

2 (A) That the individual is not required to participate in the program;

3 (B) That if the individual chooses to participate in the program, the individual may, at
4 any time, stop participating in the program;

5 (C) That choosing to participate in the program will allow the department to provide in-
6 formation as described in subsection (4) of this section;

7 (D) The potential consequences of information being provided as described in subsection
8 (4) of this section; and

9 (E) The process by which the individual may contest the accuracy of information pro-
10 vided as described in subsection (4) of this section.

11 (b) Notice provided pursuant to paragraph (a) of this subsection must be provided in a
12 clear and easy to understand manner.

13 (4)(a) An individual subject to a criminal records check under ORS 181.533, 181.534,
14 181.537 or 267.237 may, but is not required to, participate in the fingerprint retention pro-
15 gram.

16 (b) If an individual participates in the program, then the department, upon receiving
17 forms containing the person's fingerprints and other identifying information under ORS
18 181.511, or as part of any other proceeding related to the arrest of the individual, shall pro-
19 vide that information to the authorized agency, agency or district for which a criminal re-
20 cords check under ORS 181.533, 181.534, 181.537 or 267.237 for the individual was performed.

21 (5) At any time, an individual participating in the fingerprint retention program may in-
22 form the department, in a form and manner prescribed by the department, that the individ-
23 ual is no longer participating in the program. If an individual informs the department that
24 the individual is no longer participating in the program, the department shall:

25 (a) Destroy any fingerprint cards and facsimiles of fingerprints that the department has
26 retained for the individual as part of the program;

27 (b) Inform the Federal Bureau of Investigation that the individual is no longer partic-
28 ipating in the program and direct the Federal Bureau of Investigation to destroy any fin-
29 gerprint cards or facsimiles of fingerprints that the Federal Bureau of Investigation has
30 retained for the individual; and

31 (c) Notify the authorized agency, agency or district who employs the individual that the
32 individual is no longer participating in the program.

33 (6) An authorized agency, agency or district that subscribes to the fingerprint retention
34 program may not require a person to participate in the program as a condition of employ-
35 ment.

36 (7) Information retained by the department under this section is exempt from public
37 disclosure under ORS 192.410 to 192.505, and the department may not disclose the informa-
38 tion for any purpose not authorized by this section.

39 (8) The Department of State Police:

40 (a) Shall, in consultation with the Oregon Department of Administrative Services, adopt
41 rules for the administration of this section; and

42 (b) May adopt a fee that an authorized agency, agency or district must pay to subscribe
43 to the program.

44 **SECTION 2.** ORS 181.533 is amended to read:

45 181.533. (1) As used in this section:

1 (a) "Authorized agency" means the Department of State Police or other governmental agency
2 designated by the State of Oregon to report, receive or disseminate criminal offender information.

3 (b) "Qualified entity" means a business or organization that:

4 (A) Provides care or placement services, or licenses or certifies others to provide care or
5 placement services, for children, elderly persons or dependent persons;

6 (B) Is not governed by a state regulatory or licensing agency; and

7 (C) Has been determined by an authorized agency to meet the criteria established by the au-
8 thorized agency by rule under subsection (9) of this section.

9 (c) "Subject individual" means a person who is employed or seeks to be employed by a qualified
10 entity or who is providing services or seeks to provide services to a qualified entity on a contractual
11 or volunteer basis.

12 (2) An entity may request from an authorized agency a criminal records check for purposes of
13 evaluating the fitness of a subject individual as an employee, contractor or volunteer. The author-
14 ized agency may access state and federal criminal records under this subsection only through use
15 of the subject individual's fingerprints.

16 (3) Before an authorized agency may conduct a criminal records check under this section:

17 (a) The authorized agency must determine whether the entity requesting the criminal records
18 check is a qualified entity;

19 (b) The qualified entity must establish criteria, subject to rules adopted by the Oregon Depart-
20 ment of Administrative Services under ORS 181.547, to be used by the authorized agency in re-
21 viewing the criminal offender information for a final record check determination;

22 (c) The qualified entity must provide the criteria established under paragraph (b) of this sub-
23 section to the authorized agency; and

24 (d) The qualified entity must have informed the subject individual that the qualified entity might
25 request a fingerprint-based criminal records check and that the subject individual may obtain a copy
26 of the record check report from, or challenge the accuracy or completeness of the record check re-
27 port through, the authorized agency or the Federal Bureau of Investigation.

28 (4)(a) Upon receipt of a subject individual's criminal offender information, the authorized agency
29 shall use the criteria provided to the authorized agency by the qualified entity under subsection
30 (3)(c) of this section and rules adopted by the Oregon Department of Administrative Services under
31 ORS 181.547 to make a fitness determination. In making the final record check determination, the
32 authorized agency may consider only information that the Department of State Police may disclose
33 under ORS 181.560.

34 (b) An authorized agency is immune from civil liability that might otherwise be incurred or im-
35 posed for making the final record check determination under this subsection.

36 (5) An authorized agency may not transfer a fingerprint card used to conduct the criminal re-
37 cords check unless the public agency or person receiving the fingerprint card agrees to destroy or
38 return the fingerprint card to the authorized agency.

39 (6) **Except as provided in section 1 of this 2015 Act**, if the public agency or person returns
40 a fingerprint card to the authorized agency, the authorized agency:

41 (a) Shall destroy the fingerprint card[. *The authorized agency*]; **and**

42 (b) May not keep a record of the fingerprints.

43 (7) The authorized agency shall permit a subject individual to inspect the individual's Oregon
44 and Federal Bureau of Investigation criminal offender information after positive identification has
45 been established based upon fingerprints.

1 (8) Challenges to the accuracy or completeness of information provided by the authorized
2 agency, the Federal Bureau of Investigation and agencies reporting information to the authorized
3 agency or the federal bureau must be made through the authorized agency or the federal bureau.

4 (9) The authorized agency shall adopt rules to implement this section. The rules may include but
5 are not limited to:

6 (a) Criteria to be used by the authorized agency to determine whether an entity is a qualified
7 entity; and

8 (b) Fees to be charged for conducting criminal records checks under this section in amounts not
9 to exceed the actual costs of acquiring and furnishing criminal offender information.

10 **SECTION 3.** ORS 181.534 is amended to read:

11 181.534. (1) As used in this section:

12 (a) "Authorized agency" means state government as defined in ORS 174.111 and the Oregon
13 State Bar. "Authorized agency" does not include:

14 (A) The Oregon State Lottery Commission or the Oregon State Lottery; or

15 (B) A criminal justice agency, as defined in ORS 181.010, that is authorized by federal law to
16 receive fingerprint-based criminal records checks from the Federal Bureau of Investigation.

17 (b) "Subject individual" means a person from whom an authorized agency may require finger-
18 prints pursuant to statute for the purpose of enabling the authorized agency to request a state or
19 nationwide criminal records check.

20 (2) An authorized agency may request that the Department of State Police conduct a criminal
21 records check on a subject individual for non-criminal justice purposes. If a nationwide criminal
22 records check of a subject individual is necessary, the authorized agency may request that the De-
23 partment of State Police conduct the check, including fingerprint identification, through the Federal
24 Bureau of Investigation.

25 (3) The Department of State Police shall provide the results of a criminal records check con-
26 ducted pursuant to subsection (2) of this section to the authorized agency requesting the check.

27 (4) The Federal Bureau of Investigation shall return or destroy the fingerprint cards used to
28 conduct the criminal records check and may not keep any record of the fingerprints, **except that**
29 **the Federal Bureau of Investigation may retain the fingerprint cards and records of the fin-**
30 **gerprints for purposes described in section 1 of this 2015 Act.** If the federal bureau policy au-
31 thORIZING return or destruction of the fingerprint cards is changed, the Department of State Police
32 shall cease to send the cards to the federal bureau but shall continue to process the information
33 through other available resources.

34 (5) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of
35 State Police, the Department **of State Police** shall destroy the fingerprint cards and [*shall retain*
36 *no*] **may not retain** facsimiles or other material from which a fingerprint can be reproduced, **except**
37 **that the Department of State Police may retain the fingerprint cards or create facsimiles for**
38 **the purpose of providing information under section 1 of this 2015 Act.**

39 (6) If only a state criminal records check is conducted, **after the criminal records check is**
40 **completed,** the Department of State Police shall destroy the fingerprint cards [*after the criminal*
41 *records check is completed*] and the results of the criminal records check provided to the authorized
42 agency and [*shall retain no*] **may not retain** facsimiles or other material from which a fingerprint
43 can be reproduced, **except that the Department of State Police may retain the fingerprint**
44 **cards and results or create facsimiles for the purpose of providing information under section**
45 **1 of this 2015 Act.**

1 (7) An authorized agency may conduct criminal records checks on subject individuals through
2 the Law Enforcement Data System maintained by the Department of State Police in accordance with
3 rules adopted, and procedures established, by the Department of State Police.

4 (8) An authorized agency and the Department of State Police shall permit a subject individual
5 for whom a fingerprint-based criminal records check was conducted to inspect the individual's own
6 state and national criminal offender records and, if requested by the subject individual, provide the
7 individual with a copy of the individual's own state and national criminal offender records.

8 (9) Each authorized agency, in consultation with the Department of State Police, shall adopt
9 rules to implement this section and other statutes relating to criminal offender information obtained
10 through fingerprint-based criminal records checks. The rules shall include but need not be limited
11 to:

12 (a) Identifying applicable categories of subject individuals as specified by the Oregon Depart-
13 ment of Administrative Services under ORS 181.547 who are subject to criminal records checks by
14 the authorized agency.

15 (b) Identifying applicable information that may be required from a subject individual to permit
16 a criminal records check as specified by the Oregon Department of Administrative Services under
17 ORS 181.547.

18 (c) Specifying which programs or services are subject to this section.

19 (d) If the authorized agency uses criminal records checks for agency employment purposes:

20 (A) Determining when and under what conditions a subject individual may be hired on a pre-
21 liminary basis pending a criminal records check; and

22 (B) Defining the conditions under which a subject individual may participate in training, orien-
23 tation and work activities pending completion of a criminal records check.

24 (e) Establishing fees in an amount not to exceed the actual cost of acquiring and furnishing
25 criminal offender information.

26 (10) The Department of State Police shall verify that an authorized agency has adopted the rules
27 required by subsection (9) of this section.

28 (11)(a) Except as otherwise provided in ORS 181.612, 342.143, 342.223, 443.735 and 475.304 and
29 paragraph (b) of this subsection, an authorized agency, using the rules adopted by the authorized
30 agency under subsection (9) of this section and the rules adopted by the Oregon Department of Ad-
31 ministrative Services under ORS 181.547, shall determine whether a subject individual is fit to hold
32 a position, provide services, be employed or be granted a license, certification, registration or per-
33 mit, based on the criminal records check obtained pursuant to this section, on any false statements
34 made by the individual regarding the criminal history of the individual and on any refusal to submit
35 or consent to a criminal records check including fingerprint identification. If a subject individual
36 is determined to be unfit, then the individual may not hold the position, provide services, be em-
37 ployed or be granted a license, certification, registration or permit.

38 (b) An individual prohibited from receiving public funds for employment under ORS 443.004 (3)
39 is not entitled to a determination of fitness as a subject individual under paragraph (a) of this sub-
40 section.

41 (c)(A) Subject to subparagraph (B) of this paragraph, an authorized agency making a fitness de-
42 termination of an individual under this subsection may request results of a previously made fitness
43 determination from an authorized agency that has already made a fitness determination for the in-
44 dividual. An authorized agency that receives a request under this paragraph shall provide the re-
45 quested information.

1 (B) An authorized agency may make a request under this paragraph only for individuals:

2 (i) Who are applying to hold a position, provide services, be employed or be granted a license,
3 certification, registration or permit;

4 (ii) Who are in a category of individuals as specified by the Oregon Department of Administra-
5 tive Services under ORS 181.547; and

6 (iii) For whom a fitness determination has already been made.

7 (12) Except as otherwise provided in ORS 181.612, in making the fitness determination under
8 subsection (11) of this section, the authorized agency shall consider:

9 (a) The nature of the crime;

10 (b) The facts that support the conviction or pending indictment or that indicate the making of
11 the false statement;

12 (c) The relevancy, if any, of the crime or the false statement to the specific requirements of the
13 subject individual's present or proposed position, services, employment, license, certification or reg-
14 istration; and

15 (d) Intervening circumstances relevant to the responsibilities and circumstances of the position,
16 services, employment, license, certification, registration or permit. Intervening circumstances in-
17 clude but are not limited to:

18 (A) The passage of time since the commission of the crime;

19 (B) The age of the subject individual at the time of the crime;

20 (C) The likelihood of a repetition of offenses or of the commission of another crime;

21 (D) The subsequent commission of another relevant crime;

22 (E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

23 (F) A recommendation of an employer.

24 (13) An authorized agency and an employee of an authorized agency acting within the course
25 and scope of employment are immune from any civil liability that might otherwise be incurred or
26 imposed for determining, pursuant to subsection (11) of this section, that a subject individual is fit
27 or not fit to hold a position, provide services, be employed or be granted a license, certification,
28 registration or permit. An authorized agency and an employee of an authorized agency acting within
29 the course and scope of employment who in good faith comply with this section are not liable for
30 employment-related decisions based on determinations made under subsection (11) of this section.
31 An authorized agency or an employee of an authorized agency acting within the course and scope
32 of employment is not liable for defamation or invasion of privacy in connection with the lawful dis-
33 semination of information lawfully obtained under this section.

34 (14)(a) Each authorized agency shall establish by rule a contested case process by which a sub-
35 ject individual may appeal the determination that the individual is fit or not fit to hold a position,
36 provide services, be employed or be granted a license, certification, registration or permit on the
37 basis of information obtained as the result of a criminal records check conducted pursuant to this
38 section. Challenges to the accuracy or completeness of information provided by the Department of
39 State Police, the Federal Bureau of Investigation and agencies reporting information to the De-
40 partment of State Police or Federal Bureau of Investigation must be made through the Department
41 of State Police, Federal Bureau of Investigation or reporting agency and not through the contested
42 case process required by this paragraph.

43 (b) A subject individual who is employed by an authorized agency and who is determined not to
44 be fit for a position on the basis of information obtained as the result of a criminal records check
45 conducted pursuant to this section may appeal the determination through the contested case process

1 adopted under this subsection or applicable personnel rules, policies and collective bargaining pro-
2 visions. An individual's decision to appeal a determination through personnel rules, policies and
3 collective bargaining provisions is an election of remedies as to the rights of the individual with
4 respect to the fitness determination and is a waiver of the contested case process.

5 (c) An individual prohibited from receiving public funds for employment under ORS 443.004 (3)
6 is not entitled to appeal a determination under paragraph (a) or (b) of this subsection.

7 (15) Criminal offender information is confidential. Authorized agencies and the Department of
8 State Police shall adopt rules to restrict dissemination of information received under this section to
9 persons with a demonstrated and legitimate need to know the information.

10 (16) If a subject individual refuses to consent to the criminal records check or refuses to be
11 fingerprinted, the authorized agency shall deny the employment of the individual, or revoke or deny
12 any applicable position, authority to provide services, license, certification, registration or permit.

13 (17) If an authorized agency requires a criminal records check of employees, prospective em-
14 ployees, contractors, vendors or volunteers or applicants for a license, certification, registration or
15 permit, the application forms of the authorized agency must contain a notice that the person is
16 subject to fingerprinting and a criminal records check.

17 **SECTION 4.** ORS 267.237 is amended to read:

18 267.237. (1) As used in this section:

19 (a) "District" means a mass transit district organized under ORS 267.010 to 267.390 or a trans-
20 portation district organized under ORS 267.510 to 267.650.

21 (b) "Qualified entity" means an individual or business or organization, whether public, private,
22 for-profit, nonprofit or voluntary, that, under contract with a district, provides individuals to operate
23 motor vehicles for the transportation of passengers in the public transportation system of the dis-
24 trict.

25 (c) "Subject individual" means a person subject to a criminal records check as specified by re-
26 solution of a mass transit district or a transportation district.

27 (2) A mass transit district or a transportation district shall request the Department of State
28 Police to conduct criminal records checks of subject individuals if the checks are required in order
29 to protect vulnerable Oregonians:

30 (a) To implement a federal or state statute, executive order or rule that expressly refers to
31 criminal conduct and contains requirements or exclusions expressly based on such conduct;

32 (b) For district employment purposes when hiring individuals to operate motor vehicles of the
33 district; or

34 (c) For the purposes of employment decisions made by a district for qualified entities that, under
35 contracts with the district, employ individuals to operate motor vehicles for the transportation of
36 passengers in the public transportation system of the district.

37 (3) A mass transit district that has a population of more than 500,000 may request the Depart-
38 ment of State Police to conduct a criminal records check of a subject individual who is:

39 (a) Seeking employment by the district in a position that provides the individual with access to
40 critical infrastructure or security sensitive facilities or information; or

41 (b) Seeking to provide services to the district that will result in the individual's having access
42 to critical infrastructure or security sensitive facilities or information.

43 (4) In order to determine the suitability of the subject individual, a district shall require the
44 subject individual to furnish to the district a full set of fingerprints to enable a criminal records
45 check to be conducted. The district shall submit the completed fingerprint cards to the Department

1 of State Police along with the applicable Oregon and Federal Bureau of Investigation processing
2 fees. If no disqualifying record is identified at the state level, the Department of State Police shall
3 forward the fingerprints to the Federal Bureau of Investigation for a national criminal records
4 check.

5 (5) The Federal Bureau of Investigation shall either return or destroy the fingerprint cards used
6 to conduct the criminal records check and shall not keep any record of the fingerprints, **except that**
7 **the Federal Bureau of Investigation may retain the fingerprint cards and records of the fin-**
8 **gerprints for purposes described in section 1 of this 2015 Act.** However, if the federal bureau
9 policy authorizing return or destruction of the fingerprint cards is changed, a district shall cease
10 to cause the cards to be sent to the federal bureau but shall continue to process the information
11 through other available resources.

12 (6) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of
13 State Police, the Department **of State Police** shall destroy the fingerprint cards and [*shall retain*
14 *no*] **may not retain** facsimiles or other material from which a fingerprint can be reproduced, **except**
15 **that the Department of State Police may retain the fingerprint cards or create facsimiles for**
16 **the purpose of providing information under section 1 of this 2015 Act.**

17 (7) If only a state criminal records check is conducted, **after the criminal records check is**
18 **completed,** the Department of State Police shall destroy the fingerprint cards [*after the criminal*
19 *records check is completed*] and the results of the criminal records check provided to the district and
20 [*shall retain no*] **may not retain** facsimiles or other material from which a fingerprint can be re-
21 produced, **except that the Department of State Police may retain the fingerprint cards and**
22 **results or create facsimiles for the purpose of providing information under section 1 of this**
23 **2015 Act.**

24 (8) The district and the Department of State Police shall permit a subject individual to inspect
25 the individual's own Oregon and Federal Bureau of Investigation criminal offender records after
26 positive fingerprint identification has been made.

27 (9)(a) A district, using guidelines established by a resolution of the district, shall determine un-
28 der this section whether a subject individual is fit to operate motor vehicles for the transportation
29 of passengers in the public transportation system of the district or to hold a position or provide
30 services that provide the individual with access to critical infrastructure or security sensitive fa-
31 cilities or information, based on the criminal records check obtained pursuant to this section, any
32 false statements made by the individual regarding the criminal history of the individual and any
33 refusal to submit or consent to a criminal records check including fingerprint identification. If a
34 subject individual is determined to be unfit, then that person shall not be allowed to operate motor
35 vehicles for the transportation of passengers in the public transportation system of the district or
36 to hold the position or provide services that provide the individual with access to critical
37 infrastructure or security sensitive facilities or information.

38 (b) In making the fitness determination, the district shall consider:

39 (A) The nature of the crime;

40 (B) The facts that support the conviction or pending indictment or indicate the making of the
41 false statement;

42 (C) The relevancy, if any, of the crime or the false statement to the specific requirements of the
43 subject individual's present or proposed position or employment; and

44 (D) Intervening circumstances relevant to the responsibilities and circumstances of the position
45 or employment. Intervening circumstances include but are not limited to the passage of time since

1 the commission of the crime, the age of the person at the time of the crime, the likelihood of a re-
2 petition of offenses, the subsequent commission of another relevant crime and a recommendation of
3 an employer.

4 (c) A district and an employee of the district are immune from any civil liability that might
5 otherwise be incurred or imposed for actions taken in determining pursuant to this subsection that
6 a subject individual is fit or not fit to hold a position or be employed. A district, an employee of the
7 district and an employer or employer's agent who in good faith comply with this section and the
8 decision of the district or employee of the district are not liable for the failure to hire a prospective
9 employee or the decision to discharge an employee on the basis of the district's or employee's de-
10 cision. A district and an employee of the district are immune from any civil liability for the lawful
11 dissemination of information obtained under this section when the disclosure is:

12 (A) For the purpose of providing notice to the subject individual or the employer of the subject
13 individual of a determination of fitness under this section;

14 (B) Required by law; or

15 (C) Necessary to support a claim or defense related to denying employment to the subject indi-
16 vidual.

17 (10) A district shall establish by resolution a process by which a subject individual may appeal
18 the determination that the subject individual is disqualified for a position or employment pursuant
19 to this section. Challenges to the accuracy or completeness of information provided by the Depart-
20 ment of State Police, the Federal Bureau of Investigation and agencies reporting information to the
21 department or bureau must be made through the department, bureau or agency and not through the
22 appeal process required by this subsection.

23 (11) A district shall develop a system that maintains information regarding criminal records
24 checks in order to minimize the administrative burden that criminal records check requirements
25 impose upon subject individuals and providers. Records maintained under this subsection for subject
26 individuals are confidential and may not be disseminated except for the purposes of this section and
27 in accordance with the relevant resolutions of the district. Nothing in this subsection permits a
28 district to retain fingerprint cards of subject individuals.

29 (12) A district, in consultation with the Department of State Police and affected provider groups,
30 shall adopt resolutions to implement this section and other statutes relating to criminal offender
31 information. The resolutions shall include but need not be limited to:

32 (a) Specifying which employees are authorized to make criminal record inquiries;

33 (b) Specifying categories of subject individuals who are subject to criminal records checks;

34 (c) Specifying the information, including fingerprints, that may be required from a subject indi-
35 vidual to permit a criminal records check;

36 (d) Specifying which services or qualified entities are subject to this section;

37 (e) Specifying which crimes may be considered in reviewing criminal offender information for a
38 subject individual;

39 (f) Specifying when a nationwide criminal records check shall be conducted on a subject indi-
40 vidual through the Department of State Police. The additional cost of obtaining a nationwide crim-
41 inal records check and the risk to vulnerable Oregonians should be taken into consideration when
42 enacting resolutions under this subsection;

43 (g) Specifying when a district, in lieu of conducting a completely new criminal records check,
44 may proceed to make a fitness determination under this section using the information maintained
45 by the district under subsection (11) of this section; and

1 (h) Determining when a subject individual may be hired on a probationary basis pending a
2 criminal records check. At a minimum, if there is any indication of criminal behavior by the subject
3 individual, the resolution must require that, if the individual is hired, the individual can be hired
4 only on a probationary basis and must be actively supervised at all times when the individual is in
5 contact with children, the elderly or persons with disabilities.

6 (13) Criminal offender information is confidential. The Department of State Police shall adopt
7 rules to restrict dissemination of information received under this section to persons with a demon-
8 strated and legitimate need to know the information. Any district receiving information pursuant to
9 this section is bound by the rules of disclosure adopted by the department.

10 (14) If a subject individual refuses to consent to the criminal records check or refuses to be
11 fingerprinted, the district or qualified entity shall deny or terminate the employment of the individ-
12 ual, or revoke or deny any applicable position, authority to provide services or employment.

13 (15) A district shall define by resolution the conditions under which subject individuals may
14 participate in training, orientation and work activities pending completion of a criminal records
15 check through the Law Enforcement Data System or nationwide criminal records check. At a mini-
16 mum, subject individuals shall be actively supervised at all times that they are in contact with
17 children, the elderly and persons with disabilities during such periods of training, orientation and
18 work. Subject individuals may continue probationary employment while awaiting the nationwide
19 criminal records check as long as the individual's criminal records check through the Law
20 Enforcement Data System did not result in disqualification and there are no other indications of
21 criminal behavior.

22 (16) If a district or a qualified entity requires a criminal records check of employees or other
23 persons, the application forms of the district or qualified entity must contain a notice that employ-
24 ment is subject to fingerprinting and a criminal records check as required by this section.

25 **SECTION 5. ORS 181.545 is repealed.**

26