



Background Check Unit

Senate Committee on Human Services, Mental Health and Recovery
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Jeff Akin, Background Check Unit (BCU) Administrator

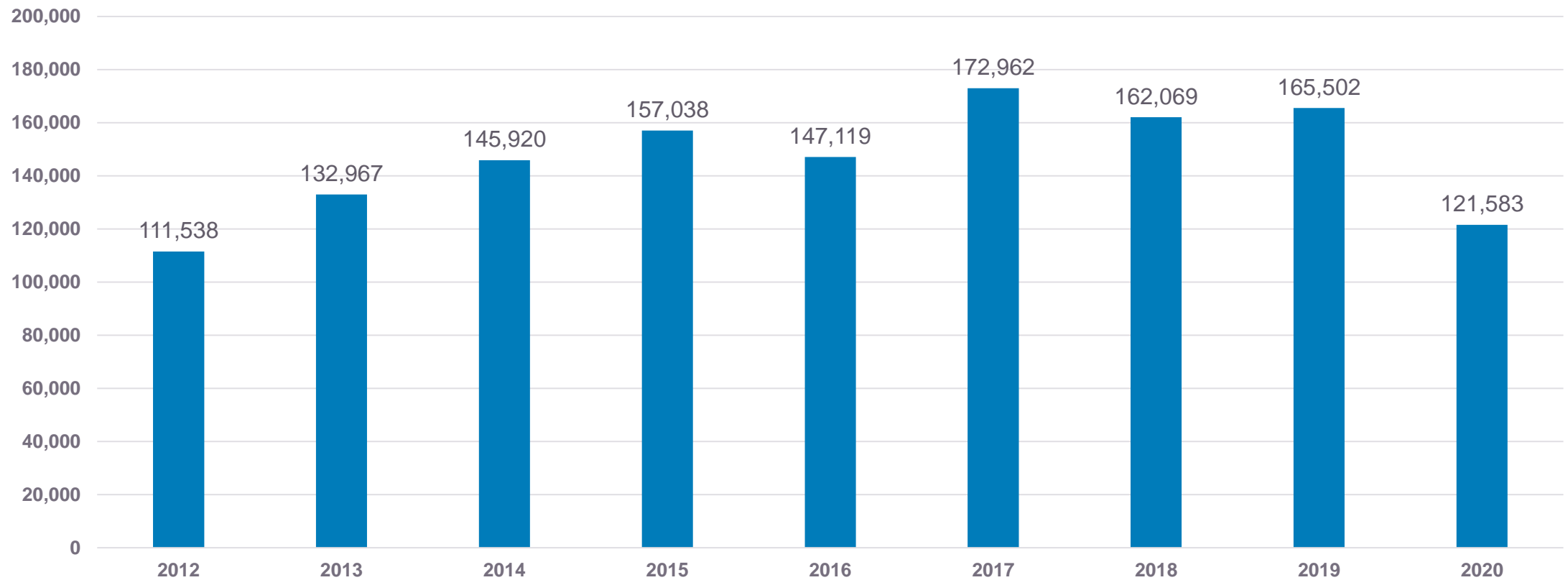
BCU Scope and Authority

- The Background Check Unit (BCU) conducts criminal records checks and protective services checks to determine if Subject Individuals (SI) have behavior such that they should not be allowed to work, volunteer, be employed, or otherwise perform in positions that serve vulnerable people.
- Statutory Authorities;
 - ORS 181A.195
 - ORS 181A.200
 - ORS 409.027
 - ORS 413.036
 - ORS 443.004
 - ORS 443.006



BCU Volume and Populations

Annual Background Check Volume



BCU Process

- Background checks are initiated by designees at the facility/program that is required to process checks.
- SIs are required to disclose adverse history and authorize the background check.
- BCU checks criminal records through the Oregon State Police Law Enforcement Data System (LEDS).
- BCU checks Child Protective Services (CPS) and Adult Protective Services (APS) records for founded or substantiated abuse.
- If the SI has potentially disqualifying history, a weigh test is performed.
- A fitness determination is made as Approved, Approved With Restrictions, or Denied.
- If the fitness determination is Denied or Approved With Restrictions, the SI has the right to an appeal.
- Some background check types are subject to mandatory exclusions which are defined by federal code or state statute.

Background Check Unit Weigh Test

ORS 181A.195 (10)(c) establishes what should be considered in a weigh test. Factors to be considered include:

- The nature of the crime,
- The facts that support the conviction or pending indictment or that indicate the making of a false statement,
- The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's present or proposed position, services, employment, license, certification or registration,
- Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, certification, registration or permit, such as:
 - The passage of time since the commission of the crime;
 - The age of the subject individual at the time of the crime;
 - The likelihood of a repetition of offenses or of the commission of another crime;
 - The subsequent commission of another relevant crime;
 - Whether the conviction was set aside and the legal effect of setting aside the conviction; and
 - The recommendation of an employer.

Intent of the Weigh Test

Green v. Missouri Pacific Railroad, 549 F.2d 1158 (8th Cir. 1977) led to guidance from the Equal Employment Opportunity Commission (EEOC).

The EEOC Guidance is to consider:

- The nature and gravity of the offense or conduct,
- Time that has passed since the offense or conduct and/or completion of the sentence, and
- Nature of the job held or sought.



Background Check Unit Appeals

- An SI has appeal rights if they disagree with a fitness determination.
- This is an administrative review process and separate BCU staff represent the department in this process.
- They work with the SI to gather information that may potentially overturn the denial.
- If the fitness determination is unable to be overturned as a result of this review, the case can be referred to the Office of Administrative Hearings.
- The final appeal level involves an Administrative Law Judge who will make the final fitness determination.



Thank You
