

Enrolled
House Bill 2132

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Oregon State Police)

CHAPTER

AN ACT

Relating to criminal records checks; amending ORS 181A.195; and declaring an emergency.

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

SECTION 1. ORS 181A.195 is amended to read:

181A.195. (1) As used in this section:

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

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

(B) A criminal justice agency, as defined in ORS 181A.010, that is authorized by federal law to receive fingerprint-based criminal records checks from the Federal Bureau of Investigation.

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

(2)(a) An authorized agency may request that the Department of State Police conduct a criminal records check on a subject individual for [*non-criminal*] **noncriminal** justice purposes.

(b) An authorized agency may request that the department conduct a criminal records check on a subject individual who is a contractor or vendor and who provides services to the authorized agency when access to criminal offender information is required to perform noncriminal justice administrative functions on behalf of the authorized agency. Criminal records checks performed under this paragraph are subject to state and federal criminal offender information access policies. An authorized agency shall conduct fitness determinations for contractors and vendors in coordination with the department.

[(b) A criminal records check under this subsection must, if requested by the authorized agency, include a name-based check of the national sex offender registry maintained by the National Crime Information Center.]

(c) If a nationwide criminal records check of a subject individual is necessary, the authorized agency may request that the department [*of State Police*] conduct the check, including fingerprint identification, through the Federal Bureau of Investigation.

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

(4) The Federal Bureau of Investigation shall return or destroy the fingerprint cards used to conduct the criminal records check and may not keep any record of the fingerprints, except that the Federal Bureau of Investigation may retain the fingerprint cards and records of the fingerprints for purposes described in ORS 181A.205. If the federal bureau policy authorizing return or destruction

of the fingerprint cards is changed, the Department of State Police shall cease to send the cards to the federal bureau but shall continue to process the information through other available resources.

(5) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of State Police, the Department of State Police shall destroy the fingerprint cards and may not retain facsimiles or other material from which a fingerprint can be reproduced, except that the Department of State Police may retain the fingerprint cards or create facsimiles for the purpose of providing information under ORS 181A.205 **and for purposes of data security under subsection (12) of this section.**

(6) If only a state criminal records check is conducted, after the criminal records check is completed, the Department of State Police shall destroy the fingerprint cards and the results of the criminal records check provided to the authorized agency and may not retain facsimiles or other material from which a fingerprint can be reproduced, except that the Department of State Police may retain the fingerprint cards and results or create facsimiles for the purpose of providing information under ORS 181A.205.

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

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

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

(a) Identifying applicable categories of subject individuals as specified by the Oregon Department of Administrative Services under ORS 181A.215 who are subject to criminal records checks by the authorized agency.

(b) Identifying applicable information that may be required from a subject individual to permit a criminal records check as specified by the Oregon Department of Administrative Services under ORS 181A.215.

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

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

(A) Determining when and under what conditions a subject individual may be hired on a preliminary basis pending a criminal records check; and

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

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

(10)(a) Except as otherwise provided in ORS 181A.400, 181A.875, 342.143, 342.223, 443.735, 475B.785 to 475B.949 and 703.090 and paragraph (d) of this subsection, an authorized agency, using the rules adopted by the Oregon Department of Administrative Services under ORS 181A.215, shall determine whether a subject individual is fit to hold a position, provide services, be employed or be granted a license, certification, registration or permit. If a subject individual is determined to be unfit, then the individual may not hold the position, provide services, be employed or be granted a license, certification, registration or permit.

(b)(A) Subject to subparagraph (B) of this paragraph, an authorized agency making a fitness determination of an individual under this subsection may request results of a previously made fitness determination from an authorized agency that has already made a fitness determination for the individual. An authorized agency that receives a request under this paragraph shall provide the requested information.

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

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

(ii) Who are in a category of individuals as specified by the Oregon Department of Administrative Services by rule under ORS 181A.215; and

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

(c) Except as otherwise provided in ORS 181A.400, in making the fitness determination under this subsection, the authorized agency shall consider:

(A) The nature of the crime;

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

(C) 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; and

(D) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, certification, registration or permit, such as:

(i) The passage of time since the commission of the crime;

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

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

(iv) The subsequent commission of another relevant crime;

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

(vi) The recommendation of an employer.

(d) A subject individual is not entitled to a fitness determination under this subsection if the subject individual:

(A) Is or seeks to be employed in any capacity having contact with a recipient of support services or a resident of a residential facility or adult foster home, as provided in ORS 443.004 (3), and has been convicted of any crime listed in ORS 443.004 (3) or (5).

(B) Is prohibited by federal law from holding a position, providing services, being employed or being granted a license, certification, registration or permit for which the fitness determination is requested by an authorized agency.

(11)(a) In conducting a fitness determination regarding a subject individual other than an individual described in paragraph (b) of this subsection, the Department of Human Services or the Oregon Health Authority may not consider:

(A) A conviction that is more than 10 years old unless the conviction is for a crime listed in ORS 443.004 (3) or (5);

(B) A charge or arrest for which there was no conviction unless the charge or arrest is for a crime listed in ORS 443.004 (3) or (5);

(C) A conviction on a charge relating to marijuana if the charge is no longer a criminal offense;

(D) A conviction under ORS 813.010, if the subject individual had no more than one conviction under ORS 813.010 in the five-year period prior to the date of the criminal records check;

(E) A deferred sentence, conditional discharge or participation in a diversion program for any crime unless the crime is listed in ORS 443.004 (3) and (5); and

(F) A pending indictment for a crime unless the crime is listed in ORS 443.004 (3) or (5).

(b) The department or the authority may consider a charge, arrest, conviction, deferred sentence, conditional discharge, participation in a diversion program or pending indictment that may not be considered under paragraph (a) of this subsection in making a fitness determination for a subject individual who is:

(A) Described in ORS 418.016;

(B) An employee, volunteer, contractor or provider in, or an agent of, a proctor foster home as defined in ORS 418.205 or a child-caring agency as defined in ORS 418.205;

(C) An exempt family child care provider, as defined in ORS 329A.430, the provider's household members who are 16 years of age or older or a frequent visitor of a provider who is subject to a criminal records check;

(D) An employee or volunteer in a facility that:
(i) Provides care to children and is operated by a school district, as defined in ORS 332.002, a political subdivision of this state, a preschool recorded program, as defined in ORS 329A.250, or a government agency; and

(ii) Is not required to be certified under ORS 329A.280; or

(E) An emergency medical services provider, as defined in ORS 682.025, for the purpose of determining the fitness of the emergency medical services provider to receive or hold a license under ORS 670.280.

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

(b) For each employee, contractor or vendor of an authorized agency who is required to have access to or review criminal offender information for noncriminal justice purposes, the authorized agency shall:

(A) Conduct a state and nationwide fingerprint-based criminal records check;

(B) Ensure that the employee, contractor or vendor meets the security background check requirements of the Federal Bureau of Investigation Criminal Justice Information Services Security Policy for having unescorted access to criminal offender information; and

(C) Pay fees as required under subsection (9) of this section.

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

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

SECTION 2. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by House April 8, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 1, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State