

HB 4122 A STAFF MEASURE SUMMARY

House Committee On Judiciary

Action Date: 02/15/24

Action: Do pass with amendments and be referred to Ways and Means. (Printed A-Eng.)

Vote: 9-0-1-0

Yeas: 9 - Andersen, Bynum, Chaichi, Kropf, Lewis, Reynolds, Tran, Wallan, Yunker

Exc: 1 - Conrad

Fiscal: Fiscal impact issued

Revenue: No revenue impact

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Meeting Dates: 2/8, 2/15

WHAT THE MEASURE DOES:

The measure replaces Oregon's voluntary individual fingerprint retention background check program with an agency-based record of arrest and prosecution background program also known as "rap back." The measure establishes a new Rap Back program administered by the Department of State Police allowing authorized state and local government agencies to subscribe to the program and requiring employees or licensees of those agencies who are subject to fingerprint-based background checks to enroll in the program for the duration of their employment or licensure with the agency.

Detailed Summary:

Directs the Department of State Police (OSP) to establish the Rap Back program and permits OSP to retain fingerprints taken for background checks under the program. Integrates the Rap Back program with the federal Rap Back system maintained by the Federal Bureau of Investigation (FBI). Requires prospective participating agencies to submit an implementation plan by December 31, 2024, to an appropriate committee or interim committee of the Legislative Assembly related to judiciary prior to participation. Lists requirements of the plan, including:

- How the agency will ensure accessibility to the program;
- Timelines for enrollment;
- Plans for notification and education about the program; and
- Projected costs.

Requires participating agencies to notify individuals subject to criminal records checks that:

- Employment or licensing with the agency requires enrollment in the Rap Back program;
- Enrollment in the Rap Back program allows OSP to provide criminal history information to the agency; and
- ORS 181A.230 allows an individual to challenge the accuracy of the information.

Permits OSP to submit retained fingerprints to the FBI's Rap Back system and allows the FBI to retain those fingerprints in the system to be searched against future submissions, including latent fingerprint searches.

Requires OSP to notify the authorized agency that enrolled an individual of any new criminal history events for the individual that OSP has received from the FBI. Requires the authorized agency that enrolled an individual to notify OSP when the individual is no longer employed or licensed by the agency. Requires OSP to destroy any fingerprints of the individual OSP has retained upon receipt of such a notice and requires OSP to notify the FBI and request that the FBI do the same.

Takes effect on the 91st day following adjournment sine die.

This summary has not been adopted or officially endorsed by action of the committee.

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ISSUES DISCUSSED:

- Level of crimes subject to reporting under the program
- Scope of entities able to participate in the program
- Ability to correct erroneous identification

EFFECT OF AMENDMENT:

Replaces the measure.

BACKGROUND:

Rap back programs allow an entity like an agency or employer requiring background checks to subscribe to alerts for individual participants whose positions require the checks. The person's fingerprints are kept after the initial background check, and any new criminal arrests or prosecutions are reported to the subscribing entity.

[House Bill 2228 \(2015\)](#) attempted to establish a voluntary rap back program in Oregon as an alternative to the standard procedure for the criminal records checks required for certain positions with authorized agencies, agencies and districts listed and defined in ORS 181A.190, ORS 181A.195, 181A.200 and 267.237. Under the standard background check program, once the background check is completed, OSP and the FBI are required to destroy any fingerprint cards they collected or received to perform the background check. Under the voluntary rap back program, [ORS 181A.205](#), an individual subject to background checks under ORS 181A.190, 181A.195, 181A.200, and 267.237 could choose to participate in the program, and the authorized agencies, agencies, and districts in those statutes could subscribe to the program. The participant could, at any time, choose to stop participating in the program, and if they do so, OSP is required to destroy the fingerprint cards kept for the program, to direct the FBI to do the same, and to notify the subscribers for that person that they are no longer participating in the program. The statute prohibits requiring a person to participate in the program as a condition of employment with the agency or district.

The voluntary program has not yet been implemented in Oregon, in part because Oregon's current statute does not clearly conform to federal guidelines for integration with the FBI's Rap Back system. [Federal guidance](#) requires in part that the participating entity that submits the fingerprints ("submitting agency"), like OSP, must have the authority to submit the fingerprints to the [federal rap back system](#) and the FBI must be authorized to retain and search the fingerprints using new fingerprint submissions to the federal system, including latent fingerprint searches, and to send appropriate responses to submitting and subscribing entities. Latent fingerprints are fingerprints left on and collected from surfaces.