

Enrolled House Bill 4122

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Representative Jason Kropf)

CHAPTER

AN ACT

Relating to fingerprint retention; creating new provisions; amending ORS 181A.205; and prescribing an effective date.

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

SECTION 1. ORS 181A.205 is amended to read:
181A.205. (1) **As used in this section:**

(a) **“Authorized agency” means a state or local government agency authorized by state and federal law to submit fingerprint-based background check requests for employment and licensing purposes to the Federal Bureau of Investigation and who may receive criminal history record information in response to such requests.**

(b) **“Criminal history record information” means information collected by and maintained in the files of criminal justice agencies concerning individuals, consisting of identifiable descriptions, notations of arrest, detentions, indictments or other formal criminal charges. This includes any disposition, sentencing, correctional supervision, and release information.**

(c) **“Rap Back program” means a system that enables authorized entities to receive ongoing status notifications of any criminal history reported on individuals whose fingerprints are registered in the system.**

(d) **“Rap Back system” means the Rap Back system maintained by the Federal Bureau of Investigation.**

[(1)(a)] **(2)(a) The Department of State Police shall establish a [voluntary] fingerprint retention program for participation in the Rap Back system through which the department retains fingerprint cards and facsimiles of fingerprints provided to or received from the Federal Bureau of Investigation that are obtained during a state criminal records check requested by an authorized agency for the purpose of employment or licensing.[.]**

[(A) Retains fingerprint cards, facsimiles of fingerprints received from the Federal Bureau of Investigation or facsimiles of fingerprints created during a state criminal records check under ORS 181A.190, 181A.195, 181A.200 or 267.237, for the purpose of providing information as described in subsection (4) of this section; and]

[(B) Provides facsimiles of fingerprints created during a state criminal records check under ORS 181A.190, 181A.195, 181A.200 or 267.237 to the Federal Bureau of Investigation.]

(b) The department may not use fingerprint cards or facsimiles of fingerprints retained pursuant to paragraph (a) of this subsection for any purpose other than the purpose of providing information as described in subsection [(4)] **(5)** of this section.

[(2) An authorized agency as defined in ORS 181A.190 or 181A.195, an agency listed in ORS 181A.200 (2), or a district as defined in ORS 267.237 may subscribe to the fingerprint retention program.]

[(3)(a) If an authorized agency, agency or district subscribes to the fingerprint retention program, the authorized agency, agency or district must inform an individual subject to a criminal records check under ORS 181A.190, 181A.195, 181A.200 or 267.237 about the program in a form and manner prescribed by the authorized agency, agency or district, provided that the authorized agency, agency or district includes as part of that information notice of the following:]

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

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

(3) An authorized agency may participate in the state fingerprint retention program by subscribing to the Rap Back program with the Department of State Police and submitting an implementation plan to an appropriate committee or interim committee of the Legislative Assembly related to the judiciary. In preparing the implementation plan, an authorized agency must consult with the department and with stakeholders, including but not limited to impacted providers and impacted employees. The implementation plan must describe:

(a) How the authorized agency will ensure that fingerprinting is accessible for all individuals across geographic regions of the state and provider settings;

(b) How the authorized agency will ensure that fingerprinting accessibility will not be a barrier to enrollment in the Rap Back program for individuals;

(c) The estimated timeline for enrolling individuals in the Rap Back program;

(d) How the authorized agency will educate and inform individuals about the Rap Back program; and

(e) Projected costs associated with reducing barriers to fingerprinting, including out-of-pocket cost to the individual and costs to the authorized agency for additional fingerprinting services.

(4)(a) If an authorized agency subscribes to the Rap Back program, the authorized agency must inform an individual subject to a criminal records check about the Rap Back program in a form and manner prescribed by the authorized agency. The authorized agency must include the following information:

(A) That employment or licensing by the authorized agency requires that the individual be enrolled in the Rap Back program;

[(C)] (B) That [choosing to participate in the program will allow] the Rap Back program allows the department to provide information as described in subsection [(4)] (5) of this section; and

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

[(E)] (C) [The process by which the individual may contest] That ORS 181A.230 allows the individual to challenge the accuracy of information that is provided as described in subsection [(4)] (5) of this section.

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

[(4)(a) An individual subject to a criminal records check under ORS 181A.190, 181A.195, 181A.200 or 267.237 may, but is not required to, participate in the fingerprint retention program.]

[(b) If an individual participates in the program, then the department, upon receiving forms containing the person's fingerprints and other identifying information under ORS 181A.160, or as part of any other proceeding related to the arrest of the individual, shall provide that information to the authorized agency, agency or district for which a criminal records check under ORS 181A.190, 181A.195, 181A.200 or 267.237 for the individual was performed.]

(5) At any time, an individual participating in the fingerprint retention program may inform the department, in a form and manner prescribed by the department, that the individual is no longer par-

ticipating in the program. If an individual informs the department that the individual is no longer participating in the program, the department shall:]

(5)(a) If an individual is subject to a criminal records check for employment or licensing and the authorized agency subscribes to the Rap Back program, the individual shall be enrolled in the Rap Back program.

(b) Under the Rap Back program the Department of State Police may receive fingerprints of individuals from an authorized agency and submit those fingerprints to the Rap Back system to be retained in the Rap Back system for the purposes of being searched by future submissions to the Rap Back system, including latent fingerprint searches.

(c) The Rap Back system provides continuous evaluation of the criminal history status of each individual enrolled in the Rap Back system as long as the individual remains in a position of trust. If the Rap Back system identifies a new criminal history event for an individual enrolled in the Rap Back program, the Federal Bureau of Investigation will send notice to the department. Upon receiving notification from the Federal Bureau of Investigation of a new criminal history event, within or outside of Oregon, for an individual enrolled in the Rap Back program, the department shall notify the authorized agency that enrolled the individual of the new criminal history event.

(6) An authorized agency that subscribes to the Rap Back program shall notify the Department of State Police, in a form and manner prescribed by the department, when an individual employed or licensed by the authorized agency and enrolled in the Rap Back program is no longer employed or licensed by the authorized agency.

(7) When the department receives notice that an individual is no longer employed or licensed by an authorized agency, the department shall:

(a) Destroy any printed and electronic fingerprint cards and facsimiles of fingerprints that the department has retained for the individual as part of the Rap Back program; and

(b) Notify the Federal Bureau of Investigation that the individual is no longer employed or licensed by the authorized agency and request that the Federal Bureau of Investigation destroy any printed and electronic fingerprint cards and facsimiles of fingerprints that the Federal Bureau of Investigation has retained for the individual in the Rap Back system.

[(b) Inform the Federal Bureau of Investigation that the individual is no longer participating in the program and direct the Federal Bureau of Investigation to destroy any fingerprint cards or facsimiles of fingerprints that the Federal Bureau of Investigation has retained for the individual; and]

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

[(6) An authorized agency, agency or district that subscribes to the fingerprint retention program may not require a person to participate in the program as a condition of employment.]

[(7)] (8) Information retained by the department under this section is exempt from public disclosure under ORS 192.311 to 192.478, and the department may not disclose the information for any purpose not authorized by this section or otherwise required by law.

[(8)] (9) The Department of State Police:

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

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

SECTION 2. (1) The amendments to ORS 181A.205 by section 1 of this 2024 Act become operative on January 1, 2025.

(2) To participate in the Rap Back program described in ORS 181A.205, as amended by section 1 of this 2024 Act, beginning on January 1, 2025, an authorized agency must subscribe to the Rap Back program with the Department of State Police and submit an implementation plan meeting the requirements of ORS 181A.205 (3), as amended by section 1 of this 2024 Act, to a committee or interim committee of the Legislative Assembly related to the judiciary no later than December 31, 2024.

SECTION 3. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of State Police by section 1 (4), chapter 386, Oregon Laws 2023, for the biennium ending June 30, 2025, for administrative services, agency support and criminal justice information services, is increased by \$540,734, for the purpose of carrying out the amendments to ORS 181A.205 by section 1 of this 2024 Act.

SECTION 4. This 2024 Act takes effect on the 91st day after the date on which the 2024 regular session of the Eighty-second Legislative Assembly adjourns sine die.

Passed by House March 6, 2024

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate March 7, 2024

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Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2024

Approved:

.....M.,....., 2024

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2024

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LaVonne Griffin-Valade, Secretary of State