

# House Bill 2041

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Education)

## 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 **as introduced**.

Allows public educational agencies to request criminal records checks directly from Department of State Police. Requires public educational agencies to request criminal records check of volunteers. Prohibits public educational agencies from using volunteers who have been convicted of certain crimes.

Declares emergency, effective July 1, 2007.

## A BILL FOR AN ACT

1  
2 Relating to criminal records checks of school personnel; creating new provisions; amending ORS  
3 181.534, 181.539, 326.603 and 326.607; and declaring an emergency.

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

5 **SECTION 1.** ORS 326.603 is amended to read:

6 326.603. (1)(a) A school district shall send to the Department of Education **or the Department**  
7 **of State Police** for purposes of a criminal records check any information, including fingerprints, for  
8 each person described in ORS 181.539 (1)(d), (e), (f), (h), [or] (i) **or (k)**.

9 (b) A private school may send to the Department of Education for purposes of a criminal records  
10 check any information, including fingerprints, for each person described in ORS 181.539 (1)(d), (e),  
11 (f), [or] (h) **or (k)**.

12 (2) The Department of Education **or a school district** shall request that the Department of  
13 State Police conduct a criminal records check as provided in ORS 181.534. **The Department of**  
14 **Education** [and] may charge the district or private school a fee as established by rule under ORS  
15 181.534. The [school] district or private school may recover its costs or a portion thereof from the  
16 person described in ORS 181.539 (1)(d), (e), (f), (h), [or] (i) **or (k)**. If the person described in ORS  
17 181.539 (1)(e), (f) or (i) requests, the district shall and a private school may withhold the amount from  
18 amounts otherwise due the person, including a periodic payroll deduction rather than a lump sum  
19 payment.

20 (3)(a) If the Superintendent of Public Instruction **or the Department of State Police** informs  
21 the school district that the person has been convicted of a crime listed in ORS 342.143 or has made  
22 a false statement as to the conviction of a crime, the superintendent **or the Department of State**  
23 **Police** shall notify the [school] district of the fact and the district [shall] **may** not employ or con-  
24 tract with the person **or use the person as a volunteer**. Notification by the superintendent **or the**  
25 **Department of State Police** that the school district [shall] **may** not employ or contract with the  
26 person **or use the person as a volunteer** shall remove the person from any school district policies,  
27 collective bargaining provisions regarding dismissal procedures and appeals and the provisions of  
28 ORS 342.805 to 342.937.

29 (b) The Superintendent of Public Instruction shall notify the private school if the person has

**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 been convicted of a crime listed in ORS 342.143 or has made a false statement as to the conviction  
2 of a crime. Based on the notice, the private school may choose not to employ or contract with the  
3 person **or use the person as a volunteer**.

4 (4) If a person described in subsection (1) of this section refuses to consent to the criminal re-  
5 cords check or refuses to be fingerprinted or if the person falsely swears to the nonconviction of a  
6 crime, the district shall terminate the employment, [*or*] contract **or volunteer** status of the person.  
7 Termination under this subsection removes the person from any school district policies, collective  
8 bargaining provisions regarding dismissal procedures and appeals and the provisions of ORS 342.805  
9 to 342.937.

10 (5) A school district may not hire **a person, use a person as a volunteer** or continue to employ  
11 or contract with or allow [*the*] **a contractor** to continue to assign a person to [*the*] **a school project**  
12 if the person described in subsection (1) of this section has been convicted of a crime according to  
13 the provisions of ORS 342.143.

14 (6) As used in this section and ORS 326.607:

15 (a) "Private school" means a school that provides educational services as defined in ORS 345.505  
16 and is registered as a private school under ORS 345.505 to 345.575.

17 (b) "School district" means:

18 (A) A school district as defined in ORS 330.003.

19 (B) The Oregon State School for the Blind.

20 (C) The Oregon State School for the Deaf.

21 (D) An educational program under the Youth Corrections Education Program.

22 (E) A public charter school as defined in ORS 338.005.

23 (F) An education service district.

24 **SECTION 2.** ORS 326.607 is amended to read:

25 326.607. (1) Upon request from a [*school district, a private school or a public charter school or a*  
26 *school district, private school or public charter school*] **school district contractor or private school**  
27 **contractor** and with consent from the individual, the Department of Education may conduct an  
28 Oregon criminal records check using the Law Enforcement Data System for screening an individual  
29 who is a volunteer for the [*school district, private school or public charter school*] **contractor** and  
30 who has **or may have** direct, unsupervised contact with school children, or for screening applicants  
31 for employment.

32 (2) The department may charge the requesting [*school district, private school, public charter*  
33 *school or school district, private school or public charter school*] contractor a fee not to exceed \$5 for  
34 each request under subsection (1) of this section.

35 **SECTION 3.** ORS 181.539 is amended to read:

36 181.539. (1) For the purpose of requesting a state or nationwide criminal records check under  
37 ORS 181.534, the Teacher Standards and Practices Commission, [*and*] the Department of Education  
38 **and a school district** may require the fingerprints of:

39 (a) A person who is applying for initial issuance of a license under ORS 342.120 to 342.430 as  
40 a teacher, administrator or personnel specialist if the person has not submitted to a criminal records  
41 check by the commission within the previous year.

42 (b) A person who is applying for reinstatement of a license as a teacher, administrator or per-  
43 sonnel specialist whose license has lapsed for at least three years.

44 (c) A person who is applying for initial issuance of a certificate under ORS 342.475 as a school  
45 nurse.

1 (d) A school district or private school contractor, whether part-time or full-time, or an employee  
2 thereof, whether part-time or full-time, who has direct, unsupervised contact with students as de-  
3 termined by the district or private school.

4 (e) A person newly hired, whether part-time or full-time, by a school district or private school  
5 in a capacity not described in paragraphs (a) to (c) of this subsection who has direct, unsupervised  
6 contact with children as determined by the district or private school.

7 (f) A person employed, whether part-time or full-time, by a school district or private school in  
8 a capacity not described in paragraphs (a) to (c) of this subsection who has direct, unsupervised  
9 contact with children as determined by the district or private school.

10 (g) A person who is registering with the commission for student teaching, practicum or  
11 internship as a teacher, administrator or personnel specialist, if the person has not submitted to a  
12 criminal records check by the commission within the previous year for student teaching, practicum  
13 or internship as a teacher, administrator or personnel specialist.

14 (h) A person who is a community college faculty member providing instruction at a kindergarten  
15 through grade 12 school site during the regular school day.

16 (i) A person who is an employee of a public charter school.

17 (j) A person who is applying for initial issuance of a registration as a public charter school  
18 teacher under ORS 342.125.

19 **(k) A person who is a volunteer for a school district or private school and who has or**  
20 **may have direct, unsupervised contact with children.**

21 (2) Notwithstanding subsection (1) of this section, the commission, [and] the department **or a**  
22 **school district** may not require fingerprints of a person described in subsection (1)(d), (e), (f), (h)  
23 or (i) of this section if the person or the person's employer was checked in one school district or  
24 private school and is currently seeking to work in another district or private school unless the  
25 person lived outside this state during the interval between the two periods of time of working in the  
26 district or private school.

27 (3) Nothing in this section requires a person described in subsection (1)(d), (e) or (i) of this  
28 section to submit to fingerprinting until the person has been offered employment or a contract by  
29 a school district or private school. Contractor employees shall not be required to submit to finger-  
30 printing until the contractor has been offered a contract.

31 (4) As used in this section:

32 (a) "Private school" means a school that provides educational services as defined in ORS 345.505  
33 and is registered as a private school under ORS 345.505 to 345.575.

34 (b) "School district" means:

35 (A) A school district as defined in ORS 330.003.

36 (B) The Oregon State School for the Blind.

37 (C) The Oregon State School for the Deaf.

38 (D) An educational program under the Youth Corrections Education Program.

39 (E) A public charter school as defined in ORS 338.005.

40 (F) An education service district.

41 **SECTION 4.** ORS 181.534 is amended to read:

42 181.534. (1) As used in this section:

43 (a) "Authorized agency" means state government as defined in ORS 174.111, [and] the Oregon  
44 State Bar **and a school district as defined in ORS 326.603.** "Authorized agency" does not include:

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

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

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

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

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

13 (4) The Federal Bureau of Investigation shall return or destroy the fingerprint cards used to  
 14 conduct the criminal records check and may not keep any record of the fingerprints. If the federal  
 15 bureau policy authorizing return or destruction of the fingerprint cards is changed, the Department  
 16 of State Police shall cease to send the cards to the federal bureau but shall continue to process the  
 17 information through other available resources.

18 (5) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of  
 19 State Police, the department shall destroy the fingerprint cards and shall retain no facsimiles or  
 20 other material from which a fingerprint can be reproduced.

21 (6) If only a state criminal records check is conducted, the Department of State Police shall  
 22 destroy the fingerprint cards after the criminal records check is completed and the results of the  
 23 criminal records check provided to the authorized agency and shall retain no facsimiles or other  
 24 material from which a fingerprint can be reproduced.

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

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

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

36 (a) Specifying categories of subject individuals who are subject to criminal records checks.

37 (b) Specifying the information that may be required from a subject individual to permit a crim-  
 38 inal records check.

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

40 (d) Specifying the types of crimes that may be considered in reviewing criminal offender infor-  
 41 mation of a subject individual.

42 (e) Specifying when a nationwide fingerprint-based criminal records check must be conducted.  
 43 An authorized agency shall consider the additional cost of obtaining a nationwide fingerprint-based  
 44 criminal records check when adopting rules under this subsection.

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

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

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

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

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

9 (11) Except as otherwise provided in ORS 181.612, an authorized agency, using the rules adopted  
 10 under subsection (9) of this section, shall determine whether a subject individual is fit to hold a  
 11 position, provide services, be employed or be granted a license, certification, registration or permit,  
 12 based on the criminal records check obtained pursuant to this section, on any false statements made  
 13 by the individual regarding the criminal history of the individual and on any refusal to submit or  
 14 consent to a criminal records check including fingerprint identification. If a subject individual is  
 15 determined to be unfit, then the individual may not hold the position, provide services, be employed  
 16 or be granted a license, certification, registration or permit.

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

19 (a) The nature of the crime;

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

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

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

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

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

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

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

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

33 (F) A recommendation of an employer.

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

44 (14)(a) Each authorized agency shall establish by rule a contested case process by which a sub-  
 45 ject individual may appeal the determination that the individual is fit or not fit to hold a position,

1 provide services, be employed or be granted a license, certification, registration or permit on the  
 2 basis of information obtained as the result of a criminal records check conducted pursuant to this  
 3 section. Challenges to the accuracy or completeness of information provided by the Department of  
 4 State Police, the Federal Bureau of Investigation and agencies reporting information to the De-  
 5 partment of State Police or Federal Bureau of Investigation must be made through the Department  
 6 of State Police, Federal Bureau of Investigation or reporting agency and not through the contested  
 7 case process required by this paragraph.

8 (b) A subject individual who is employed by an authorized agency and who is determined not to  
 9 be fit for a position on the basis of information obtained as the result of a criminal records check  
 10 conducted pursuant to this section may appeal the determination through the contested case process  
 11 adopted under this subsection or applicable personnel rules, policies and collective bargaining pro-  
 12 visions. An individual's decision to appeal a determination through personnel rules, policies and  
 13 collective bargaining provisions is an election of remedies as to the rights of the individual with  
 14 respect to the fitness determination and is a waiver of the contested case process.

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

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

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

25 **SECTION 5. The amendments to ORS 181.534, 181.539, 326.603 and 326.607 by sections 1**  
 26 **to 4 of this 2007 Act first apply to the 2007-2008 school year.**

27 **SECTION 6. This 2007 Act being necessary for the immediate preservation of the public**  
 28 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**  
 29 **July 1, 2007.**