

Enrolled Senate Bill 157

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CHAPTER

AN ACT

Relating to criminal records checks; amending ORS 181.537.

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

SECTION 1. ORS 181.537 is amended to read:

181.537. (1) As used in this section:

(a) "Care" means the provision of care, treatment, education, training, instruction, supervision, placement services, recreation or support to children, the elderly or persons with disabilities.

(b) "Qualified entity" means a community mental health and developmental disabilities program, a local health department or an individual or business or organization, whether public, private, for-profit, nonprofit or voluntary, that provides care, including a business or organization that licenses, certifies or registers others to provide care.

[(2) The Department of Human Services and the Employment Department may require the fingerprints of a person for the purpose of requesting a state or nationwide criminal records check of the person under ORS 181.534:]

[(a) For agency employment purposes;]

(2) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Department of Human Services and the Employment Department may require the fingerprints of a person:

(a) Who is employed by or is applying for employment with either department;

(b) Who provides or seeks to provide services to either department as a contractor, subcontractor, vendor or volunteer who:

(A) May have contact with recipients of care;

(B) Has access to personal information about employees of either department, recipients of care from either department or members of the public, including Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information or criminal background information;

(C) Has access to information the disclosure of which is prohibited by state or federal laws, rules or regulations, or information that is defined as confidential under state or federal laws, rules or regulations;

(D) Has access to property held in trust or to private property in the temporary custody of the state;

(E) Has payroll or fiscal functions or responsibility for:

(i) Receiving, receipting or depositing money or negotiable instruments;
(ii) Billing, collections, setting up financial accounts or other financial transactions; or
(iii) Purchasing or selling property;
(F) Provides security, design or construction services for government buildings, grounds or facilities;

(G) Has access to critical infrastructure or secure facilities information; or

(H) Is providing information technology services and has control over or access to information technology systems;

[(b)] (c) For the purposes of licensing, certifying, registering or otherwise regulating or administering programs, persons or qualified entities that provide care;

[(c)] (d) For the purposes of employment decisions by or for qualified entities that are regulated or otherwise subject to oversight by the Department of Human Services and that provide care; or

[(d)] (e) For the purposes of employment decisions made by a mass transit district or transportation district for qualified entities that, under contracts with the district or the Department of Human Services, employ persons to operate motor vehicles for the transportation of medical assistance program clients.

(3) The Department of Human Services may conduct criminal records checks on a person through the Law Enforcement Data System maintained by the Department of State Police, if deemed necessary by the Department of Human Services to protect children, elderly persons, persons with disabilities or other vulnerable persons.

(4) The Department of Human Services may furnish to qualified entities, in accordance with the Department of Human Services' rules and the rules of the Department of State Police, information received from the Law Enforcement Data System. However, any criminal offender records and information furnished to the Department of Human Services by the Federal Bureau of Investigation through the Department of State Police may not be disseminated to qualified entities.

(5) A qualified entity, using rules adopted by the Department of Human Services, shall determine under this section whether a person is fit to hold a position, provide services, be employed or, if the qualified entity has authority to make such a determination, be licensed, certified or registered, based on the criminal records check obtained pursuant to ORS 181.534, any false statements made by the person regarding the criminal history of the person and any refusal to submit or consent to a criminal records check including fingerprint identification. If a person is determined to be unfit, then that person may not hold the position, provide services or be employed, licensed, certified or registered.

(6) In making the fitness determination under subsection (5) of this section, the qualified entity shall consider:

(a) The nature of the crime;

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

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the person'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 or registration. Intervening circumstances include but are not limited to the passage of time since the commission of the crime, the age of the person at the time of the crime, the likelihood of a repetition of offenses, the subsequent commission of another relevant crime and a recommendation of an employer.

(7) The Department of Human Services and the Employment Department may make fitness determinations based on criminal offender records and information furnished by the Federal Bureau of Investigation through the Department of State Police only as provided in ORS 181.534.

(8) A qualified entity and an employee of a qualified entity acting within the course and scope of employment are immune from any civil liability that might otherwise be incurred or imposed for determining pursuant to subsection (5) of this section that a person is fit or not fit to hold a posi-

tion, provide services or be employed, licensed, certified or registered. A qualified entity, employee of a qualified entity acting within the course and scope of employment and an employer or employer's agent who in good faith comply with this section and the decision of the qualified entity or employee of the qualified entity acting within the course and scope of employment are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of the qualified entity's decision. An employee of the state acting within the course and scope of employment is not liable for defamation or invasion of privacy in connection with the lawful dissemination of information lawfully obtained under this section.

(9) The Department of Human Services shall develop a system that maintains information regarding criminal records checks in order to minimize the administrative burden imposed by this section and ORS 181.534. Records maintained under this subsection are confidential and may not be disseminated except for the purposes of this section and in accordance with the rules of the Department of Human Services and the Department of State Police. Nothing in this subsection permits the Department of Human Services to retain fingerprint cards obtained pursuant to this section.

(10) In addition to the rules required by ORS 181.534, the Department of Human Services, in consultation with the Department of State Police, shall adopt rules:

- (a) Specifying which qualified entities are subject to this section;
- (b) Specifying which qualified entities may request criminal offender information;
- (c) Specifying which qualified entities are responsible for deciding whether a subject individual is not fit for a position, service, license, certification, registration or employment; and
- (d) Specifying when a qualified entity, in lieu of conducting a completely new criminal records check, may proceed to make a fitness determination under subsection (5) of this section using the information maintained by the Department of Human Services pursuant to subsection (9) of this section.

(11) If a person refuses to consent to the criminal records check or refuses to be fingerprinted, the qualified entity shall deny or terminate the employment of the person, or revoke or deny any applicable position, authority to provide services, employment, license, certification or registration.

(12) If the qualified entity requires a criminal records check of employees or other persons, the application forms of the qualified entity must contain a notice that employment is subject to fingerprinting and a criminal records check.

Passed by Senate April 20, 2009

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Secretary of Senate

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President of Senate

Passed by House May 28, 2009

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Speaker of House

Received by Governor:

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Approved:

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Governor

Filed in Office of Secretary of State:

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Secretary of State