

Senate Bill 157

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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**.

Expands authority of Department of Human Services and Employment Department to require fingerprints for purpose of requesting criminal records check.

A BILL FOR AN ACT

1
2 Relating to criminal records checks; amending ORS 181.537.

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

4 **SECTION 1.** ORS 181.537 is amended to read:

5 181.537. (1) As used in this section:

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

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

12 (2) The Department of Human Services and the Employment Department may require the fin-
13 gerprints of a person for the purpose of requesting a state or nationwide criminal records check of
14 the person under ORS 181.534:

15 (a) *[For agency employment purposes;]* **If the person:**

16 **(A) Is an employee of or applying for employment with the department; or**

17 **(B) Provides services or seeks to provide services to the department as a contractor,**
18 **subcontractor, vendor or volunteer;**

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

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

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

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

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

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

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

16 (a) The nature of the crime;

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

19 (c) The relevancy, if any, of the crime or the false statement to the specific requirements of the
20 person's present or proposed position, services, employment, license, certification or registration;
21 and

22 (d) Intervening circumstances relevant to the responsibilities and circumstances of the position,
23 services, employment, license, certification or registration. Intervening circumstances include but
24 are not limited to the passage of time since the commission of the crime, the age of the person at
25 the time of the crime, the likelihood of a repetition of offenses, the subsequent commission of an-
26 other relevant crime and a recommendation of an employer.

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

30 (8) A qualified entity and an employee of a qualified entity acting within the course and scope
31 of employment are immune from any civil liability that might otherwise be incurred or imposed for
32 determining pursuant to subsection (5) of this section that a person is fit or not fit to hold a position,
33 provide services or be employed, licensed, certified or registered. A qualified entity, employee of a
34 qualified entity acting within the course and scope of employment and an employer or employer's
35 agent who in good faith comply with this section and the decision of the qualified entity or employee
36 of the qualified entity acting within the course and scope of employment are not liable for the fail-
37 ure to hire a prospective employee or the decision to discharge an employee on the basis of the
38 qualified entity's decision. An employee of the state acting within the course and scope of employ-
39 ment is not liable for defamation or invasion of privacy in connection with the lawful dissemination
40 of information lawfully obtained under this section.

41 (9) The Department of Human Services shall develop a system that maintains information re-
42 garding criminal records checks in order to minimize the administrative burden imposed by this
43 section and ORS 181.534. Records maintained under this subsection are confidential and may not be
44 disseminated except for the purposes of this section and in accordance with the rules of the De-
45 partment of Human Services and the Department of State Police. Nothing in this subsection permits

1 the Department of Human Services to retain fingerprint cards obtained pursuant to this section.

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

4 (a) Specifying which qualified entities are subject to this section;

5 (b) Specifying which qualified entities may request criminal offender information;

6 (c) Specifying which qualified entities are responsible for deciding whether a subject individual
7 is not fit for a position, service, license, certification, registration or employment; and

8 (d) Specifying when a qualified entity, in lieu of conducting a completely new criminal records
9 check, may proceed to make a fitness determination under subsection (5) of this section using the
10 information maintained by the Department of Human Services pursuant to subsection (9) of this
11 section.

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

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

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