

House Bill 2772

Sponsored by Representative THATCHER (Pre-session filed.)

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 school districts to submit information to Department of State Police for purpose of conducting criminal records checks.

A BILL FOR AN ACT

1
2 Relating to criminal records checks for schools; amending ORS 181.534 and 326.603.

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

4 **SECTION 1.** ORS 181.534 is amended to read:

5 181.534. (1) As used in this section:

6 (a) "Authorized agency" means state government as defined in ORS 174.111 and the Oregon
7 State Bar. "Authorized agency" does not include:

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

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

11 **(b) "School district" has the meaning given that term in ORS 326.603.**

12 *[(b)]* **(c)** "Subject individual" means a person from whom an authorized agency **or a school**
13 **district** may require fingerprints pursuant to statute for the purpose of enabling the authorized
14 agency **or school district** to request a state or nationwide criminal records check.

15 (2) An authorized agency **or a school district** may request that the Department of State Police
16 conduct a criminal records check on a subject individual for non-criminal justice purposes. If a
17 nationwide criminal records check of a subject individual is necessary, the authorized agency **or**
18 **school district** may request that the Department of State Police conduct the check, including fin-
19 gerprint identification, through the Federal Bureau of Investigation.

20 (3) The Department of State Police shall provide the results of a criminal records check con-
21 ducted pursuant to subsection (2) of this section to the authorized agency **or school district** re-
22 questing the check.

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

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

31 (6) If only a state criminal records check is conducted, the Department of State Police shall:

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 (a) Destroy the fingerprint cards after the criminal records check is completed and the results
 2 of the criminal records check provided to the authorized agency **or school district**; and

3 (b) [shall] Retain no facsimiles or other material from which a fingerprint can be reproduced.

4 (7) An authorized agency **or a school district** may conduct criminal records checks on subject
 5 individuals through the Law Enforcement Data System maintained by the Department of State Po-
 6 lice in accordance with rules adopted, and procedures established, by the Department of State Po-
 7 lice.

8 (8) An authorized agency, **a school district** and the Department of State Police shall permit a
 9 subject individual for whom a fingerprint-based criminal records check was conducted to inspect the
 10 individual's own state and national criminal offender records and, if requested by the subject indi-
 11 vidual, provide the individual with a copy of the individual's own state and national criminal
 12 offender records.

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

17 [(a)] (A) Specifying categories of subject individuals who are subject to criminal records checks.

18 [(b)] (B) Specifying the information that may be required from a subject individual to permit a
 19 criminal records check.

20 [(c)] (C) Specifying which programs or services are subject to this section.

21 [(d)] (D) Specifying the types of crimes that may be considered in reviewing criminal offender
 22 information of a subject individual.

23 [(e)] (E) Specifying when a nationwide fingerprint-based criminal records check must be con-
 24 ducted. An authorized agency shall consider the additional cost of obtaining a nationwide
 25 fingerprint-based criminal records check when adopting rules under this subsection.

26 [(f)] (F) If the authorized agency uses criminal records checks for agency employment purposes:

27 [(A)] (i) Determining when and under what conditions a subject individual may be hired on a
 28 preliminary basis pending a criminal records check; and

29 [(B)] (ii) Defining the conditions under which a subject individual may participate in training,
 30 orientation and work activities pending completion of a criminal records check.

31 [(g)] (G) Establishing fees in an amount not to exceed the actual cost of acquiring and furnishing
 32 criminal offender information.

33 (b) **For the purposes of this subsection, a school district must comply with the rules**
 34 **adopted by the State Board of Education.**

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

37 (11) Except as otherwise provided in ORS 181.612, an authorized agency **or a school district**,
 38 using the rules adopted under subsection (9) of this section, shall determine whether a subject indi-
 39 vidual is fit to hold a position, provide services, be employed or be granted a license, certification,
 40 registration or permit, based on the criminal records check obtained pursuant to this section, on any
 41 false statements made by the individual regarding the criminal history of the individual and on any
 42 refusal to submit or consent to a criminal records check including fingerprint identification. If a
 43 subject individual is determined to be unfit, then the individual may not hold the position, provide
 44 services, be employed or be granted a license, certification, registration or permit.

45 (12) Except as otherwise provided in ORS 181.612, in making the fitness determination under

1 subsection (11) of this section, the authorized agency **or school district** shall consider:

2 (a) The nature of the crime;

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

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

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

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

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

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

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

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

16 (F) A recommendation of an employer.

17 (13) An authorized agency, **a school district** and an employee of an authorized agency **or**
18 **school district** acting within the course and scope of employment are immune from any civil li-
19 ability that might otherwise be incurred or imposed for determining, pursuant to subsection (11) of
20 this section, that a subject individual is fit or not fit to hold a position, provide services, be em-
21 ployed or be granted a license, certification, registration or permit. An authorized agency [*and*], **a**
22 **school district or** an employee of an authorized agency **or school district** acting within the course
23 and scope of employment who in good faith [*comply*] **complies** with this section [*are*] **is** not liable
24 for employment-related decisions based on determinations made under subsection (11) of this section.
25 An authorized agency, **a school district** or an employee of an authorized agency **or school district**
26 acting within the course and scope of employment is not liable for defamation or invasion of privacy
27 in connection with the lawful dissemination of information lawfully obtained under this section.

28 (14)(a) Each authorized agency shall establish by rule a contested case process by which a sub-
29 ject individual may appeal the determination that the individual is fit or not fit to hold a position,
30 provide services, be employed or be granted a license, certification, registration or permit on the
31 basis of information obtained as the result of a criminal records check conducted pursuant to this
32 section.

33 **(b) A school district must comply with the rules adopted by the State Board of Education**
34 **pursuant to this subsection.**

35 (c) Challenges to the accuracy or completeness of information provided by the Department of
36 State Police, the Federal Bureau of Investigation and agencies reporting information to the De-
37 partment of State Police or Federal Bureau of Investigation must be made through the Department
38 of State Police, Federal Bureau of Investigation or reporting agency and not through the contested
39 case process required by this [*paragraph*] **subsection.**

40 [(b)] **(d)** A subject individual who is employed by an authorized agency **or a school district** and
41 who is determined not to be fit for a position on the basis of information obtained as the result of
42 a criminal records check conducted pursuant to this section may appeal the determination through
43 the contested case process adopted under this subsection or applicable personnel rules, policies and
44 collective bargaining provisions. An individual's decision to appeal a determination through person-
45 nel rules, policies and collective bargaining provisions is an election of remedies as to the rights

1 of the individual with respect to the fitness determination and is a waiver of the contested case
 2 process.

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

6 (b) **A school district must comply with the rules adopted by the State Board of Education**
 7 **under this subsection.**

8 (16) If a subject individual refuses to consent to the criminal records check or refuses to be
 9 fingerprinted, the authorized agency **or school district** shall deny the employment of the individual,
 10 or revoke or deny any applicable position, authority to provide services, license, certification, reg-
 11 istration or permit.

12 (17) If an authorized agency **or a school district** requires a criminal records check of employ-
 13 ees, prospective employees, contractors, vendors or volunteers or applicants for a license, certifi-
 14 cation, registration or permit, the application forms of the authorized agency **or school district**
 15 must contain a notice that the person is subject to fingerprinting and a criminal records check.

16 **SECTION 2.** ORS 326.603 is amended to read:

17 326.603. (1) For the purposes of requesting a state or nationwide criminal records check under
 18 ORS 181.534, the Department of Education may require the fingerprints of:

19 (a) A school district or private school contractor, whether part-time or full-time, or an employee
 20 of a contractor, whether part-time or full-time, who has direct, unsupervised contact with students
 21 as determined by the **school** district or private school.

22 (b) A person newly hired, whether part-time or full-time, by a school district or private school
 23 in a capacity not described in ORS 342.223 (1).

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

26 (d) A person who is an employee of a public charter school.

27 **(2) For the purposes of conducting a state or nationwide criminal records check author-**
 28 **ized under this section:**

29 [(2)(a)] (a) A school district shall send to the Department of Education **or the Department of**
 30 **State Police** [for purposes of a criminal records check] any information, including fingerprints, for
 31 each person described in subsection (1) of this section.

32 (b) A private school may send to the Department of Education [for purposes of a criminal records
 33 check] any information, including fingerprints, for each person described in subsection (1)(a), (b) or
 34 (c) of this section.

35 (3)(a) The Department of Education **or a school district** shall request that the Department of
 36 State Police conduct a criminal records check as provided in ORS 181.534. **The Department of**
 37 **Education** [and] may charge [the] a school district or private school a fee as established by rule
 38 under ORS 181.534 **for any requests submitted by the Department of Education on behalf of**
 39 **the school district or private school.**

40 (b) [The] A school district or private school may recover its costs or a portion [thereof] of its
 41 **costs** from the person described in subsection (1) of this section. If the person described in sub-
 42 section (1)(b) or (d) of this section requests, [the] a school district shall [and] **or** a private school
 43 may withhold the amount from amounts otherwise due the person, including a periodic payroll de-
 44 duction rather than a lump sum payment.

45 (4) Notwithstanding subsection (1) of this section, the Department of Education may not require

1 fingerprints of a person described in subsection (1) of this section if the person or the person's em-
 2 ployer was checked in one school district or private school and is currently seeking to work in an-
 3 other **school** district or private school unless the person lived outside this state during the interval
 4 between the two periods of time of working in the **school** district or private school.

5 (5) Nothing in this section requires a person described in subsection (1)(a), (b) or (d) of this
 6 section to submit to fingerprinting until the person has been offered employment or a contract by
 7 a school district or private school. Contractor employees may not be required to submit to finger-
 8 printing until the contractor has been offered a contract.

9 (6)(a) If a person described in subsection (1) of this section states on a criminal history form
 10 provided by the Department of Education **or a school district** that the person has not been con-
 11 victed of a crime but the criminal records check indicates that the person has a conviction, the
 12 Department **of Education** shall determine whether the person knowingly made a false statement as
 13 to the conviction. **For the purpose of enabling the Department of Education to make a deter-**
 14 **mination under this subsection, a school district that requested the Department of State**
 15 **Police to conduct a criminal records check shall send to the Department of Education all**
 16 **information related to the criminal records check of the person who may have a conviction.**

17 (b) The Department **of Education** shall develop a process and criteria to use for appeals of a
 18 determination under this subsection.

19 (7)(a) The Superintendent of Public Instruction shall inform a school district or private school
 20 if a person described in subsection (1) of this section:

21 (A) Has been convicted of a crime listed in ORS 342.143 (3), **if the Department of Education**
 22 **submitted a request for a criminal records check on behalf of the school district or private**
 23 **school; or**

24 (B) [or] Has knowingly made a false statement on a criminal history form provided by the De-
 25 partment of Education **or school district** as to the conviction of any crime, **if the Department of**
 26 **Education makes a determination as described in subsection (6) of this section.**

27 (b) If a person described in subsection (1) of this section has been convicted of a crime listed in
 28 ORS 342.143 (3), a school district may not employ or contract with the person and a private school
 29 may choose not to employ or contract with the person. [*Notification by the superintendent that the*
 30 *school district may not*] **The determination not to employ or contract with the person [shall**
 31 **remove] under this paragraph removes** the person from any school district policies, collective
 32 bargaining provisions regarding dismissal procedures and appeals and the provisions of ORS 342.805
 33 to 342.937.

34 (c) If a person described in subsection (1) of this section has knowingly made a false statement
 35 on a criminal history form provided by the Department of Education **or a school district** as to the
 36 conviction of a crime not listed in ORS 342.143 (3), a school district or private school may choose
 37 to employ or contract with the person.

38 (8) If a person described in subsection (1) of this section refuses to consent to the criminal re-
 39 cords check or refuses to be fingerprinted, the school district shall terminate the employment or
 40 contract status of the person. Termination under this subsection removes the person from any school
 41 district policies, collective bargaining provisions regarding dismissal procedures and appeals and the
 42 provisions of ORS 342.805 to 342.937.

43 (9) A school district may not hire or continue to employ or contract with or allow the contractor
 44 to continue to assign a person to the school project if the person described in subsection (1) of this
 45 section has been convicted of a crime according to the provisions of ORS 342.143.

- 1 (10) As used in this section and ORS 326.607:
2 (a) "Private school" means a school that provides educational services as defined in ORS 345.505
3 and is registered as a private school under ORS 345.505 to 345.575.
4 (b) "School district" means:
5 (A) A school district as defined in ORS 330.003.
6 (B) The Oregon School for the Deaf.
7 (C) An educational program under the Youth Corrections Education Program.
8 (D) A public charter school as defined in ORS 338.005.
9 (E) An education service district.
10 _____