

DAS

DEPARTMENT OF
ADMINISTRATIVE
SERVICES

Oregon Department of Administrative Services

Chief Human Resources Office

HB 4091: *Workgroup Report*

Recommendations Regarding Criminal Records Verification in Oregon

November 2012

Prepared by
The House Bill 4091 Workgroup
Assembled by the Department of Administrative Services

Prepared for
The Oregon State Legislature
Per House Bill 4091

This report is available online at:
<http://www.oregon.gov/DAS/Pages/leginfo2.aspx>

This page intentionally left blank.

Table of Contents

Workgroup Participants	5
Executive Summary	6
Criminal Background Checks—Verifying Eligibility for Licensure or Employment	6
This Document.....	6
Section I: Introduction.....	7
Forming The Workgroup	7
The HB 4091 Workgroup Process.....	7
Developing Shared Working Definitions	8
Working Definition: Protection of the Public	8
Working Definition: Safety and Accuracy.....	8
Working Definition: Timely Process	8
Final Report	8
Section II: The Criminal Background Verification Process.....	9
Step one: Gather identifying information	9
Step two: Information search.....	9
Step three: Fitness Determination	9
Visual Representation of Verification Process	10
Section III: Determinations & Recommendations.....	11
Workgroup Determinations	11
Assessment of Current State.....	11
Determining Possible Improvements to Current Overall System	12
Fitness Determination Criteria	12
Electronic Fingerprint Capture—LiveScan.....	12

Utilizing a Pre-Clearance Approach: Creating a “Clean Box” Registry 13

Exploring Use of Single “Rap Back” Program 14

Feasibility of developing a single system for conducting background checks administered by the Department of State Police (OSP) 17

Determine the cost, accuracy and quality assurance associated with obtaining criminal record checks from sources other than the Department of State Police. 17

Workgroup Recommendations 18

 Require a review of privacy, non-discrimination and value of the separation of identification and verification..... 18

 Take “cluster” approach to background verification. 18

 Apply similar criteria in fitness determination within logical “clusters”..... 19

 Establish “clean-box” registries, where practical, within logical “clusters” 19

 Minimize the need for repetitive fingerprint capture..... 19

 Increase the use of electronic fingerprint processing (i.e. LiveScan) at point of capture..... 20

 Establish one or more user groups to regularly evaluate overall criminal verification system, changes and to compare best practices. 20

Conclusion 21

Appendix A: House Bill 4091 22

Appendix B: Equal Employment Opportunity Commission (EEOC) Information 23

 EEOC Best Practices Recommendations..... 23

 General 23

 Developing a Policy..... 24

 Questions about Criminal Records 24

 Confidentiality 24

Appendix C: Criminal Background Verification Process- Sample Comparison 25

Appendix D: Federal and State Law regarding Non-Criminal Justice Background Checks..... 27

Workgroup Participants

As required by HB 4091 Section 1 (2), the workgroup included representatives from the following organizations:

- The Oregon State Police
- The Department of Education
- The Department of Human Services
- The Department of Corrections
- Oregon Department of Administrative Services
- The State & Local Government Efficiency Task Force created in sec. 1, chap. 435, Oregon Laws 2011
- *An agency that licenses individuals:* Oregon Health Licensing Agency
- *A human services organization:* Oregon Rehabilitation Association
- *An association of school employees:* Oregon School Employees Association
- *A local government:* Benton County
- *An organization that advocates for the privacy rights of Individuals:* American Civil Liberties Union of Oregon

Additional participants added by the Department of Administrative Services represented:

- The Department of Public Safety Standards & Training
- The Board of Nursing
- The Employment Department
- Oregon State Legislature
- Rogue Valley Transportation District
- Oregon Mentors

While not official participants, representatives from other Interested Parties provided valuable input, including representatives from:

- Oregon Alliance
- Independent Adult Foster Home Association of Oregon
- The Oregon Department of Transportation
- YMCA

The Department of Administrative Services (DAS) would like to thank everyone who participated for their contributions and expertise during this work effort.

Executive Summary

Criminal Background Checks—Verifying Eligibility for Licensure or Employment

Criminal background verification is an essential component of consumer protection in the licensing and employment of individuals in many professions, including but not limited to medical practitioners, educators, law enforcement officers, etc. The purpose of this verification process is to ensure that the individual being licensed or employed—often to work directly with vulnerable populations—does not have a criminal history that represents a demonstrable negative bearing on the performance of that profession. To this end, most professions requiring licensure have specific requirements for verification of criminal history before a license is issued or renewed. These verification requirements are established in either Federal or State law, depending on the specific profession. Further, because there may be a gap in time between licensure and employment, or because a specific employer may have other legal or procedural requirements, most employers in these professions also require verification of criminal history at time of employment. This can contribute to a single individual being required to complete a background verification by multiple entities in a short period of time, if, for example, the individual were to seek employment immediately after licensure, and employed part-time for more than one employer (such as at multiple long-term care facilities or multiple schools—both scenarios which can be common occurrences).

From a State-wide perspective, based on specific legal requirements, there are distinct processes at over 50 agencies and boards that—while each may be singularly efficient—may not provide the most efficient or effective approach when viewed from the perspective of a citizen who may encounter multiple, unconnected processes in the course of seeking employment. The impact to the individual can consist of delay in employment and multiple fees for each separate check.

Therefore, during the 2012 legislative session, HB 4091 was crafted to direct the Department of Administrative Services to convene a workgroup to consider criminal background “checks” as a single state-wide system and evaluate for any potential improvements in:

- Timeliness of verification
- Cost
- Duplication of clearance

This Document

This document describes the workgroup that was formed, the approach taken, and presents the background, determinations and recommendations for next actions. The recommendations reflect the viewpoints of the workgroup based on the discussions and analyses, but may not be fully applicable to—or may not have been fully reviewed—by the leadership of participating organizations and interested parties.

This document should be used to inform specific next actions, a process that should include stakeholder input and review as detailed action plans are developed.

Section I: Introduction

Forming The Workgroup

This report is the culmination of work conducted between February 2012 and November 2012 by the HB 4091 workgroup established by the 2012 Oregon Legislature's passage of HB 4091. The Oregon Department of Administrative Services (DAS) was directed to convene a workgroup in order to review the topic systemically, and to develop recommendations for ways in which the performance of criminal records checks could be streamlined without sacrificing individual privacy or public safety.

HB 4091 Section (4) sets out the specific requirements the workgroup was to consider when developing the recommendations as follows:

- ✓ The protection of the public;
- ✓ Maintaining high standards of safety and accuracy;
- ✓ Acknowledging and addressing disparate procedures that may be required by federal and state law;
- ✓ Ensuring a timely process;
- ✓ Reducing the number and types of criminal records checks required;
- ✓ Allowing for transferability of criminal records checks among agencies and organizations;
- ✓ Determining the feasibility of developing a single system for conducting background checks administered by the Department of State Police;
- ✓ The cost, accuracy and quality assurance associated with obtaining criminal record checks from sources other than the Department of State Police;
- ✓ Providing for a system to update criminal records checks when certain events occur; and
- ✓ Determining the feasibility of allowing authorized persons to access criminal records checks on file.

The HB 4091 Workgroup Process

The full workgroup met nine times. Using the structure of the Bill to guide the work effort, the meetings were divided into specific discussion topics. The workgroup then divided the work effort into three sections in order to form sub-groups to delve more deeply into a topic between meetings of the full workgroup.

The three topics were:

1. Assess the "as-is"
2. Develop recommendations to improve the current process
3. Assess single system feasibility

Workgroup members then self-selected into one or more of the sub-groups to develop materials between full group meetings. The small groups each met two times. The efforts of each sub-group were then presented and discussed in full workgroup meetings to ensure the results reflected the perspective of all participants.

Developing Shared Working Definitions

Next, the workgroup felt it was important to establish a common vocabulary and evaluation criteria, before determining recommendations on how to improve the criminal background check process. The full workgroup established common working definitions for the following:

1. Protection of the Public
2. Safety and Accuracy
3. What is considered a timely process?

These definitions are not intended to be legal definitions, but rather to establish a shared understanding of the intent of the terms usage in the context of work effort.

Working Definition: Protection of the Public

For the purposes of this work effort, public protection was defined as including both the safety **and** privacy of the individual being investigated, as well as the population being served. It also provides for the exclusion of individuals whose past behavior demonstrates that, more likely than not, the individual will repeat dangerous behavior, e.g., it protects vulnerable individuals.

Working Definition: Safety and Accuracy

The workgroup determined safety and accuracy refers to the need to protect information against disclosure, ensure that the information in the criminal background check is accurate and complete, and that it also includes a process for the applicant to challenge the findings, e.g., due process if appropriate.

Working Definition: Timely Process

The workgroup was not able to determine a single, concrete measure of timeliness, as this can be a subjective measure and impacted greatly depending on the specific steps required for each individual verification. The workgroup did determine, however, that there are several components to the completion of verification and that “timeliness” could be defined as having no lag time in any of these steps.

Final Report

The final report was drafted by the Department of Administrative Services and then reviewed by the full workgroup. Feedback was received from the group until a final draft was created that the majority of the group felt accurately reflected the group’s efforts, determinations, and recommendations. Through the course of the project, the workgroup discovered it is very difficult to come up with a single recommendation to meet the needs of all entities that conduct criminal records checks. As a result, none are “one size fits all” recommendations to improve the criminal background check process. However, it was also determined there could be individual recommendations in very specific areas to potentially gain incremental improvements with the overall process.

Section II: The Criminal Background Verification Process

The overall criminal background verification process has several process components performed by different entities. This section presents a general overview, but each specific entity may be bound by specific legal requirements to include a specific component that may not be fully represented here. However, this will provide a general understanding of the overall process and what is involved.

Step one: Gather identifying information

An entity will gather identifying information from an individual, usually on a form, along with a request for information about any existing criminal history.

In some cases, individuals will be asked to also provide fingerprints. This could involve having fingerprints taken on site at the same entity whether via paper and ink or via electronic capture, but often involves going to a second location to be fingerprinted. Each entity has a unique code located on the fingerprint card (or in the electronic data file). The fingerprints are routed to the Oregon State Police (OSP), which is the sole entity in Oregon that can submit fingerprint cards to the FBI for processing applicant background checks. Illegible fingerprints are rejected by the FBI/OSP and returned to the requesting entity for follow-up with the applicant.

Step two: Information search

An entity will typically perform a name-based records search in one or more secure databases such as the Law Enforcement Data System (LEDS) or Oregon Judicial Information Network (OJIN). Access to these systems is controlled and will only be allowed for authorized purposes. An entity may also contact other jurisdictions in Oregon or other states for relevant information, depending on the specifics of each subject individual.

If a fingerprint-based check is requested, once the prints are processed by the OSP and FBI if needed, the results (either a “no record found” or the actual criminal record) for both state and FBI checks are then returned to the originating entity for review and determination. The OSP will then destroy the applicant fingerprint card upon completion, as required by statute.

Step three: Fitness Determination

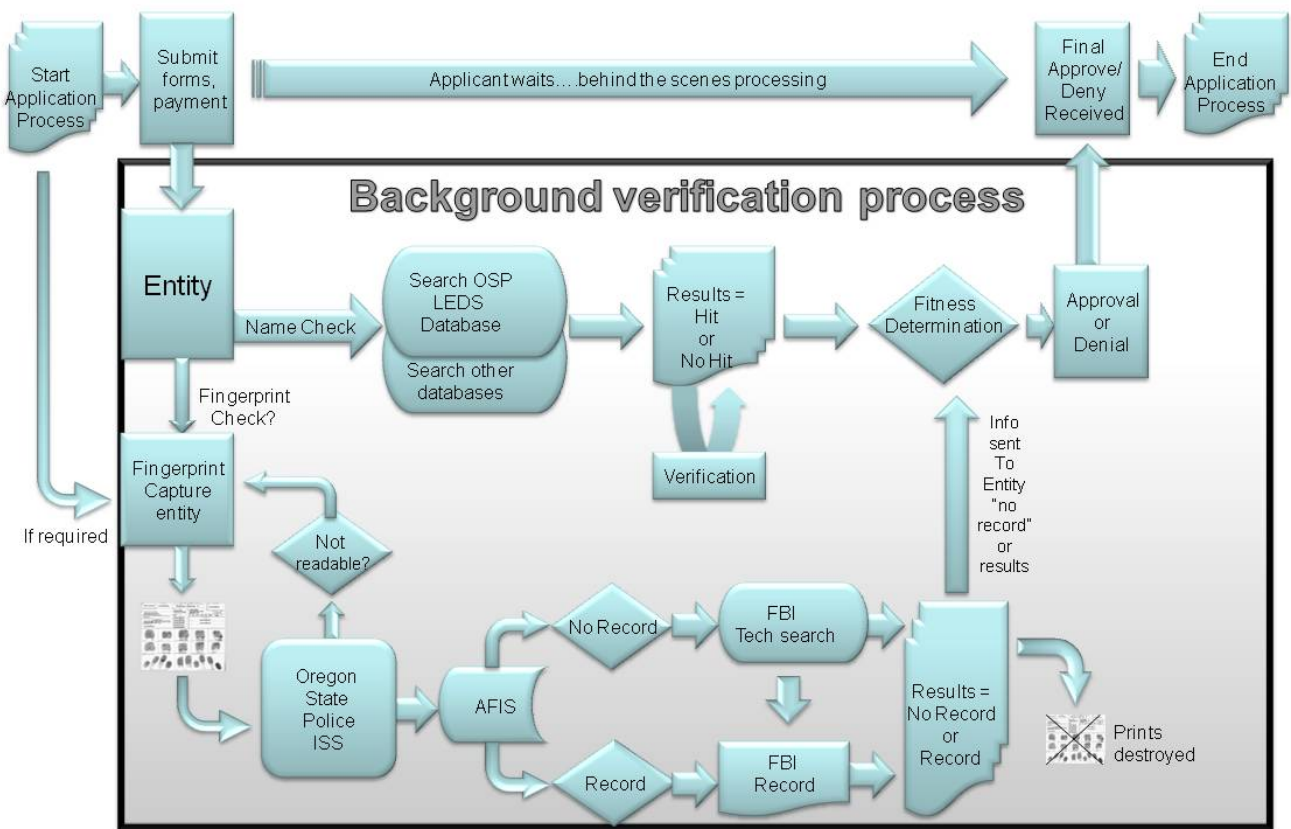
Once the search is complete and all relevant information is transmitted back to the entity, the resultant information is reviewed by the entity for any instances of disqualifying crimes. The specific disqualifying crimes—as well as the minimum elapsed time since the crime was committed—varies greatly from entity to entity, depending on the relevant Federal, State or entity laws and rules. If the check produced results about disqualifying arrest-only crimes, many entities must then locate and contact the court for the official final disposition record. If a named-based criminal background check was performed, it is also only an indicator that criminal activity may exist for that applicant, and may not be accurate or complete as nation-wide and state criminal records are linked to fingerprint and not name. Most entities cannot take action based solely on the criminal background check which revealed arrest-only information or that has not been confirmed by a subsequent fingerprint check. If the crime was committed outside the state of Oregon, a review of the charge is also required to determine if it is equivalent to a disqualifying crime in Oregon.

Depending on the specifics of the entity or the situation, this determination process may also require board review, if appropriate. This phase can vary the most in terms of time needed to complete the overall process.

Once a final determination is made, the entity’s decision—typically in the form of an approval or denial—is communicated to the subject individual.

Visual Representation of Verification Process

The following diagram shows the generic verification process. The end-to-end process is mostly invisible to the applicant. Each step is controlled by different entities and each entity may have additional steps depending on that specific entity’s requirements.



Section III: Determinations & Recommendations

Workgroup Determinations

Assessment of Current State

During the first two meetings, the workgroup compared processes and discussed the current legal context for the performance of full criminal background checks, including the processing of fingerprints through the Oregon State Police (OSP). The group determined that criminal background verification requirements are governed by a wide variety of sources, ranging from Federal requirements, State statute and entity or county administrative rule. Generally, that context looks like the following:

Federal Law	Title 42, USC Section 14616. Title 5 U.S.C. Section 552a(b); Public Law 92-544 FBI Criminal History Checks for Employment and Licensing Federal Register Rules and Regulations - 28 CFR § 20.33 Dissemination of criminal history record information § 20.34 Individual's right to access criminal history record information. § 50.12 Exchange of FBI identification records. § 906.2 and § 16.34
State Law (ORS)	General: ORS 181 In addition, each entity has specific ORS which have varying levels of specificity about fingerprinting, disqualifying crimes and other relevant aspects of the process.
Agency (OAR) or equivalent Entity bylaws and policies	General: OAR 257-010 (ID Services) and OAR 257-015 (LEDS) Each agency has also developed OARs to further qualify the requirements in rule, if not specific in statute. This process is a public process, governed by statute. Non-agency entities have various means of establishing equivalent policies at this level.
Procedure/Policy/Technology Systems	Finally, there are aspects of the process that are not allowed or disallowed by law, but which have developed in order to implement those laws. In some cases there may be an extensive effort in changing systems, for example, to accommodate changes in law. This includes paper workflow, application tracking and notification systems, procedures, staff assignments, etc.

Overall, this layered context and the variation either embedded in federal or state law—or which developed in response to specific laws—makes it difficult to make a recommendation for a single point system or develop a single list of recommendations that would apply equally in every case. Please see Appendix D for related survey information.

Determining Possible Improvements to Current Overall System

Fitness Determination Criteria

One of the greatest concerns resulting from the workgroup meetings and from the survey conducted is the lack of portability for sharing results of criminal background checks between employers and licensures, especially when the individuals are working/volunteering within the same populations. In most cases regulatory agencies administer criteria established by a governing Board, Policy or Advisory Committee made up of volunteers, appointees and/or statutorily defined positions representing specific areas of interest. Each group determines its own criteria of disqualifying crimes and weighing tests which, in many if not most cases, are written into their agency's Oregon Administrative Rules. As a result, because of the varying criteria, the results of criminal background checks are not portable. By nature of how criminal activity takes place and when those records are reported, a background check is essentially a snapshot view at the time of request and can be updated at any time. Therefore, by the time the next need arises, the record data could no longer be timely or accurate for applying a current review. Also contributing to the challenge in this area, state and federal laws restrict the access, use and dissemination of confidential criminal offender information for which all authorized users are required to comply. **Appendix C: Criminal Background Verification Process Comparisons**—contains a small sample of public entities. As you can see, this sampling demonstrates the variation in disqualifying crimes and time periods for these disqualifying crimes.

Electronic Fingerprint Capture—LiveScan

First developed in 1989 and since well established, LiveScan is for the electronic capture and transmittal of fingerprints. Digitizing the fingerprints enables the electronic transfer of the fingerprint image data along with personal descriptor information to computers at OSP in a matter of seconds, instead of the days required to send hard copy fingerprint cards through the mail. As a result, the timeliness of the criminal record check process is greatly improved. There are vendors who can provide LiveScan prints through a contract or entities can purchase their own LiveScan systems to take the electronic prints themselves. The fingerprint images can either be printed onto a hard card document and submitted manually (which would only realize some of the benefit), or the LiveScan vendor or entity taking the prints can work with OSP to have the prints submitted electronically. LiveScan can eliminate many of the problems associated with ink-based fingerprint capture, such as smudging, smearing and over or under inking. As a result, fewer fingerprint submissions are rejected.

The workgroup compiled some pros and cons of implementing LiveScan statewide which are as follows:

Pros:

- Currently implemented by some agencies.
- Can reduce the cost to obtain the prints and reduce the time for the entity and applicant to receive the results of the criminal background check.
- Improves the quality of the fingerprints captured; reducing the number of rejected prints.
- Provides a single standard resource option for all entities and/or applicants to use.

Cons:

- There is no current oversight of private fingerprinting services in Oregon to ensure vendors destroy the fingerprints—increasing electronic capture of prints may increase potential for misuse.
- A statewide contract may negatively impact private fingerprint companies or local law enforcement that cannot compete with larger scale fingerprint service providers in this area

Utilizing a Pre-Clearance Approach: Creating a “Clean Box” Registry

The workgroup considered whether a “clean box” registry would assist in consolidating criminal records checks. In 2009, the Oregon Commission for Child Care requested the introduction of HB 2988, which ultimately did not pass. HB 2988 would have established a Voluntary Central Background Registry administered by the Child Care Division of the Employment Department (“Clean Box” Registry). In the proposed concept, to be eligible for the Clean Box Registry, an applicant must successfully complete a fingerprint-based criminal background check. If the result of the fingerprint check establishes the applicant has no criminal history, the applicant must pay the applicable fee and can then elect to be placed in this “clean box” registry. A fingerprint check is only required for this initial clearance and not at renewal. Once an applicant is placed in this registry, a quarterly Law Enforcement Data Systems (LEDS) name-based Oregon only check is run on the individual. As long as the applicant continues to have no criminal history, he or she remains in the registry. This registry expires after two years, but may be renewed upon application and payment of the applicable fees.

As conceived in HB 2988, individuals who work or volunteer to provide services to children could opt into the registry, and agencies and organizations in this field could accept enrollment in the registry in lieu of the agency's or organization's own requirements for conducting criminal records checks. If an enrolled individual is later found to have activity, they would be removed from the registry, and the approved entities that indicated a need for information will be contacted. Removal from the registry may or may not affect the relationship (e.g., employment) with the agency. The entity can still do their own suitability determination or separate background check.

The workgroup compiled some of the pros and cons of implementing a similar “clean box” registry:

Pros:

- The registry is completely voluntary. A subject individual must elect to be placed on the registry.
- Employers must offer employment contingent on a successful criminal background check before checking the registry. Waiting until the end of the hiring process reduces the risk of an employer eliminating an applicant for not being in the “clean box” registry.
- This registry will likely work well for some agencies/boards/commissions; e.g. many small non-profits who do not currently conduct background checks.
- The State has the ability to implement a secure database and restrict access to only those authorized to access the registry.
- A quarterly check helps mitigate changes in criminal activity that otherwise could go unreported within a two-year renewal period.
- The quarterly LEDS check is automated on the front end.
- There will be an appeal process (due process). The subject individual will be notified if they have been removed from the clean box if LEDS indicates the individual no longer has a clean history. Notification would include information on how to challenge the record.
- A subject individual must be completely clean to be added to the registry. The individual is not eligible if he/she has any pending crimes.

Cons:

- The “clean box” registry will not work for all employers, licensing agencies, etc. For example, the Department of Human Services has federal requirements for certain positions that an applicant must successfully complete a current fingerprint criminal background check before being offered the position.
- It would need to be determined which entity will house the database, develop this registry and staff the ongoing support and maintenance of the registry.
- The costs are unknown at this time.
- There are certain positions that do not currently require a fingerprint criminal background check which would then be fingerprinted if the employer wanted to utilize this registry.
- Implementation of this registry requires a statutory change.
- The quarterly LEDS check is name-based only, and no out of state activity is included.
- The quarterly review of LEDS can be resource intensive.
- A name-based check is not considered best practice and could lead to false positives or false negatives.

Exploring Use of Single “Rap Back” Program

The term “rap back” is derived from the proactive reporting out of the existence of a “rap sheet” on an individual—in other words, proactive notification if and when an individual is involved in criminal activity. A Rap Back program would inform an employer or other designated entity when an individual, who has undergone a fingerprint-based background check and whose fingerprint cards are retained by a criminal history repository after the check, is subsequently arrested. Currently, most fingerprints are destroyed following a criminal background check, as required by statute. If a statewide rap back system was implemented, all fingerprints would need to be retained, requiring a change in Oregon law.

Implementing a national rap back program will not reduce the number of times an individual is required to do an initial statewide fingerprint check, but it could replace a federal fingerprint check if those fingerprints are retained at the federal level *and* the position or license is in the same category as when the fingerprints were originally taken and retained. For example, a nurse applies for his or her license. During that process, he or she is subject to a fingerprint-based criminal background check and the Board of Nursing enrolls in the rap back program. The fingerprints are retained at both the state and federal level and the Board then subscribes to receive notifications of any subsequent arrests on this individual. Six months later, the same individual applies to work for a long term care facility. To work for this facility, the individual must pass a fingerprint-based criminal background check. Under the national rap back system, because the license and the employment falls under the same category—nursing—and the individual's fingerprints retained, he or she may not be subject to another federal fingerprint check. However, the State will still need to fingerprint this individual to confirm this is the same individual already on file. Once the background check is completed, both the Board of Nursing and the long term care facility could subscribe at the state level and (because they fall in the same category) could receive notifications of any subsequent arrests under the single federal subscription.

However, rap back would not work if the individual described above decides to volunteer at a childcare facility. This would fall under a different category and the individual would be required to undergo a state and federal fingerprint-based criminal records check in addition to the current subscription.

Implementing a national rap back system improves the protection to the public, as it provides a continuous evaluation of the individual. In addition, a national rap back system would provide a long-term savings potential as it eliminates the need for federal fingerprint-based criminal records check if the individual has already undergone such a check and is applying for a position or license in the same category. For applicants that stay in the same career field or maintain a license, repeated fingerprinting and background checks at renewal period could be significantly reduced, if not eliminated. However, that would be up to the regulating entity and emphasizes the need to ensure all safeguards are in place and that the person being printed is, in fact, the applicant of interest to that entity.

The workgroup does not recommend moving forward with a national Rap Back Program that would be used by all entities statewide at this time. However, it is the workgroup's recommendation to further explore this option in 2014 when the federal government is expected to implement their program nationwide. In the mean time, the workgroup suggests that any cluster of entities interested in pursuing the application of some form of a limited rap back program do so, and, if so, work together to share their experience with others to further inform the development of a broader implementation in the future.

The workgroup compiled some pros and cons of implementing a rap back system which are addressed below:

Pros:

- Potentially eliminates the need for multiple federal fingerprint-based background checks for some individuals.
- Oregon State Police currently has security measures in place to retain fingerprints.
- Employers will subscribe to receive notifications about the subject individual and are obligated to inform OSP when it no longer has a need for or authorized purpose for the information. FBI provides entities with the authority and accountability not to misuse the information.
- Continuous evaluation of suitability on a subject individual.
- Ability to implement safeguards and/or training for those who subscribe to rap back.
- Ability to implement on a smaller scale, i.e. the State could start with only those positions involving safety.
- If entities use the Apply Same Criteria in Fitness Determination and have the same purpose, rap back could eliminate multiple fingerprint checks.

Cons:

- The FBI does not currently have a rap back system in place. It is expected to be implemented in the summer of 2014.
- Retention of all fingerprints would require statutory language change.
- Since rap back is driven by arrests and not convictions, there is a concern about what an entity may do with the arrest information.
- As stated above, because rap back is driven by arrests, there is a concern about who is notified and when (arrest v. convictions). Arrests do not usually lead to disqualifications.
- Rap back constitutes one piece of the FBI's larger Next Generation Identification program, a system to collect and store a variety of biometric information about individuals, which raises further privacy concerns.
- Increased personnel costs at implementation. Employees will need to be trained on how to properly administer a rap back system.
- There may be a potential hurdle to share results, i.e. if two entities have different purposes for conducting the background check both entities may still need to conduct fingerprint checks. As a result, the subject individual may have a set of fingerprints on file for each category.
- Entities may have difficulties tracking individuals who leave and/or no longer possess licenses.
- Creates an administrative burden to maintain the state portion of a national rap back program, which is the key to reducing the number of prints sent to the FBI.
- Costs to implement and maintain are unknown. FBI fee for rap back is unknown.
- Any significant reduction of fingerprint-based checks through OSP has potential revenue impact on OSP core services for creating and maintaining statewide criminal history records accessed via LEDS.

Feasibility of developing a single system for conducting background checks administered by the Department of State Police

The workgroup explored the feasibility of developing a “single system” for conducting background checks administered by the Department of State Police (OSP). The workgroup determined it would not be feasible, based on the information currently available, to develop a single point of contact for conducting background verification and approval administered entirely by OSP. While all criminal fingerprint-based checks are processed through OSP, the greatest amount of variation and workload required in conducting criminal background checks is the fitness determination process in which an entity determines if any criminal history is sufficient enough to determine the person should not be approved for the specific position/certification/licensure requested. As the law currently stands, there are too many different criteria to assess fitness based on each entity and position-specific needs for OSP (or any single entity) to become an expert on each area. As a result, this could lengthen the time it takes to complete a criminal background check and would require multiple additional staff to support the work. A predictable estimate was not found to be reliable with such limited information. However, it is clear that this role would not be able to be accomplished with existing resources and it is believed by the group that the end net result may require more staff than the current “as is” process. Because the criminal background check is but one part of the overall process to license or employ applicants, it is assumed that OSP would require new staff resources while entities would continue to retain current staff resources for conducting all remaining functions within the employment or licensing process.

However, when viewing criminal background verification as a single *distributed* system, there is the opportunity to make changes in procedure, rule or statute to streamline the verification within certain logical clusters. From this vantage you can see how each entity diverged in the development of Administrative Rules, procedures and systems to meet their specific stakeholder needs. This change of perspective allows the group to create alignment that better meets the needs of persons experiencing more than one entity’s jurisdiction.

There are already examples of entities within a specific cluster already collaborating to align practice or share information, where possible, such as within education, and between Department of Human Services and the Board of Nursing.

Determine the cost, accuracy and quality assurance associated with obtaining criminal record checks from sources other than the Department of State Police.

There are private companies who have been approved by the FBI to perform criminal background checks for specific federal agencies and some, as noted below, may have been given the unique authority to access FBI databases for that purpose only. Initial inquiries make it appear the cost may be competitive to the current cost of conducting these checks. However, before the workgroup could recommend using a private company to perform these background checks, it would need to obtain information on where the private company is pulling its information from to ensure accuracy and quality assurance. Criminal offender records are confidential by state and federal law, and are generally not accessible outside of law enforcement and criminal justice purposes, except as authorized by state law and approved by the US Attorney’s Office. However, the FBI does maintain a list of approved private companies that can serve as “channelers” for specific programs. A fingerprint-based check is required by the FBI before any access is allowed for non-criminal justice purposes.

Workgroup Recommendations

HB 4091 is just the beginning of an important effort to improve the public's experience of the *overall* criminal records verification process in Oregon. The workgroup recommends each option below be explored in further detail and believes these initial steps will begin improving the criminal records verification process for Oregonians.

Require a review of privacy, non-discrimination and value of the separation of identification and verification.

The workgroup engaged in extensive discussion on a variety of related topics that are essential components of a criminal background verification process. Irrespective of any other recommended changes, the workgroup strongly suggests all entities which perform verification be asked to review their processes and requirements against benchmarks for privacy and non-discrimination, such as the employer best practices published by the EEOC (see Appendix B).

Additionally, the workgroup recommends that further discussions occur—or best practices be identified—for further separating the identification of an individual for licensure or employment from the criminal background verification and fitness determination process. This would further reduce the potential for intentional or unintentional bias and prevent the potential for introducing opportunity for bias in the fitness determination phase as new identification and verification technologies change. For example, this means if a photo or demographic information is captured on an application for identification purposes, an entity will not include this information with the information used to perform a criminal background verification and fitness determination.

Change Required: This directive could be handled via a directive from DAS or through legislation.

Take “cluster” approach to background verification.

The workgroup did not find a benefit in creating a singular point for the collection, processing and review of criminal backgrounds; however, the workgroup did see a benefit when similar organizations collaborate in the process of background verification and, therefore, recommends organizations that fall within logical “clusters” pursue a more detailed analysis of aligning processes and requirements, and explore the ability to share the results of a background verification. Furthermore, the workgroup recommends entities within a cluster—especially when bound by the same statutes for criminal backgrounds and fingerprints—“start from scratch” to draft related Administrative Rules that are aligned which each entity can then adopt.

Change Required: This “analyze and align” recommendation can proceed without statutory changes, but may produce a list of specific changes required to facilitate optimal alignment of processes within clusters.

Apply similar criteria in fitness determination within logical “clusters”.

Using the same “cluster” approach—after logical clusters have been identified—the workgroup recommends that members within each cluster consider the alignment of their entity’s criteria for fitness determination. Should alignment be possible, this action will facilitate the sharing of verifications without the need to transmit specific individual detail, but rather a confirmation of yes/no clearance status. The workgroup recommends the Legislature consider requiring entities to apply the same criteria when conducting fitness determinations to those who serve similar populations for only *non-criminal justice* positions. While to some degree the process for conducting checks for law enforcement and criminal justice purposes was discussed, the workgroup determined that the focus of the project was for non-criminal justice background checks established through state entities and serving a larger citizen-based population for employment and licensing. Therefore, the workgroup is not including criminal justice positions within its recommendations.

The workgroup recommends identifying clusters comprised of logical clustering of those individuals with direct access and provide services in clusters such as: (1) Children; (2) Elderly; (3) Disabled/includes Mental Health; and (4) General Public. However, greater or fewer clusters may be required and should be evaluated in more detail to identify the appropriate lines of demarcation. The workgroup defined direct access to include those with access to a vulnerable population, access to personal information, as well as direct access to the individual.

Change Required: This “align and normalize” recommendation can proceed without statutory changes, but will most likely require changes to entity administrative rule or policy, and may produce a list of requisite statutory changes if a specific entity’s criteria are delineated in statute.

Establish “clean-box” registries, where practical, within logical “clusters”.

Taking a slightly different approach, a “clean-box” registry involves creating an information repository of individuals who have a verified clean criminal background which can then be referenced by multiple participating entities. This approach is described in more detail in the document. The workgroup recommends identifying a viable pilot cluster

Change Required: This “clean-box” recommendation will require legislation to form the pilot group, the “clean-box” repository structure and management, and modify relevant statutes for participating entities to make use of the “clean-box” approach.

Minimize the need for repetitive fingerprint capture.

Acquiring, submitting, and processing fingerprints can be one of the most time consuming and costly elements of a criminal background verification process. The workgroup recommends each entity review their individual processes and utilize fingerprinting only where and when necessary due to Federal requirements, identity-verification or where equivalent verifying information is not available through other means, such as search services of sufficient scope or via partnership with other entities to reference prior fingerprinting verification

(e.g. clean-box or cluster agreements). However, this must be done in balance with an understanding of the limitations of name-only checks and a review of the balance of risk.

Change Required: This “analyze and reduce” recommendation would not require legislation to move forward, but may result in the generation of a list of statutory changes required after work is complete.

Increase the use of electronic fingerprint processing (e.g., LiveScan) at point of capture.

In spite of the availability of electronic fingerprint capture for over 23 years, the majority of applicant fingerprinting in Oregon is captured with ink and paper cards while the majority of arrest fingerprinting is via livescan. This reliance on paper fingerprint cards can increase the length of the overall verification process, because it has a higher error rate and takes longer to process and distribute than fingerprints captured electronically. It should also be noted that the FBI requires OSP to submit fingerprints electronically. This means paper cards sent to OSP must be scanned for transmittal.

The workgroup recommends increasing the utilization of LiveScan technology in Oregon at the point of capture. This will require a mix of actions, including ensuring sufficient availability of LiveScan machines and technicians—either acquired by state agencies directly or provisioned through third-party providers—as well as potential changes in the processes and data systems at individual entities to accommodate the differences.

Change Required: The workgroup recommends the DAS State Procurement Office initiate and then centrally administer a state-wide contract for LiveScan services which entities could utilize. The contract should provide a variety of use-case providers and levels of service in order to meet the varying needs of entities which require this service. The workgroup also recommends creating a standing LiveScan User Group to share best practices, communicate implementation tips, update provider requirements, etc.

Establish one or more user groups to regularly evaluate overall criminal verification system, changes and to compare best practices.

The participants in the workgroup commented that there was value in comparing processes, practices, drivers and technologies among the group, and the workgroup recommends this topical collaboration continue—not just for the purposes described in previous recommendations—but at the strategic level of viewing the overall criminal history verification system in Oregon.

Change Required: The establishment of a standing user group with participation from all agencies or entities that perform criminal background verification may or may not require the creation of legislation and this will need to be determined. This can be factored into the creation and review of “clusters” as described in prior recommendations.

Conclusion

Criminal background verification is an essential tool used to improve public safety. Performed at over 50 agencies and numerous other entities, at times a single individual can be required to submit to multiple verifications within a short period of time, and often for the same event (e.g., employment at multiple care facilities). While these verification processes, have for the most part, been optimized for effectiveness, cost and timeliness at each entity, they have not been viewed comprehensively as a single system. From this viewpoint, there are changes that can be made to improve the overall system, without undermining the service-levels or mission outcomes of the individual entities. While far from a comprehensive action plan, the workgroup has made several recommendations for next steps on the path to improvement and strongly encourages serious consideration and adoption of the recommendations.

Appendix A: House Bill 4091

76th OREGON LEGISLATIVE ASSEMBLY--2012 Regular Session

Enrolled
House Bill 4091

Sponsored by Representative NATHANSON; Representatives BAILEY,
BARKER, BOONE, BUCKLEY, COWAN, DOHERTY, GELSER, HARKER, HOLVEY,
HOYLE, KENY-GUYER, ROBLAN, TOMEI, WITT, Senator DEVLIN
(Presession filed.)

CHAPTER

AN ACT

Relating to criminal records checks; and declaring an emergency.

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

SECTION 1. { + (1) The Oregon Department of Administrative Services shall convene a work group to develop recommendations for performing criminal records checks.

(2) The work group must include representatives of:

- (a) The Oregon State Police;
- (b) The Department of Education;
- (c) The Department of Human Services;
- (d) The Department of Corrections;
- (e) The Oregon Department of Administrative Services;
- (f) The State and Local Government Efficiency Task Force created in section 1, chapter 435, Oregon Laws 2011;

- (g) An agency that licenses individuals;
- (h) A human services organization;
- (i) An association of school employees;
- (j) A local government; and
- (k) An organization that advocates for the privacy rights of individuals.

(3) The Oregon Department of Administrative Services may include additional members in the work group at its discretion.

(4) In developing its recommendations, the work group shall consider:

- (a) The protection of the public;
- (b) Maintaining high standards of safety and accuracy;
- (c) Acknowledging and addressing disparate procedures that may be required by federal and state law;
- (d) Ensuring a timely process;
- (e) Reducing the number and types of criminal records checks required;
- (f) Allowing for transferability of criminal records checks among agencies and organizations;
- (g) Determining the feasibility of developing a single system for conducting background checks administered by the Department of State Police;

(h) The cost, accuracy and quality assurance associated with obtaining criminal record checks from sources other than the Department of State Police;

(i) Providing for a system to update criminal records checks when certain events occur; and

(j) Determining the feasibility of allowing authorized persons to access criminal records checks on file.

(5) The Oregon Department of Administrative Services shall report on the work group's recommendations to an appropriate interim committee of the Legislative Assembly on or before November 30, 2012. + }

SECTION 2. { + Section 1 of this 2012 Act is repealed on January 2, 2013. + }

SECTION 3. { + This 2012 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect on its passage. + }

Passed by House February 27, 2012

Appendix B: Equal Employment Opportunity Commission (EEOC) Information

HB 4091 required the work group to “[a]cknowledg[e] and address[] disparate procedures that may be required by federal and state law.”

There are federal and state laws that make it an unlawful employment practice for an employer to implement a policy or law that has a disparate impact of excluding a protected class. In line with this law, several HB 4091 work group members attended a webinar about the Equal Employment Opportunity Commission (EEOC) guidelines about criminal background checks and Title VII of the Civil Rights Act of 1967, *as amended*, 42 USC § 2000e *et seq.* The EEOC warns employers that a neutral criminal background check policy could violate the law if it has a disparate impact of excluding a protected class. A disparate impact is established if the policy is not job related and consistent with business necessity.¹ An employer could defend such a policy if it established:

- A valid criminal conduct exclusion for position in question, i.e. if there is data or analysis about criminal conduct as related to subsequent work performance or behaviors; or
- A targeted screen considering the nature of the crime, the time elapsed and the nature of the job. Also provides an opportunity for an individualized assessment to determine if the policy, as applied, is job related and consistent with business necessity.

The EEOC warns against employers basing employment decisions on arrests and blanket disqualifiers that do not consider time elapsed. Employers need to be sure it can tie the criminal history as relevant to the particular job. Be thoughtful in determining disqualifications, i.e. consider the individual facts, the context, the job, and the time elapsed. Social studies which demonstrate specific convictions lead to specific future behaviors in specific contexts are useful. Employers need to focus on the nature of the crime, the position, and the time since the conviction. The EEOC states state law preemption is not a defense against a disparate impact claim, i.e. the fact a policy adopted to comply with state or local law or regulation does not shield the employer from Title VII liability.

Exhibit 1 establishes there are currently a number of agencies with blanket disqualifiers that do not consider time elapsed. If the legislature decides to review the criteria agencies use to disqualify individuals, it is recommended those blanket disqualifiers be removed in accordance with the EEOC guidelines.

EEOC Best Practices Recommendations

General

- Eliminate policies or practices that exclude people from employment based on any criminal record.
- Train managers, hiring officials, and decision makers about Title VII and its prohibition on employment discrimination.

¹ Oregon law is similar to the Federal law. See OAR 839-005-0010(2).

Developing a Policy

- Develop a narrowly tailored written policy and procedure for screening applicants and employees for criminal conduct.
 - Identify essential job requirements and the actual circumstances under which the jobs are performed.
 - Determine the specific offenses that may demonstrate unfitness for performing such jobs.
 - Identify the criminal offenses based on all available evidence.
 - Determine the duration of exclusions for criminal conduct based on all available evidence.
 - Include an individualized assessment.
 - Record the justification for the policy and procedures.
 - Note and keep a record of consultations and research considered in crafting the policy and procedures.
- Train managers, hiring officials, and decision makers on how to implement the policy and procedures consistent with Title VII.

Questions about Criminal Records

- When asking questions about criminal records, limit inquiries to records for which exclusion would be job related for the position in question and consistent with business necessity.

Confidentiality

- Keep information about applicants' and employees' criminal records confidential. Only use it for the purpose for which it was intended.

Information taken from U.S. Equal Employment Opportunity Commission, Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 at http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

Appendix C: Criminal Background Verification Process- Sample Comparison

Sample Comparison of Entity Criminal Background Verification Processes						
Entity	Subject Individuals	Fingerprints		LEDS and/or OJIN	Cost/LEDS/ Fingerprints	Time period for disqualifying crimes
		Required?	Retained?			
Department of Education	Any contractor and employee with unsupervised contact or employee at the school district unless the individual was previously checked in another district or private school through TSPC or ODE or unless that person lived outside the state. ORS 326.603	Yes, ORS 326.603	No, ORS 181.534	NO OJIN, LEDS for volunteers Oregon check only – ORS 326.607, cost \$5; pre-employment for \$5 will do an Oregon only LEDS check on anyone; retention 3 months.	\$62 OAR 581-021 / LEDS \$5 / done by OSP	ORS 342.143 look back forever on all crimes. If make a false statement/weighting test is done and there is the right for a hearing. District determines whether the individual is hired.
Department of Human Services	Two set of rules. Done if have not been done in the past 60 days or if been out of state in the past 5 years. OAR 407-007-0000-0100 applies to DHS and OHA employees and volunteers; OAR 407-007-0200-0370 applies to providers. There are some exceptions for certain individuals if a check has been completed within the previous 24 months and was approved without restrictions. See OAR 407-007-0220(5)(a). Background check is required if been out of state for 60 days or more in the past 5 years.	Yes, ORS 181.537(2), OAR 407-007-0020(2) and OAR 407-007-0220(2); Adam Walsh Act of 2006 requires fingerprints on all foster parents and adoptions.	No, ORS 181.534	Yes, ORS 181.537(3), OAR 407-007-0020(1) and OAR 497-007-0220(1); also conduct OJIN checks.	Absorbed through DHS.	ORS 181.537(6) and OAR 407-007-0060 - weighing system for employees and volunteers; OAR 407-007-0275 - lists forever crimes and 10 year limits for some providers; OAR 407-007-0280 provides for a weighing system for other providers, 10 year and 5 year crimes.
Oregon Rehabilitation Association	OAR 407-007-0200-0370-DHS contractors	Yes, OAR 407-007-0220(2)	No, ORS 181.534	Yes, OAR 497-007-0220(1); also use OJIN	Absorbed	OAR 407-007-0275 lists forever crimes and 10 year limits for some providers; OAR 407-007-0280 provides for a weighing system for other providers. 10 year and 5 year crimes.
Benton County	LEDS users, OAR 257-015; public safety, ORS 181.534; employees and employees working in DHS programs, ORS 181.537 and OAR 407-007-0000-0200	Yes, OAR 257-015-0050(6) required for LEDS; ORS 181.534/ OAR 259-008-0010 Public Safety Employees; and ORS 181.537, OAR 407-007 - employees working in DHS programs	Yes, for law enforcement – sworn and unsworn, OAR 259-008-0010(3)(a); subset of DPSST; and DHS.	Yes, run LEDS and OJIN	Absorbed	Varies – Public safety has disqualifiers and discretionary disqualifiers per OAR 259-008-0070(3) and (4); DHS it depends on the program – see above.
Department of Public Standards and Safety	Private Security Program and Private Investigator Program	Yes OAR 259-060-0120, ORS 181.880(3) and ORS 703.425(4)	Yes, ORS 181.880 and ORS 703.425	Yes for both. Run LEDS for license renewals conduct a LEDS state check; run every two years	OAR 259-060-0500(2)(b) allows department to set appropriate fees. \$51 for private investigators and \$50 for private security	ORS 181.875(2) and OAR 259-060-0020 Person felonies forever; 10 year and 7 year disqualifiers; right to disqualify for moral fitness.

Sample Comparison of Entity Criminal Background Verification Processes

Entity	Subject Individuals	Fingerprints		LEDS and/or OJIN	Cost/LEDS/ Fingerprints	Time period for disqualifying crimes
		Required?	Retained?			
Oregon Health Licensing Agency	11 regulatory boards/22 professions	Yes, OAR 331-030-0000(2)-OHLA ; OAR 331-820-0010(2) – Sex offender therapist; OAR 331-710-0010(3) – Respiratory Therapist; OAR 331-710-0040(1)(c) – Polysomnography Therapist	No, ORS 181.534	No, OJIN for investigations, but not licensing.	Applicant pays per OAR 331-030-0004(2)	ORS 670.280(2) and OAR 331-030-0004(4) consider a number of factors-board makes the determination.
Oregon State Board of Nursing	License/certificate applicants ORS 678.150(5) and (10); since 2008 fingerprint every new licensee and anyone returning after license expires and if reapplying.	Yes, ORS 678.150(10). Policy requires fingerprints for initial applications	No, ORS 181.534	Yes per agreement with OSP -OAR 257-010-0025. Per policy for renewal, prescriptive privilege, dispensing privilege, certified nursing assistant 2, registered nurse first assistant; also run LEDS every other year; run OJIN checks.	OAR 851-002-0055 - \$52	OAR 851-063-0110 and OAR 851-045-0080 list exclusionary crimes; OAR 851-031-0007 requires the board to look at different factors which includes nature of the crime, passage of time, and age of the applicant at the time of the crime. OAR 851-062-0135 also lists these factors.
Oregon Department of Corrections	Before placed on eligible list - Law enforcement Officers – OAR 259-008-0010; non-security, volunteers, and contractors run LEDS/DMV / OAR 259-008-0015(1).	Yes, OAR 259-008-0010(3)	Yes, OAR 259-008-0010(3)(a)	Yes for both; run LEDS yearly on security employees; also use a database to see if there are any inmate relationships; personal behavior such as stalking and/or restraining orders-disqualifiers. Also run DMV checks on every state the applicant has lived in since age 18.	Absorbed.	Mandatory disqualifying misconduct described in OAR 259-008-0070(3) and discretionary disqualifying misconduct described in OAR 259-008-0070(4); cannot disqualify based on juvenile record, but can use it as showing a pattern.
Employment Department, Child Care Division	Subject individual defined in OAR 414-061-0030.	Yes (if applicable), OAR 414-061-0080(1), ORS 181.537, ORS 181.534	Yes (if applicable), OAR 257-015-0050.	Yes	\$3 application fee, \$62 FBI fee	OAR 414-061-0050 (5, 7, 10, 15, 20, No limit) OAR 414-061-0050(6) Suitability Determination
Mass Transit Districts or Transportation Districts	All persons employed by, under contract with or used by the District to transport passengers for regular routes, light rail, Para transit or Medicaid	Yes, ORS 181.536 ORS 181.537	No, ORS 181.534	Yes for both	Absorbed	As Defined in District resolution and policy based on OAR 410-007-0310 OAR 407-007-0275

Appendix D: Federal and State Law regarding Non-Criminal Justice Background Checks

Title 42, USC Section 14616. National Crime Prevention and Privacy Compact – for the exchange and use of criminal records for non-criminal justice purposes.

Public Law 92-544 FBI Criminal History Checks for Employment and Licensing

The FBI's authority to conduct a criminal history record check for non-criminal justice purposes is based upon Public Law (Pub. L.) 92-544. Pursuant to that law, the FBI is empowered to exchange criminal history record information with officials of state and local governments for employment, licensing, which includes volunteers, and other similar non-criminal justice purposes, if authorized by a state statute which has been approved by the Attorney General of the United States. The U.S. Department of Justice has advised that the state statute establishing guidelines for a category of employment or the issuance of a license must, in itself, require fingerprinting and authorize the governmental licensing or employing agency to exchange fingerprint data directly with the FBI.

A criminal history record search obtained pursuant to U.S. Department of Justice Order 556-73 may not meet employment requirements. Governmental licensing or employing agencies covered by federal laws and/or state statutes may refuse to accept criminal history record information directly from the subject of the record, as there would be no way to verify that the information contained on the record had not been altered. Also, a record provided to the subject for personal review contains only information maintained by the CJIS Division and may lack dispositional data and/or arrest records that are maintained only at the state level.

Federal Register Rules and Regulations - 28 CFR

§ 20.33 Dissemination of criminal history record information. (a) Criminal history record information contained in the III System and the FIRS may be made available:(1) To criminal justice agencies for criminal justice purposes, which purposes include the screening of employees or applicants for employment hired by criminal justice agencies;

(2) To federal agencies authorized to receive it pursuant to federal statute or Executive order;

(3) For use in connection with licensing or employment, pursuant to Public Law 92–544, 86 Stat. 1115, or other federal legislation, and for other uses for which dissemination is authorized by federal law. Refer to §50.12 of this chapter for dissemination guidelines relating to requests processed under this paragraph;

(4) For issuance of press releases and publicity designed to effect the apprehension of wanted persons in connection with serious or significant offenses;

(5) To criminal justice agencies for the conduct of background checks under the National Instant Criminal Background Check System (NICS);

(6) To noncriminal justice governmental agencies performing criminal justice dispatching functions or data processing/ information services for criminal justice agencies; and

(7) To private contractors pursuant to a specific agreement with an agency identified in paragraphs (a)(1) or (a)(6) of this section and for the purpose of providing services for the administration of criminal justice pursuant to that agreement. The agreement must incorporate a security addendum approved by the Attorney General of the United States, which shall specifically authorize access to criminal history record information, limit the use of the information to the purposes for which it is provided, ensure the security and confidentiality of the information consistent with these regulations, provide for sanctions, and contain such other provisions as the Attorney General may require. The power and authority of the Attorney General hereunder shall be exercised by the FBI Director (or the Director's designee).

(b) The exchange of criminal history record information authorized by paragraph (a) of this section is subject to cancellation if dissemination is made outside the receiving departments, related agencies, or service providers identified in paragraphs (a)(6) and (a)(7) of this section.

(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates.

(d) Criminal history records received from the IIS System or the FIRS shall be used only for the purpose requested and a current record should be requested when needed for a subsequent authorized use.

§ 20.34 Individual's right to access criminal history record information. The procedures by which an individual may obtain a copy of his or her identification record from the FBI to review and request any change, correction, or update are set forth in §§16.30–16.34 of this chapter. The procedures by which an individual may obtain a copy of his or her identification record from a state or local criminal justice agency are set forth in §20.34 of the appendix to this part.

§ 50.12 Exchange of FBI identification records. (a) The Federal Bureau of Investigation, hereinafter referred to as the FBI, is authorized to expend funds for the exchange of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions and, if authorized by state statute and approved by the Director of the FBI, acting on behalf of the Attorney General, with officials of state and local governments for purposes of employment and licensing, pursuant to section 201 of Public Law 92–544, 86 Stat. 1115. Also, pursuant to 15 U.S.C. 78q, 7 U.S.C. 21 (b)(4)(E), and 42 U.S.C. 2169, respectively, such records can be exchanged with certain segments of the securities industry, with registered futures associations, and with nuclear power plants. The records also may be exchanged in other instances as authorized by federal law.

(b) The FBI Director is authorized by 28 CFR 0.85(j) to approve procedures relating to the exchange of identification records. Under this authority, effective September 6, 1990, the FBI Criminal Justice Information Services (CJIS) Division has made all data on identification records available for such purposes. Records obtained under this authority may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities. Officials at the governmental institutions and other entities authorized to submit fingerprints and receive FBI identification records under this authority must notify the individuals fingerprinted that the fingerprints will be used to check the criminal history records of the FBI. The officials making the determination of suitability for licensing or employment shall provide the applicants the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. These officials also must advise the applicants that procedures for obtaining a change, correction, or updating of an FBI identification record are set forth in 28 CFR 16.34. Officials making such determinations should not deny the license or employment based on information in the record until the applicant has been afforded a reasonable time to correct or complete the record, or has declined to do so. A statement incorporating these use-and-challenge requirements will be placed on all records disseminated under this program. This policy is intended to ensure that all relevant criminal record information is made available to provide for the public safety and, further, to protect the interests of the prospective employee/licensee who may be affected by the information or lack of information in an identification record.

Agency Privacy Requirements for Noncriminal Justice Applicants

Authorized governmental and non-governmental agencies/officials that conduct a national fingerprint-based criminal history record check on an applicant for a noncriminal justice purpose (such as a job or license, immigration or naturalization matter, security clearance, or adoption) are obligated to ensure the applicant is provided certain notice and other information and that the results of the check are handled in a manner that protects the applicant's privacy.

- Officials must provide to the applicant written notice¹ that his/her fingerprints will be used to check the criminal history records of the FBI.

- Officials using the FBI criminal history record (if one exists) to make a determination of the applicant’s suitability for the job, license, or other benefit must provide the applicant the opportunity to complete or challenge the accuracy of the information in the record.
- Officials must advise the applicant that procedures for obtaining a change, correction, or updating of an FBI criminal history record are set forth at Title 28, Code of Federal Regulations (CFR), Section 16.34.
- Officials should not deny the job, license, or other benefit based on information in the criminal history record until the applicant has been afforded a reasonable time to correct or complete the record or has declined to do so.
- Officials must use the criminal history record solely for the purpose requested and cannot disseminate the record outside the receiving department, related agency, or other authorized entity.²

The FBI has no objection to officials providing a copy of the applicant’s FBI criminal history record to the applicant for review and possible challenge when the record was obtained based on positive fingerprint identification. If agency policy permits, this courtesy will save the applicant the time and additional FBI fee to obtain his/her record directly from the FBI by following the procedures found at 28 CFR 16.30 through 16.34. It will also allow the officials to make a more timely determination of the applicant’s suitability.

Each agency should establish and document the process/procedures it utilizes for how/when it gives the applicant notice, what constitutes “a reasonable time” for the applicant to correct or complete the record, and any applicant appeal process that is afforded the applicant. Such documentation will assist state and/or FBI auditors during periodic compliance reviews on use of criminal history records for noncriminal justice purposes.

Endnotes

1 Written notification includes electronic notification, but excludes oral notification.

2 See 5 U.S.C. 552a(b); 28 U.S.C. 534(b); 42 U.S.C. 14616, Article IV(c); 28 CFR 20.21(c), 20.33(d), 50.12(b) and 906.2(d).

List of FBI-Approved Channelers for Departmental Order Submissions

FBI-approved Channelers receive the fingerprint submission and relevant data, collect the associated fee(s), electronically forward the fingerprint submission with the necessary information to the FBI CJIS Division for a national criminal history record check, and receive the electronic record check result for dissemination to the individual. An FBI-approved Channeler simply helps expedite the criminal history record information on behalf of the FBI.

The process for making a request through an FBI-approved Channeler is consistent with FBI submission procedures. Please note that an FBI-approved Channeler may have different methods or processes for submissions. Furthermore, additional fees may apply above the FBI fee for requests submitted through an FBI-approved Channeler. Contact each Channeler for processing times.

An individual requesting their FBI Identification Record or proof that a record does not exist through FBI-approved Channelers should contact the Channeler directly for complete information and instructions.

Note: Please review the information below regarding the use of FBI-approved Channelers:

- An FBI-approved Channeler may only process requests for a U.S. person (an individual who is a citizen of the U.S. or a lawful permanent resident of the U.S.).
- An FBI-approved Channeler cannot authenticate (apostille) fingerprint search results. A request for your FBI Identification Record or proof that a record does not exist must be submitted directly to the FBI if an apostille is needed.
- An FBI-approved Channeler cannot process a request for employment and/or licensing purposes within the United States. This type of request should be coordinated with the appropriate state identification bureau (or state police) for the correct procedures.

State Statute ORS 181. sections

ORS 181.010 – Definitions, including “criminal offender information” and “designated agency”.

ORS 181.036 – National Crime Prevention and Privacy Compact. Designates OSP as the state’s representative agency to the Compact Council for the exchange of criminal history records within the state and nationally for noncriminal justice purposes.

ORS 181.066 – Directs OSP to maintain the states fingerprint database and to use that database for the identification of individuals for criminal justice agencies as well as for non-criminal justice agencies and the public.

ORS 181.533 – Background checks authorized for non-state regulated entities.

ORS 181.534 – Directs OSP to provide the results (state and nationwide) of criminal record checks for authorized agencies that request fingerprint based services. Directs OSP to verify that an authorized agency has adopted rules and directs OSP to destroy fingerprints once the background check is completed.

ORS 181.538 – Criminal information furnished to Native American tribes

ORS 181.548 – Confidentiality of certain records

ORS 181.555 – Access to criminal record information

ORS 181.556 – Fee waiver for volunteer checks by certain organizations

ORS 181.557 – Procedure when criminal offender information is requested by a designated agency.

ORS 181.560 – Procedure when criminal offender information is requested by a person or agency other than a criminal justice agency.