

# D R A F T

## SUMMARY

Requires Oregon Department of Administrative Services to adopt rules for purposes of establishing statewide criteria by which certain qualified entities and authorized agencies conduct criminal records checks for purposes other than criminal justice.

### A BILL FOR AN ACT

1  
2 Relating to categories of individuals subject to criminal background checks;  
3 creating new provisions; and amending ORS 181.533, 181.534, 181.537 and  
4 418.016.

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

6 **SECTION 1. (1) As used in this section, “direct access” means ac-**  
7 **cess to an individual or the personal information of an individual.**

8 **(2) The Oregon Department of Administrative Services, in consul-**  
9 **tation with the Department of State Police, shall adopt rules specify-**  
10 **ing:**

11 **(a) Categories of individuals who are subject to criminal records**  
12 **checks that:**

13 **(A) An authorized agency, as defined in ORS 181.533 or 181.534, may**  
14 **use to make fitness determinations under ORS 181.533 (4)(a) and 181.534**  
15 **(11); or**

16 **(B) Qualified entities may use to make fitness determinations under**  
17 **ORS 181.537 (10)(c).**

18 **(b) The information, for each category, that may be required from**  
19 **a subject individual to permit a criminal records check.**

20 **(c) The types of crimes that may be considered in reviewing crimi-**

1 **nal offender information of a subject individual for each category.**

2 **(d) When a nationwide fingerprint-based criminal records check**  
3 **must be conducted.**

4 **(3) The Oregon Department of Administrative Services shall con-**  
5 **sider the additional cost of obtaining a nationwide fingerprint-based**  
6 **criminal records check when adopting rules under subsection (2)(d) of**  
7 **this section.**

8 **(4) Categories adopted under subsection (2)(a) of this section shall**  
9 **separate individuals into categories comprising:**

10 **(a) Individuals who have direct access to or who provide services**  
11 **for children;**

12 **(b) Individuals who have direct access to or who provide services**  
13 **for the elderly;**

14 **(c) Individuals who have direct access to or who provide services for**  
15 **persons with disabilities;**

16 **(d) Individuals who have direct access to or who provide services**  
17 **for persons with a mental illness;**

18 **(e) Individuals who have direct access to or who provide services for**  
19 **the general public;**

20 **(f) Individuals licensed, registered, certified or otherwise authorized**  
21 **to practice a profession or trade in this state and individuals applying**  
22 **for licensure, registration, certification or authorization to practice a**  
23 **profession or trade in this state; and**

24 **(g) Any other population of individuals specified by the Oregon**  
25 **Department of Administrative Services by rule.**

26 **SECTION 2. ORS 181.533 is amended to read:**

27 **181.533. (1) As used in this section:**

28 **(a) “Authorized agency” means the Department of State Police or other**  
29 **governmental agency designated by the State of Oregon to report, receive**  
30 **or disseminate criminal offender information.**

31 **(b) “Qualified entity” means a business or organization that:**

1 (A) Provides care or placement services, or licenses or certifies others to  
2 provide care or placement services, for children, elderly persons or dependent  
3 persons;

4 (B) Is not governed by a state regulatory or licensing agency; and

5 (C) Has been determined by an authorized agency to meet the criteria  
6 established by the authorized agency by rule under subsection (9) of this  
7 section.

8 (c) "Subject individual" means a person who is employed or seeks to be  
9 employed by a qualified entity or who is providing services or seeks to pro-  
10 vide services to a qualified entity on a contractual or volunteer basis.

11 (2) An entity may request from an authorized agency a criminal records  
12 check for purposes of evaluating the fitness of a subject individual as an  
13 employee, contractor or volunteer. The authorized agency may access state  
14 and federal criminal records under this subsection only through use of the  
15 subject individual's fingerprints.

16 (3) Before an authorized agency may conduct a criminal records check  
17 under this section:

18 (a) The authorized agency must determine whether the entity requesting  
19 the criminal records check is a qualified entity;

20 (b) The qualified entity must establish criteria, **subject to rules adopted**  
21 **by the Oregon Department of Administrative Services under section 1**  
22 **of this 2013 Act**, to be used by the authorized agency in reviewing the  
23 criminal offender information for a final record check determination;

24 (c) The qualified entity must provide the criteria established under para-  
25 graph (b) of this subsection to the authorized agency; and

26 (d) The qualified entity must have informed the subject individual that  
27 the qualified entity might request a fingerprint-based criminal records check  
28 and that the subject individual may obtain a copy of the record check report  
29 from, or challenge the accuracy or completeness of the record check report  
30 through, the authorized agency or the Federal Bureau of Investigation.

31 (4)(a) Upon receipt of a subject individual's criminal offender information,

1 the authorized agency shall [*make a final record check determination by*  
2 *comparing the criminal offender information with*] **use** the criteria provided  
3 to the authorized agency by the qualified entity under subsection (3)(c) of  
4 this section **and rules adopted by the Oregon Department of Adminis-**  
5 **trative Services under section 1 of this 2013 Act to make a fitness de-**  
6 **termination.** In making the final record check determination, the authorized  
7 agency may consider only information that the Department of State Police  
8 may disclose under ORS 181.560.

9 (b) An authorized agency is immune from civil liability that might oth-  
10 erwise be incurred or imposed for making the final record check determi-  
11 nation under this subsection.

12 (5) An authorized agency may not transfer a fingerprint card used to  
13 conduct the criminal records check unless the public agency or person re-  
14 ceiving the fingerprint card agrees to destroy or return the fingerprint card  
15 to the authorized agency.

16 (6) If the public agency or person returns a fingerprint card to the au-  
17 thorized agency, the authorized agency shall destroy the fingerprint card.  
18 The authorized agency may not keep a record of the fingerprints.

19 (7) The authorized agency shall permit a subject individual to inspect the  
20 individual's Oregon and Federal Bureau of Investigation criminal offender  
21 information after positive identification has been established based upon  
22 fingerprints.

23 (8) Challenges to the accuracy or completeness of information provided  
24 by the authorized agency, the Federal Bureau of Investigation and agencies  
25 reporting information to the authorized agency or the federal bureau must  
26 be made through the authorized agency or the federal bureau.

27 (9) The authorized agency shall adopt rules to implement this section. The  
28 rules may include but are not limited to:

29 (a) Criteria to be used by the authorized agency to determine whether an  
30 entity is a qualified entity; and

31 (b) Fees to be charged for conducting criminal records checks under this

1 section in amounts not to exceed the actual costs of acquiring and furnishing  
2 criminal offender information.

3 **SECTION 3.** ORS 181.534, as amended by section 18, chapter 70, Oregon  
4 Laws 2012, is amended to read:

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

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

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

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

13 (b) “Subject individual” means a person from whom an authorized agency  
14 may require fingerprints pursuant to statute for the purpose of enabling the  
15 authorized agency to request a state or nationwide criminal records check.

16 (2) An authorized agency may request that the Department of State Police  
17 conduct a criminal records check on a subject individual for non-criminal  
18 justice purposes. If a nationwide criminal records check of a subject indi-  
19 vidual is necessary, the authorized agency may request that the Department  
20 of State Police conduct the check, including fingerprint identification,  
21 through the Federal Bureau of Investigation.

22 (3) The Department of State Police shall provide the results of a criminal  
23 records check conducted pursuant to subsection (2) of this section to the  
24 authorized agency requesting the check.

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

31 (5) If the Federal Bureau of Investigation returns the fingerprint cards

1 to the Department of State Police, the department shall destroy the finger-  
2 print cards and shall retain no facsimiles or other material from which a  
3 fingerprint can be reproduced.

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

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

13 (8) An authorized agency and the Department of State Police shall permit  
14 a subject individual for whom a fingerprint-based criminal records check was  
15 conducted to inspect the individual's own state and national criminal  
16 offender records and, if requested by the subject individual, provide the in-  
17 dividual with a copy of the individual's own state and national criminal  
18 offender records.

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

23 (a) [*Specifying*] **Identifying applicable** categories of subject individuals  
24 **as specified by the Oregon Department of Administrative Services**  
25 **under section 1 of this 2013 Act** who are subject to criminal records checks  
26 **by the authorized agency.**

27 (b) [*Specifying the*] **Identifying applicable** information that may be re-  
28 quired from a subject individual to permit a criminal records check **as**  
29 **specified by the Oregon Department of Administrative Services under**  
30 **section 1 of this 2013 Act.**

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

1        *[(d) Specifying the types of crimes that may be considered in reviewing*  
2 *criminal offender information of a subject individual.]*

3        *[(e) Specifying when a nationwide fingerprint-based criminal records check*  
4 *must be conducted. An authorized agency shall consider the additional cost*  
5 *of obtaining a nationwide fingerprint-based criminal records check when*  
6 *adopting rules under this subsection.]*

7        [(f)] (d) If the authorized agency uses criminal records checks for agency  
8 employment purposes:

9        (A) Determining when and under what conditions a subject individual  
10 may be hired on a preliminary basis pending a criminal records check; and

11        (B) Defining the conditions under which a subject individual may partic-  
12 ipate in training, orientation and work activities pending completion of a  
13 criminal records check.

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

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

18        (11)(a) Except as otherwise provided in ORS 181.612, **342.143, 342.223,**  
19 **443.735 and 475.304** and paragraph (b) of this subsection, an authorized  
20 agency, using the rules adopted **by the authorized agency** under subsection  
21 (9) of this section **and the rules adopted by the Oregon Department of**  
22 **Administrative Services under section 1 of this 2013 Act**, shall determine  
23 whether a subject individual is fit to hold a position, provide services, be  
24 employed or be granted a license, certification, registration or permit, based  
25 on the criminal records check obtained pursuant to this section, on any false  
26 statements made by the individual regarding the criminal history of the in-  
27 dividual and on any refusal to submit or consent to a criminal records check  
28 including fingerprint identification. If a subject individual is determined to  
29 be unfit, then the individual may not hold the position, provide services, be  
30 employed or be granted a license, certification, registration or permit.

31        (b) An individual prohibited from receiving public funds for employment

1 under ORS 443.004 (3) is not entitled to a determination of fitness as a sub-  
2 ject individual under paragraph (a) of this subsection.

3 **(c)(A) Subject to subparagraph (B) of this paragraph, an authorized**  
4 **agency making a fitness determination of an individual under this**  
5 **subsection may request results of a previously made fitness determi-**  
6 **nation from an authorized agency that has already made a fitness de-**  
7 **termination for the individual. An authorized agency that receives a**  
8 **request under this paragraph shall provide the requested information.**

9 **(B) An authorized agency may make a request under this paragraph**  
10 **only for individuals:**

11 **(i) Who are applying to hold a position, provide services, be em-**  
12 **ployed or be granted a license, certification, registration or permit;**

13 **(ii) Who are in a category of individuals as specified by the Oregon**  
14 **Department of Administrative Services under section 1 of this 2013**  
15 **Act; and**

16 **(iii) For whom a fitness determination has already been made.**

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

20 (a) The nature of the crime;

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

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

26 (d) Intervening circumstances relevant to the responsibilities and cir-  
27 cumstances of the position, services, employment, license, certification, reg-  
28 istration or permit. Intervening circumstances include but are not limited  
29 to:

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

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



1 (C) The likelihood of a repetition of offenses or of the commission of an-  
2 other crime;

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

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

6 (F) A recommendation of an employer.

7 (13) An authorized agency and an employee of an authorized agency act-  
8 ing within the course and scope of employment are immune from any civil  
9 liability that might otherwise be incurred or imposed for determining, pur-  
10 suant to subsection (11) of this section, that a subject individual is fit or not  
11 fit to hold a position, provide services, be employed or be granted a license,  
12 certification, registration or permit. An authorized agency and an employee  
13 of an authorized agency acting within the course and scope of employment  
14 who in good faith comply with this section are not liable for employment-  
15 related decisions based on determinations made under subsection (11) of this  
16 section. An authorized agency or an employee of an authorized agency acting  
17 within the course and scope of employment is not liable for defamation or  
18 invasion of privacy in connection with the lawful dissemination of informa-  
19 tion lawfully obtained under this section.

20 (14)(a) Each authorized agency shall establish by rule a contested case  
21 process by which a subject individual may appeal the determination that the  
22 individual is fit or not fit to hold a position, provide services, be employed  
23 or be granted a license, certification, registration or permit on the basis of  
24 information obtained as the result of a criminal records check conducted  
25 pursuant to this section. Challenges to the accuracy or completeness of in-  
26 formation provided by the Department of State Police, the Federal Bureau  
27 of Investigation and agencies reporting information to the Department of  
28 State Police or Federal Bureau of Investigation must be made through the  
29 Department of State Police, Federal Bureau of Investigation or reporting  
30 agency and not through the contested case process required by this para-  
31 graph.

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

11 (c) An individual prohibited from receiving public funds for employment  
12 under ORS 443.004 (3) is not entitled to appeal a determination under para-  
13 graph (a) or (b) of this subsection.

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

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

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

27 **SECTION 4.** ORS 181.537, as amended by section 19, chapter 70, Oregon  
28 Laws 2012, is amended to read:

29 181.537. (1) As used in this section:

30 (a) "Care" means the provision of care, treatment, education, training,  
31 instruction, supervision, placement services, recreation or support to chil-

1 dren, the elderly or persons with disabilities.

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

7 (2) For the purpose of requesting a state or nationwide criminal records  
8 check under ORS 181.534, the Department of Human Services, the Oregon  
9 Health Authority and the Employment Department may require the finger-  
10 prints of a person:

11 (a) Who is employed by or is applying for employment with either de-  
12 partment or the authority;

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

15 (A) May have contact with recipients of care;

16 (B) Has access to personal information about employees of either depart-  
17 ment or the authority, recipients of care from either department or the au-  
18 thority or members of the public, including Social Security numbers, dates  
19 of birth, driver license numbers, medical information, personal financial in-  
20 formation or criminal background information;

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

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

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

27 (i) Receiving, receipting or depositing money or negotiable instruments;

28 (ii) Billing, collections, setting up financial accounts or other financial  
29 transactions; or

30 (iii) Purchasing or selling property;

31 (F) Provides security, design or construction services for government

1 buildings, grounds or facilities;

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

3 or

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

6 (c) For the purposes of licensing, certifying, registering or otherwise  
7 regulating or administering programs, persons or qualified entities that pro-  
8 vide care;

9 (d) For the purposes of employment decisions by or for qualified entities  
10 that are regulated or otherwise subject to oversight by the Department of  
11 Human Services or the Oregon Health Authority and that provide care; or

12 (e) For the purposes of employment decisions made by a mass transit  
13 district or transportation district for qualified entities that, under contracts  
14 with the district or the Oregon Health Authority, employ persons to operate  
15 motor vehicles for the transportation of medical assistance program clients.

16 (3) The Department of Human Services and the Oregon Health Authority  
17 may conduct criminal records checks on a person through the Law Enforce-  
18 ment Data System maintained by the Department of State Police, if deemed  
19 necessary by the Department of Human Services or the Oregon Health Au-  
20 thority to protect children, elderly persons, persons with disabilities or other  
21 vulnerable persons.

22 (4) The Department of Human Services and the Oregon Health Authority  
23 may furnish to qualified entities, in accordance with the rules of the De-  
24 partment of Human Services or the Oregon Health Authority and the rules  
25 of the Department of State Police, information received from the Law  
26 Enforcement Data System. However, any criminal offender records and in-  
27 formation furnished to the Department of Human Services or the Oregon  
28 Health Authority by the Federal Bureau of Investigation through the De-  
29 partment of State Police may not be disseminated to qualified entities.

30 (5)(a) **Except as otherwise provided in ORS 443.735 and 475.304**, a  
31 qualified entity, using rules adopted by the Department of Human Services

1 or the Oregon Health Authority **under ORS 181.534 (9) and rules adopted**  
2 **by the Oregon Department of Administrative Services under section 1**  
3 **of this 2013 Act**, shall determine under this section whether a person is fit  
4 to hold a position, provide services, be employed or, if the qualified entity  
5 has authority to make such a determination, be licensed, certified or regis-  
6 tered, based on the criminal records check obtained pursuant to ORS 181.534,  
7 any false statements made by the person regarding the criminal history of  
8 the person and any refusal to submit or consent to a criminal records check  
9 including fingerprint identification. If a person is determined to be unfit,  
10 then that person may not hold the position, provide services or be employed,  
11 licensed, certified or registered.

12 (b) A person prohibited from receiving public funds for employment under  
13 ORS 443.004 (3) is not entitled to a determination of fitness under paragraph  
14 (a) of this subsection.

15 (6) In making the fitness determination under subsection (5) of this sec-  
16 tion, the qualified entity shall consider:

17 (a) The nature of the crime;

18 (b) The facts that support the conviction or pending indictment or indi-  
19 cate the making of the false statement;

20 (c) The relevancy, if any, of the crime or the false statement to the spe-  
21 cific requirements of the person's present or proposed position, services, em-  
22 ployment, license, certification or registration; and

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

30 (7) The Department of Human Services, the Oregon Health Authority and  
31 the Employment Department may make fitness determinations based on

1 criminal offender records and information furnished by the Federal Bureau  
2 of Investigation through the Department of State Police only as [*provided*]  
3 **described** in ORS 181.534.

4 (8) A qualified entity and an employee of a qualified entity acting within  
5 the course and scope of employment are immune from any civil liability that  
6 might otherwise be incurred or imposed for determining pursuant to sub-  
7 section (5) of this section that a person is fit or not fit to hold a position,  
8 provide services or be employed, licensed, certified or registered. A qualified  
9 entity, employee of a qualified entity acting within the course and scope of  
10 employment and an employer or employer's agent who in good faith comply  
11 with this section and the decision of the qualified entity or employee of the  
12 qualified entity acting within the course and scope of employment are not  
13 liable for the failure to hire a prospective employee or the decision to dis-  
14 charge an employee on the basis of the qualified entity's decision. An em-  
15 ployee of the state acting within the course and scope of employment is not  
16 liable for defamation or invasion of privacy in connection with the lawful  
17 dissemination of information lawfully obtained under this section.

18 (9) The Department of Human Services and the Oregon Health  
19 Authority, **subject to rules adopted by the Oregon Department of Ad-**  
20 **ministrative Services under section 1 of this 2013 Act**, shall develop  
21 systems that maintain information regarding criminal records checks in or-  
22 der to minimize the administrative burden imposed by this section and ORS  
23 181.534. Records maintained under this subsection are confidential and may  
24 not be disseminated except for the purposes of this section and in accordance  
25 with the rules of the Department of Human Services, the Oregon Health  
26 Authority and the Department of State Police. Nothing in this subsection  
27 permits the Department of Human Services to retain fingerprint cards ob-  
28 tained pursuant to this section.

29 (10) In addition to the rules required by ORS 181.534, the Department of  
30 Human Services and the Oregon Health Authority, in consultation with the  
31 Department of State Police, shall adopt rules:

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

2 (b) Specifying which qualified entities may request criminal offender in-  
3 formation;

4 (c) Specifying which qualified entities are responsible for deciding, **sub-**  
5 **ject to rules adopted by the Oregon Department of Administrative**  
6 **Services under section 1 of this 2013 Act**, whether a subject individual is  
7 not fit for a position, service, license, certification, registration or employ-  
8 ment; and

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

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

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

22 **SECTION 5.** ORS 418.016 is amended to read:

23 418.016. (1) To protect the health and safety of children who are in the  
24 custody of the Department of Human Services and who may be placed in a  
25 foster home or adoptive home or with a relative caregiver, the department  
26 shall adopt rules pursuant to ORS 181.534 and ORS chapter 418 to require  
27 that criminal records checks be conducted under ORS 181.534 on:

28 (a) All persons who seek to be foster parents, adoptive parents or relative  
29 caregivers; and

30 (b) Other individuals over 18 years of age who will be in the household  
31 of the foster parent, adoptive parent or relative caregiver.

1 (2) Rules adopted under subsection (1) of this section shall include:

2 [(a) *A list of crimes for which a conviction disqualifies a person from be-*  
3 *coming a foster parent, adoptive parent or relative caregiver;*]

4 [(b)] (a) A requirement that persons who have been convicted of crimes  
5 listed in the rules **adopted by the Oregon Department of Administrative**  
6 **Services under section 1 of this 2013 Act** are disqualified from becoming  
7 a foster parent, adoptive parent or relative caregiver; and

8 [(c)] (b) A provision that the Department of **Human Services** may ap-  
9 prove a person who has been convicted of certain crimes listed in the rules  
10 if the person demonstrates to the department that:

11 (A) The person possesses the qualifications to be a foster parent or  
12 adoptive parent regardless of having been convicted of a listed crime; or

13 (B) The disqualification would create emotional harm to the child for  
14 whom the person is seeking to become a foster parent, adoptive parent or  
15 relative caregiver and placement of the child with the person would be a safe  
16 placement that is in the best interests of the child.

17 **SECTION 6. Notwithstanding section 1 of this 2013 Act and the**  
18 **amendments to ORS 181.533, 181.534, 181.537 and 418.016 by sections 2**  
19 **to 5 of this 2013 Act, rules adopted by an authorized agency, as defined**  
20 **in ORS 181.533 or 181.534, and the Department of Human Services or**  
21 **the Oregon Health Authority under ORS 181.533, 181.534, 181.537 and**  
22 **418.016 that are in effect on the effective date of this 2013 Act continue**  
23 **in effect until superseded or repealed by rules adopted by the Oregon**  
24 **Department of Administrative Services under section 1 of this 2013**  
25 **Act.**

26