

House Bill 3168

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFICIENCY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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; creating new provisions;
3 and amending ORS 181.533, 181.534, 181.537 and 418.016.

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

5 **SECTION 1. (1) As used in this section, "direct access" means access to an individual or**
6 **the personal information of an individual.**

7 **(2) The Oregon Department of Administrative Services, in consultation with the Depart-**
8 **ment of State Police, shall adopt rules specifying:**

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

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

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

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

15 **(c) The types of crimes that may be considered in reviewing criminal offender informa-**
16 **tion of a subject individual for each category.**

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

18 **(3) The Oregon Department of Administrative Services shall consider the additional cost**
19 **of obtaining a nationwide fingerprint-based criminal records check when adopting rules un-**
20 **der subsection (2)(d) of this section.**

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

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

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

25 **(c) Individuals who have direct access to or who provide services for persons with disa-**
26 **bilities;**

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

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

30 **(f) Individuals licensed, registered, certified or otherwise authorized to practice a pro-**
31 **fession or trade in this state and individuals applying for licensure, registration, certification**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **or authorization to practice a profession or trade in this state; and**

2 **(g) Any other population of individuals specified by the Oregon Department of Adminis-**
 3 **trative Services by rule.**

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

5 181.533. (1) As used in this section:

6 (a) "Authorized agency" means the Department of State Police or other governmental agency
 7 designated by the State of Oregon to report, receive or disseminate criminal offender information.

8 (b) "Qualified entity" means a business or organization that:

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

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

12 (C) Has been determined by an authorized agency to meet the criteria established by the au-
 13 thorized agency by rule under subsection (9) of this section.

14 (c) "Subject individual" means a person who is employed or seeks to be employed by a qualified
 15 entity or who is providing services or seeks to provide services to a qualified entity on a contractual
 16 or volunteer basis.

17 (2) An entity may request from an authorized agency a criminal records check for purposes of
 18 evaluating the fitness of a subject individual as an employee, contractor or volunteer. The author-
 19 ized agency may access state and federal criminal records under this subsection only through use
 20 of the subject individual's fingerprints.

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

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

24 (b) The qualified entity must establish criteria, **subject to rules adopted by the Oregon De-**
 25 **partment of Administrative Services under section 1 of this 2013 Act,** to be used by the au-
 26 thorized agency in reviewing the criminal offender information for a final record check
 27 determination;

28 (c) The qualified entity must provide the criteria established under paragraph (b) of this sub-
 29 section to the authorized agency; and

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

34 (4)(a) Upon receipt of a subject individual's criminal offender information, the authorized agency
 35 shall [*make a final record check determination by comparing the criminal offender information with*]
 36 **use** the criteria provided to the authorized agency by the qualified entity under subsection (3)(c) of
 37 this section **and rules adopted by the Oregon Department of Administrative Services under**
 38 **section 1 of this 2013 Act to make a fitness determination.** In making the final record check
 39 determination, the authorized agency may consider only information that the Department of State
 40 Police may disclose under ORS 181.560.

41 (b) An authorized agency is immune from civil liability that might otherwise be incurred or im-
 42 posed for making the final record check determination under this subsection.

43 (5) An authorized agency may not transfer a fingerprint card used to conduct the criminal re-
 44 cords check unless the public agency or person receiving the fingerprint card agrees to destroy or
 45 return the fingerprint card to the authorized agency.

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

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

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

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

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

14 (b) Fees to be charged for conducting criminal records checks under this section in amounts not
 15 to exceed the actual costs of acquiring and furnishing criminal offender information.

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

18 181.534. (1) As used in this section:

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

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

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

24 (b) "Subject individual" means a person from whom an authorized agency may require finger-
 25 prints pursuant to statute for the purpose of enabling the authorized agency to request a state or
 26 nationwide criminal records check.

27 (2) An authorized agency may request that the Department of State Police conduct a criminal
 28 records check on a subject individual for non-criminal justice purposes. If a nationwide criminal
 29 records check of a subject individual is necessary, the authorized agency may request that the De-
 30 partment of State Police conduct the check, including fingerprint identification, through the Federal
 31 Bureau of Investigation.

32 (3) The Department of State Police shall provide the results of a criminal records check con-
 33 ducted pursuant to subsection (2) of this section to the authorized agency requesting the check.

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

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

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

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

4 (8) An authorized agency and the Department of State Police shall permit a subject individual
 5 for whom a fingerprint-based criminal records check was conducted to inspect the individual's own
 6 state and national criminal offender records and, if requested by the subject individual, provide the
 7 individual with a copy of the individual's own state and national criminal offender records.

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

12 (a) *[Specifying]* **Identifying applicable** categories of subject individuals **as specified by the**
 13 **Oregon Department of Administrative Services under section 1 of this 2013 Act** who are sub-
 14 ject to criminal records checks **by the authorized agency.**

15 (b) *[Specifying the]* **Identifying applicable** information that may be required from a subject in-
 16 dividual to permit a criminal records check **as specified by the Oregon Department of Adminis-**
 17 **trative Services under section 1 of this 2013 Act.**

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

19 *[(d) Specifying the types of crimes that may be considered in reviewing criminal offender informa-*
 20 *tion of a subject individual.]*

21 *[(e) Specifying when a nationwide fingerprint-based criminal records check must be conducted. An*
 22 *authorized agency shall consider the additional cost of obtaining a nationwide fingerprint-based crim-*
 23 *inal records check when adopting rules under this subsection.]*

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

25 (A) Determining when and under what conditions a subject individual may be hired on a pre-
 26 liminary basis pending a criminal records check; and

27 (B) Defining the conditions under which a subject individual may participate in training, orien-
 28 tation and work activities pending completion of a criminal records check.

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

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

33 (11)(a) Except as otherwise provided in ORS 181.612, **342.143, 342.223, 443.735 and 475.304** and
 34 paragraph (b) of this subsection, an authorized agency, using the rules adopted **by the authorized**
 35 **agency** under subsection (9) of this section **and the rules adopted by the Oregon Department**
 36 **of Administrative Services under section 1 of this 2013 Act**, shall determine whether a subject
 37 individual is fit to hold a position, provide services, be employed or be granted a license, certif-
 38 ication, registration or permit, based on the criminal records check obtained pursuant to this sec-
 39 tion, on any false statements made by the individual regarding the criminal history of the individual
 40 and on any refusal to submit or consent to a criminal records check including fingerprint identifi-
 41 cation. If a subject individual is determined to be unfit, then the individual may not hold the posi-
 42 tion, provide services, be employed or be granted a license, certification, registration or permit.

43 (b) An individual prohibited from receiving public funds for employment under ORS 443.004 (3)
 44 is not entitled to a determination of fitness as a subject individual under paragraph (a) of this sub-
 45 section.

1 (c)(A) **Subject to subparagraph (B) of this paragraph, an authorized agency making a**
 2 **fitness determination of an individual under this subsection may request results of a previ-**
 3 **ously made fitness determination from an authorized agency that has already made a fitness**
 4 **determination for the individual. An authorized agency that receives a request under this**
 5 **paragraph shall provide the requested information.**

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

7 **(i) Who are applying to hold a position, provide services, be employed or be granted a li-**
 8 **cence, certification, registration or permit;**

9 **(ii) Who are in a category of individuals as specified by the Oregon Department of Ad-**
 10 **ministrative Services under section 1 of this 2013 Act; and**

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

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

14 (a) The nature of the crime;

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

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

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

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

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

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

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

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

28 (F) A recommendation of an employer.

29 (13) An authorized agency and an employee of an authorized agency acting within the course
 30 and scope of employment are immune from any civil liability that might otherwise be incurred or
 31 imposed for determining, pursuant to subsection (11) of this section, that a subject individual is fit
 32 or not fit to hold a position, provide services, be employed or be granted a license, certification,
 33 registration or permit. An authorized agency and an employee of an authorized agency acting within
 34 the course and scope of employment who in good faith comply with this section are not liable for
 35 employment-related decisions based on determinations made under subsection (11) of this section.
 36 An authorized agency or an employee of an authorized agency acting within the course and scope
 37 of employment is not liable for defamation or invasion of privacy in connection with the lawful dis-
 38 semination of information lawfully obtained under this section.

39 (14)(a) Each authorized agency shall establish by rule a contested case process by which a sub-
 40 ject individual may appeal the determination that the individual is fit or not fit to hold a position,
 41 provide services, be employed or be granted a license, certification, registration or permit on the
 42 basis of information obtained as the result of a criminal records check conducted pursuant to this
 43 section. Challenges to the accuracy or completeness of information provided by the Department of
 44 State Police, the Federal Bureau of Investigation and agencies reporting information to the De-
 45 partment of State Police or Federal Bureau of Investigation must be made through the Department

1 of State Police, Federal Bureau of Investigation or reporting agency and not through the contested
 2 case process required by this paragraph.

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

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

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

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

18 (17) If an authorized agency requires a criminal records check of employees, prospective em-
 19 ployees, contractors, vendors or volunteers or applicants for a license, certification, registration or
 20 permit, the application forms of the authorized agency must contain a notice that the person is
 21 subject to fingerprinting and a criminal records check.

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

24 181.537. (1) As used in this section:

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

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

31 (2) For the purpose of requesting a state or nationwide criminal records check under ORS
 32 181.534, the Department of Human Services, the Oregon Health Authority and the Employment De-
 33 partment may require the fingerprints of a person:

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

35 (b) Who provides or seeks to provide services to either department or the authority as a con-
 36 tractor, subcontractor, vendor or volunteer who:

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

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

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

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

1 state;

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

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

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

5 (iii) Purchasing or selling property;

6 (F) Provides security, design or construction services for government buildings, grounds or fa-
7 cilities;

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

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

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

13 (d) For the purposes of employment decisions by or for qualified entities that are regulated or
14 otherwise subject to oversight by the Department of Human Services or the Oregon Health Au-
15 thority and that provide care; or

16 (e) For the purposes of employment decisions made by a mass transit district or transportation
17 district for qualified entities that, under contracts with the district or the Oregon Health Authority,
18 employ persons to operate motor vehicles for the transportation of medical assistance program cli-
19 ents.

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

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

31 (5)(a) **Except as otherwise provided in ORS 443.735 and 475.304**, a qualified entity, using rules
32 adopted by the Department of Human Services or the Oregon Health Authority **under ORS 181.534**
33 **(9) and rules adopted by the Oregon Department of Administrative Services under section 1**
34 **of this 2013 Act**, shall determine under this section whether a person is fit to hold a position, pro-
35 vide services, be employed or, if the qualified entity has authority to make such a determination,
36 be licensed, certified or registered, based on the criminal records check obtained pursuant to ORS
37 181.534, any false statements made by the person regarding the criminal history of the person and
38 any refusal to submit or consent to a criminal records check including fingerprint identification. If
39 a person is determined to be unfit, then that person may not hold the position, provide services or
40 be employed, licensed, certified or registered.

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

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

45 (a) The nature of the crime;

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

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

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

11 (7) The Department of Human Services, the Oregon Health Authority and the Employment De-
12 partment may make fitness determinations based on criminal offender records and information fur-
13 nished by the Federal Bureau of Investigation through the Department of State Police only as
14 [provided] **described** in ORS 181.534.

15 (8) A qualified entity and an employee of a qualified entity acting within the course and scope
16 of employment are immune from any civil liability that might otherwise be incurred or imposed for
17 determining pursuant to subsection (5) of this section that a person is fit or not fit to hold a position,
18 provide services or be employed, licensed, certified or registered. A qualified entity, employee of a
19 qualified entity acting within the course and scope of employment and an employer or employer's
20 agent who in good faith comply with this section and the decision of the qualified entity or employee
21 of the qualified entity acting within the course and scope of employment are not liable for the fail-
22 ure to hire a prospective employee or the decision to discharge an employee on the basis of the
23 qualified entity's decision. An employee of the state acting within the course and scope of employ-
24 ment is not liable for defamation or invasion of privacy in connection with the lawful dissemination
25 of information lawfully obtained under this section.

26 (9) The Department of Human Services and the Oregon Health Authority, **subject to rules**
27 **adopted by the Oregon Department of Administrative Services under section 1 of this 2013**
28 **Act**, shall develop systems that maintain information regarding criminal records checks in order to
29 minimize the administrative burden imposed by this section and ORS 181.534. Records maintained
30 under this subsection are confidential and may not be disseminated except for the purposes of this
31 section and in accordance with the rules of the Department of Human Services, the Oregon Health
32 Authority and the Department of State Police. Nothing in this subsection permits the Department
33 of Human Services to retain fingerprint cards obtained pursuant to this section.

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

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

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

38 (c) Specifying which qualified entities are responsible for deciding, **subject to rules adopted**
39 **by the Oregon Department of Administrative Services under section 1 of this 2013 Act**,
40 whether a subject individual is not fit for a position, service, license, certification, registration or
41 employment; and

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

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

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

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

8 418.016. (1) To protect the health and safety of children who are in the custody of the Depart-
 9 ment of Human Services and who may be placed in a foster home or adoptive home or with a rela-
 10 tive caregiver, the department shall adopt rules pursuant to ORS 181.534 and ORS chapter 418 to
 11 require that criminal records checks be conducted under ORS 181.534 on:

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

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

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

16 [(a) A list of crimes for which a conviction disqualifies a person from becoming a foster parent,
 17 adoptive parent or relative caregiver;]

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

21 [(c)] (b) A provision that the Department **of Human Services** may approve a person who has
 22 been convicted of certain crimes listed in the rules if the person demonstrates to the department
 23 that:

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

26 (B) The disqualification would create emotional harm to the child for whom the person is seek-
 27 ing to become a foster parent, adoptive parent or relative caregiver and placement of the child with
 28 the person would be a safe placement that is in the best interests of the child.

29 **SECTION 6. Notwithstanding section 1 of this 2013 Act and the amendments to ORS**
 30 **181.533, 181.534, 181.537 and 418.016 by sections 2 to 5 of this 2013 Act, rules adopted by an**
 31 **authorized agency, as defined in ORS 181.533 or 181.534, and the Department of Human Ser-**
 32 **VICES or the Oregon Health Authority under ORS 181.533, 181.534, 181.537 and 418.016 that are**
 33 **in effect on the effective date of this 2013 Act continue in effect until superseded or repealed**
 34 **by rules adopted by the Oregon Department of Administrative Services under section 1 of**
 35 **this 2013 Act.**

36