

**Enrolled**  
**House Bill 2228**

Sponsored by Representatives HOYLE, GILLIAM; Representative NATHANSON (at the request of Oregon Elder Abuse Prevention Work Group) (Presession filed.)

CHAPTER .....

AN ACT

Relating to retention of fingerprint information; creating new provisions; amending ORS 181.533, 181.534 and 267.237; and repealing ORS 181.545.

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

**SECTION 1. (1)(a) The Department of State Police shall establish a voluntary fingerprint retention program through which the department:**

**(A) Retains fingerprint cards, facsimiles of fingerprints received from the Federal Bureau of Investigation or facsimiles of fingerprints created during a state criminal records check under ORS 181.533, 181.534, 181.537 or 267.237, for the purpose of providing information as described in subsection (4) of this section; and**

**(B) Provides facsimiles of fingerprints created during a state criminal records check under ORS 181.533, 181.534, 181.537 or 267.237 to the Federal Bureau of Investigation.**

**(b) The department may not use fingerprint cards or facsimiles of fingerprints retained pursuant to paragraph (a) of this subsection for any purpose other than the purpose of providing information as described in subsection (4) of this section.**

**(2) An authorized agency as defined in ORS 181.533 or 181.534, an agency listed in ORS 181.537 (2), or a district as defined in ORS 267.237 may subscribe to the fingerprint retention program.**

**(3)(a) If an authorized agency, agency or district subscribes to the fingerprint retention program, the authorized agency, agency or district must inform an individual subject to a criminal records check under ORS 181.533, 181.534, 181.537 or 267.237 about the program in a form and manner prescribed by the authorized agency, agency or district, provided that the authorized agency, agency or district includes as part of that information notice of the following:**

**(A) That the individual is not required to participate in the program;**

**(B) That if the individual chooses to participate in the program, the individual may, at any time, stop participating in the program;**

**(C) That choosing to participate in the program will allow the department to provide information as described in subsection (4) of this section;**

**(D) The potential consequences of information being provided as described in subsection (4) of this section; and**

**(E) The process by which the individual may contest the accuracy of information provided as described in subsection (4) of this section.**

(b) Notice provided pursuant to paragraph (a) of this subsection must be provided in a clear and easy to understand manner.

(4)(a) An individual subject to a criminal records check under ORS 181.533, 181.534, 181.537 or 267.237 may, but is not required to, participate in the fingerprint retention program.

(b) If an individual participates in the program, then the department, upon receiving forms containing the person's fingerprints and other identifying information under ORS 181.511, or as part of any other proceeding related to the arrest of the individual, shall provide that information to the authorized agency, agency or district for which a criminal records check under ORS 181.533, 181.534, 181.537 or 267.237 for the individual was performed.

(5) At any time, an individual participating in the fingerprint retention program may inform the department, in a form and manner prescribed by the department, that the individual is no longer participating in the program. If an individual informs the department that the individual is no longer participating in the program, the department shall:

(a) Destroy any fingerprint cards and facsimiles of fingerprints that the department has retained for the individual as part of the program;

(b) Inform the Federal Bureau of Investigation that the individual is no longer participating in the program and direct the Federal Bureau of Investigation to destroy any fingerprint cards or facsimiles of fingerprints that the Federal Bureau of Investigation has retained for the individual; and

(c) Notify the authorized agency, agency or district who employs the individual that the individual is no longer participating in the program.

(6) An authorized agency, agency or district that subscribes to the fingerprint retention program may not require a person to participate in the program as a condition of employment.

(7) Information retained by the department under this section is exempt from public disclosure under ORS 192.410 to 192.505, and the department may not disclose the information for any purpose not authorized by this section.

(8) The Department of State Police:

(a) Shall, in consultation with the Oregon Department of Administrative Services, adopt rules for the administration of this section; and

(b) May adopt a fee that an authorized agency, agency or district must pay to subscribe to the program.

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

181.533. (1) As used in this section:

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

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

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

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

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

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

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

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

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

(b) The qualified entity must establish criteria, subject to rules adopted by the Oregon Department of Administrative Services under ORS 181.547, to be used by the authorized agency in reviewing the criminal offender information for a final record check determination;

(c) The qualified entity must provide the criteria established under paragraph (b) of this subsection to the authorized agency; and

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

(4)(a) Upon receipt of a subject individual's criminal offender information, the authorized agency shall use the criteria provided to the authorized agency by the qualified entity under subsection (3)(c) of this section and rules adopted by the Oregon Department of Administrative Services under ORS 181.547 to make a fitness determination. In making the final record check determination, the authorized agency may consider only information that the Department of State Police may disclose under ORS 181.560.

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

(5) An authorized agency may not transfer a fingerprint card used to conduct the criminal records check unless the public agency or person receiving the fingerprint card agrees to destroy or return the fingerprint card to the authorized agency.

(6) **Except as provided in section 1 of this 2015 Act**, if the public agency or person returns a fingerprint card to the authorized agency, the authorized agency:

(a) Shall destroy the fingerprint card[. *The authorized agency*]; **and**

(b) May not keep a record of the fingerprints.

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

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

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

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

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

**SECTION 3.** ORS 181.534 is amended to read:

181.534. (1) As used in this section:

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

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

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

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

(2) An authorized agency may request that the Department of State Police conduct a criminal records check on a subject individual for non-criminal justice purposes. If a nationwide criminal records check of a subject individual is necessary, the authorized agency may request that the De-

partment of State Police conduct the check, including fingerprint identification, through the Federal Bureau of Investigation.

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

(4) The Federal Bureau of Investigation shall return or destroy the fingerprint cards used to conduct the criminal records check and may not keep any record of the fingerprints, **except that the Federal Bureau of Investigation may retain the fingerprint cards and records of the fingerprints for purposes described in section 1 of this 2015 Act.** If the federal bureau policy authorizing return or destruction of the fingerprint cards is changed, the Department of State Police shall cease to send the cards to the federal bureau but shall continue to process the information through other available resources.

(5) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of State Police, the Department of State Police shall destroy the fingerprint cards and *[shall retain no]* **may not retain** facsimiles or other material from which a fingerprint can be reproduced, **except that the Department of State Police may retain the fingerprint cards or create facsimiles for the purpose of providing information under section 1 of this 2015 Act.**

(6) If only a state criminal records check is conducted, **after the criminal records check is completed,** the Department of State Police shall destroy the fingerprint cards *[after the criminal records check is completed]* and the results of the criminal records check provided to the authorized agency and *[shall retain no]* **may not retain** facsimiles or other material from which a fingerprint can be reproduced, **except that the Department of State Police may retain the fingerprint cards and results or create facsimiles for the purpose of providing information under section 1 of this 2015 Act.**

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

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

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

(a) Identifying applicable categories of subject individuals as specified by the Oregon Department of Administrative Services under ORS 181.547 who are subject to criminal records checks by the authorized agency.

(b) Identifying applicable information that may be required from a subject individual to permit a criminal records check as specified by the Oregon Department of Administrative Services under ORS 181.547.

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

(d) If the authorized agency uses criminal records checks for agency employment purposes:

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

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

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

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

(11)(a) Except as otherwise provided in ORS 181.612, 342.143, 342.223, 443.735 and 475.304 and paragraph (b) of this subsection, an authorized agency, using the rules adopted by the authorized

agency under subsection (9) of this section and the rules adopted by the Oregon Department of Administrative Services under ORS 181.547, shall determine whether a subject individual is fit to hold a position, provide services, be employed or be granted a license, certification, registration or permit, based on the criminal records check obtained pursuant to this section, on any false statements made by the individual regarding the criminal history of the individual and on any refusal to submit or consent to a criminal records check including fingerprint identification. If a subject individual is determined to be unfit, then the individual may not hold the position, provide services, be employed or be granted a license, certification, registration or permit.

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

(c)(A) Subject to subparagraph (B) of this paragraph, an authorized agency making a fitness determination of an individual under this subsection may request results of a previously made fitness determination from an authorized agency that has already made a fitness determination for the individual. An authorized agency that receives a request under this paragraph shall provide the requested information.

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

(i) Who are applying to hold a position, provide services, be employed or be granted a license, certification, registration or permit;

(ii) Who are in a category of individuals as specified by the Oregon Department of Administrative Services under ORS 181.547; and

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

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

(a) The nature of the crime;

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

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

(d) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, certification, registration or permit. Intervening circumstances include but are not limited to:

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

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

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

(D) The subsequent commission of another relevant crime;

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

and

(F) A recommendation of an employer.

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

(14)(a) Each authorized agency shall establish by rule a contested case process by which a subject individual may appeal the determination that the individual is fit or not fit to hold a posi-

tion, provide services, be employed or be granted a license, certification, registration or permit on the basis of information obtained as the result of a criminal records check conducted pursuant to this section. Challenges to the accuracy or completeness of information provided by the Department of State Police, the Federal Bureau of Investigation and agencies reporting information to the Department of State Police or Federal Bureau of Investigation must be made through the Department of State Police, Federal Bureau of Investigation or reporting agency and not through the contested case process required by this paragraph.

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

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

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

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

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

**SECTION 4.** ORS 267.237 is amended to read:

267.237. (1) As used in this section:

(a) "District" means a mass transit district organized under ORS 267.010 to 267.390 or a transportation district organized under ORS 267.510 to 267.650.

(b) "Qualified entity" means an individual or business or organization, whether public, private, for-profit, nonprofit or voluntary, that, under contract with a district, provides individuals to operate motor vehicles for the transportation of passengers in the public transportation system of the district.

(c) "Subject individual" means a person subject to a criminal records check as specified by resolution of a mass transit district or a transportation district.

(2) A mass transit district or a transportation district shall request the Department of State Police to conduct criminal records checks of subject individuals if the checks are required in order to protect vulnerable Oregonians:

(a) To implement a federal or state statute, executive order or rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct;

(b) For district employment purposes when hiring individuals to operate motor vehicles of the district; or

(c) For the purposes of employment decisions made by a district for qualified entities that, under contracts with the district, employ individuals to operate motor vehicles for the transportation of passengers in the public transportation system of the district.

(3) A mass transit district that has a population of more than 500,000 may request the Department of State Police to conduct a criminal records check of a subject individual who is:

(a) Seeking employment by the district in a position that provides the individual with access to critical infrastructure or security sensitive facilities or information; or

(b) Seeking to provide services to the district that will result in the individual's having access to critical infrastructure or security sensitive facilities or information.

(4) In order to determine the suitability of the subject individual, a district shall require the subject individual to furnish to the district a full set of fingerprints to enable a criminal records check to be conducted. The district shall submit the completed fingerprint cards to the Department of State Police along with the applicable Oregon and Federal Bureau of Investigation processing fees. If no disqualifying record is identified at the state level, the Department of State Police shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal records check.

(5) The Federal Bureau of Investigation shall either return or destroy the fingerprint cards used to conduct the criminal records check and shall not keep any record of the fingerprints, **except that the Federal Bureau of Investigation may retain the fingerprint cards and records of the fingerprints for purposes described in section 1 of this 2015 Act.** However, if the federal bureau policy authorizing return or destruction of the fingerprint cards is changed, a district shall cease to cause the cards to be sent to the federal bureau but shall continue to process the information through other available resources.

(6) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of State Police, the Department of State Police shall destroy the fingerprint cards and *[shall retain no]* **may not retain** facsimiles or other material from which a fingerprint can be reproduced, **except that the Department of State Police may retain the fingerprint cards or create facsimiles for the purpose of providing information under section 1 of this 2015 Act.**

(7) If only a state criminal records check is conducted, **after the criminal records check is completed,** the Department of State Police shall destroy the fingerprint cards *[after the criminal records check is completed]* and the results of the criminal records check provided to the district and *[shall retain no]* **may not retain** facsimiles or other material from which a fingerprint can be reproduced, **except that the Department of State Police may retain the fingerprint cards and results or create facsimiles for the purpose of providing information under section 1 of this 2015 Act.**

(8) The district and the Department of State Police shall permit a subject individual to inspect the individual's own Oregon and Federal Bureau of Investigation criminal offender records after positive fingerprint identification has been made.

(9)(a) A district, using guidelines established by a resolution of the district, shall determine under this section whether a subject individual is fit to operate motor vehicles for the transportation of passengers in the public transportation system of the district or to hold a position or provide services that provide the individual with access to critical infrastructure or security sensitive facilities or information, based on the criminal records check obtained pursuant to this section, any false statements made by the individual regarding the criminal history of the individual and any refusal to submit or consent to a criminal records check including fingerprint identification. If a subject individual is determined to be unfit, then that person shall not be allowed to operate motor vehicles for the transportation of passengers in the public transportation system of the district or to hold the position or provide services that provide the individual with access to critical infrastructure or security sensitive facilities or information.

(b) In making the fitness determination, the district shall consider:

(A) The nature of the crime;

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

(C) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's present or proposed position or employment; and

(D) Intervening circumstances relevant to the responsibilities and circumstances of the position or employment. Intervening circumstances include but are not limited to the passage of time since the commission of the crime, the age of the person at the time of the crime, the likelihood of a repetition of offenses, the subsequent commission of another relevant crime and a recommendation of an employer.

(c) A district and an employee of the district are immune from any civil liability that might otherwise be incurred or imposed for actions taken in determining pursuant to this subsection that a subject individual is fit or not fit to hold a position or be employed. A district, an employee of the district and an employer or employer's agent who in good faith comply with this section and the decision of the district or employee of the district are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of the district's or employee's decision. A district and an employee of the district are immune from any civil liability for the lawful dissemination of information obtained under this section when the disclosure is:

(A) For the purpose of providing notice to the subject individual or the employer of the subject individual of a determination of fitness under this section;

(B) Required by law; or

(C) Necessary to support a claim or defense related to denying employment to the subject individual.

(10) A district shall establish by resolution a process by which a subject individual may appeal the determination that the subject individual is disqualified for a position or employment pursuant to this section. Challenges to the accuracy or completeness of information provided by the Department of State Police, the Federal Bureau of Investigation and agencies reporting information to the department or bureau must be made through the department, bureau or agency and not through the appeal process required by this subsection.

(11) A district shall develop a system that maintains information regarding criminal records checks in order to minimize the administrative burden that criminal records check requirements impose upon subject individuals and providers. Records maintained under this subsection for subject individuals are confidential and may not be disseminated except for the purposes of this section and in accordance with the relevant resolutions of the district. Nothing in this subsection permits a district to retain fingerprint cards of subject individuals.

(12) A district, in consultation with the Department of State Police and affected provider groups, shall adopt resolutions to implement this section and other statutes relating to criminal offender information. The resolutions shall include but need not be limited to:

(a) Specifying which employees are authorized to make criminal record inquiries;

(b) Specifying categories of subject individuals who are subject to criminal records checks;

(c) Specifying the information, including fingerprints, that may be required from a subject individual to permit a criminal records check;

(d) Specifying which services or qualified entities are subject to this section;

(e) Specifying which crimes may be considered in reviewing criminal offender information for a subject individual;

(f) Specifying when a nationwide criminal records check shall be conducted on a subject individual through the Department of State Police. The additional cost of obtaining a nationwide criminal records check and the risk to vulnerable Oregonians should be taken into consideration when enacting resolutions under this subsection;

(g) Specifying when a district, in lieu of conducting a completely new criminal records check, may proceed to make a fitness determination under this section using the information maintained by the district under subsection (11) of this section; and

(h) Determining when a subject individual may be hired on a probationary basis pending a criminal records check. At a minimum, if there is any indication of criminal behavior by the subject individual, the resolution must require that, if the individual is hired, the individual can be hired only on a probationary basis and must be actively supervised at all times when the individual is in contact with children, the elderly or persons with disabilities.

(13) Criminal offender information is confidential. The Department of State Police shall adopt rules to restrict dissemination of information received under this section to persons with a demonstrated and legitimate need to know the information. Any district receiving information pursuant to this section is bound by the rules of disclosure adopted by the department.



(14) If a subject individual refuses to consent to the criminal records check or refuses to be fingerprinted, the district or qualified entity shall deny or terminate the employment of the individual, or revoke or deny any applicable position, authority to provide services or employment.

(15) A district shall define by resolution the conditions under which subject individuals may participate in training, orientation and work activities pending completion of a criminal records check through the Law Enforcement Data System or nationwide criminal records check. At a minimum, subject individuals shall be actively supervised at all times that they are in contact with children, the elderly and persons with disabilities during such periods of training, orientation and work. Subject individuals may continue probationary employment while awaiting the nationwide criminal records check as long as the individual's criminal records check through the Law Enforcement Data System did not result in disqualification and there are no other indications of criminal behavior.

(16) If a district or a qualified entity requires a criminal records check of employees or other persons, the application forms of the district or qualified entity must contain a notice that employment is subject to fingerprinting and a criminal records check as required by this section.

**SECTION 5. ORS 181.545 is repealed.**

**Passed by House June 22, 2015**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate June 30, 2015**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2015

**Approved:**

.....M.,....., 2015

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State