



Oregon

Kate Brown, Governor

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TO: Senate Judiciary Committee
Floyd Prozanski, Chair
Kim Thatcher, Vice-Chair
Michael Dembrow
Dennis Linthicum
James Manning Jr.

FROM: Linsay Hale, Professional Standards Division Director

SUBJECT: Senate Bill 40/40-1

Summary: This bill has been filed on behalf of the Board on Public Safety Standards and Training (Board). As is true of all regulatory agencies, the Department of Public Safety Standards and Training (DPSST) is required to have specific statutory authority to require the submission of fingerprints for the purposes of conducting criminal background checks on individuals applying for employment, certification or licensure. Additionally, the Oregon State Police (OSP) must be given specific statutory authority to retain fingerprints once submitted, which would result in a regulatory body being notified of any criminal activity occurring within Oregon (Rap Back).

Issue #1: ORS 181A.400, 181A.875, 703.090 and 703.425 contain the fingerprinting authorities for current or potential DPSST employees, volunteers, vendors or contractors as well as those applying for licensure or certification as a public or private safety provider or an occupational licensure within the Board's jurisdiction.

The following chart depicts the disciplines licensed or certified by the DPSST disciplines, the certification or licensure period of each discipline and whether the OSP currently has the authority to retain the fingerprints.

Discipline:	Certification/Licensure Period:	Fingerprints Retained?
Police Officer	Does not expire	No
Certified Reserve Officer (Police)	Does not expire	No
Corrections Officer	Does not expire	No
Parole & Probation Officer	Does not expire	No
Telecommunicator (9-1-1) Dispatcher	Does not expire	No
Emergency Medical Dispatcher	Does not expire	No
Regulatory Specialist (OLCC)	Does not expire	No
Public Safety Instructor	Does not expire	No
Fire Service Professionals	Does not expire	No
Private Security Providers	Two years	Yes
Private Investigator	Two years	Yes
Polygraph Examiner	One year	Yes

As indicated in the table, despite the fact that public safety certification (police, certified reserve, corrections, parole & probation, telecommunicator, emergency medical dispatcher, regulatory specialist, instructor and fire service professional) does not expire, the OSP does not currently have the authority to retain the fingerprints of applicants for these certifications. This means that the DPSST is not notified of criminal activity occurring within Oregon involving public safety professionals who are certified, but not currently employed as a public safety professional. This prevents the DPSST from initiating a professional standards review as required by current law and rule to determine if the revocation of these certifications is required.

On the contrary, the OSP does currently have the authority to retain the fingerprints of applicants for certification/licensure as a private security provider, private investigator and polygraph examiner. This authority has resulted in the retention of approximately 80,000 current and former providers of private security, private investigation and polygraph services. Because these certifications and licenses are temporary in nature, an overwhelming number of these prints belong to individuals who no longer fall within the Board's jurisdiction. In addition, due to the fact that the fingerprints of the individuals who no longer fall within DPSST's jurisdiction are not consistently purged by the OSP, DPSST continues to receive sensitive criminal information if any of these individuals are arrested for criminal activity.

Issue #2: ORS 181A.875 grants DPSST the authority to require fingerprints of applicants for private security certification who apply under ORS 181A.860 (Application Procedure). ORS 181A.860 references only "applicants for certification as a private security professional", which may be interpreted as excluding the authority of the DPSST to require fingerprints of applicants for licensure as a private security manager or supervisor.

Issue #3: In 2013, the Oregon legislature passed a bill requiring all governmental agencies authorized to report, receive or disseminate criminal offender information use electronic fingerprint technology to take and submit a person's fingerprints for conducting criminal records checks. [2013 HB 3330] This bill exempted criminal justice agencies authorized by federal law to receive fingerprint-based criminal records checks from the Federal Bureau of Investigation (FBI). Though it was confirmed through conversation with the Department of Administrative Services and the Department of Justice that the intent was to exempt the DPSST (a criminal justice agency by definition) from this requirement, DPSST is not recognized by the FBI as being authorized to receive federal-based criminal records check. As such, the DPSST is not technically exempted from the requirements found in ORS 181A.170 requiring all fingerprints be submitted electronically using a third-party vendor contracted with through the State.

Effects of SB 40: SB 40, if passed, would accomplish the following:

Issue #1: The OSP would be granted the authority to retain the fingerprints of those who are certified in a public safety discipline in which certification does not expire, allowing the DPSST to be notified of criminal activity occurring in Oregon regardless of current employment status. The retain authority would be removed from the fingerprints of those applying for licenses and certifications that do expire (private security, private investigator and polygraph examiners). Instead, the DPSST will adjust internal processes to allow DPSST staff to conduct more frequent Law Enforcement Data Systems (LEDS) checks on certified and licensed private security providers, private investigators and polygraph

examiners to ensure the minimum standards for certification and licensure are maintained throughout the certification and licensure period.

Issue #2: ORS 181A.860 is expanded to clarify that applicants for private security certification and licensure as a private security provider (which is inclusive of professionals, instructors and managers) will be subjected to a national fingerprint-based criminal records check.

Issue #3: The DPSST would be explicitly exempted from the requirement that all fingerprints be submitted using electronic capture technology provided by a service provider contracted with through the Department of Administrative Services.

40-1 Amendments Summary: ORS 181A.670 requires all public or private safety agencies to provide the DPSST access to personnel records of an employee or former employee if the DPSST requests access to relevant records in order to proceed with an investigation into the current or former employee's ability to be employed, trained or certified as a public safety officer. ORS 181A.670(3) goes on to afford immunity from civil liability resulting from the disclosure of this information if disclosure is done in good faith.

It was recently discovered that ORS 181A.355 defines "public or private safety agency" as "... a unit of state or local government, a special purpose district or a private firm that provides, or has authority to provide, fire fighting, police, ambulance or emergency medical services." This definition does not include agencies that specifically provide corrections or parole and probation services, thereby excluding the employers of corrections or parole and probation officers from the requirement and the immunity from liability afforded should this information be disclosed. It has been confirmed through research into the legislative history of this requirement conducted by the DPSST's legal counsel that the intent was not to exclude the employers of corrections and parole and probation officers from this requirement or from the immunity from liability. Rather the implementation of this statute was intended to encompass all employers of public safety personnel.

Effects of SB 40-1: Should SB 40-1 pass, employers of public safety officers will be added to the requirements found in ORS 181A.670 and will be granted the same immunity from liability afforded in subsection (3) regardless of the type of service being provided by the employer.

None of the issues mentioned in this testimony are expected to have a significant or substantive fiscal impact.
