



March 3, 2023

Senator Floyd Prozanski, Chair
Senate Committee on Judiciary
Oregon Legislature
Salem, Oregon

Chair Prozanski, members of the committee for the record my name is Wendy Landers, Division Director at Oregon State Police Criminal Justice Information Services.

Oregon State Police has no official position regarding SB 697 and SB 698; however, I would like to provide some information that you may find helpful regarding the logistics of this bill.

The Criminal Justice Information Services (CJIS) Division is Oregon's central repository for criminal offender information. Within CJIS Division there are five program areas which include the Computerized Criminal History (CCH) unit and the Automated Biometric Identification System (ABIS) unit. CCH is where all fingerprint-based arrests, court dispositions tied to those arrests, and any Oregon Department of Correction custody that results from the court dispositions are recorded.

SB 697 modifies ORS137.225 by eliminating the requirement for a person to send a full set of fingerprints to Oregon State Police for positive identification when they make a motion for a set-aside. SB 698 does not explicitly speak to eliminating for a person to send a full set of fingerprints to Oregon State Police for positive identification when they make a motion for a set-aside however, it does not outline this step of the processes therefore our understanding is that with an automated process the positive identification would be eliminated. I would like to start with providing information regarding of SB 697 and SB 698 and how the modifications to not provide fingerprints impact processes and the accuracy of our Oregon criminal history repository.

The term "positive identification" means a determination that the subject of the fingerprint-based record search is the same person as the subject of a criminal history record or records indexed in the Interstate Identification Index (III) System. This determination is, based upon a comparison of fingerprints through computer applications against criminal history repositories both interstate and federally. Identifications without biometric information (fingerprints), based solely upon a comparison of subjects' names or other nonunique identification characteristics or numbers (i.e. name and DOB), or combinations thereof, does not constitute positive identification.

Positive identification is how the Oregon CCH is created and or modified. For example, a person is arrested, and their fingerprints are taken by the arresting agency then transmitted either electronically or via US mail to the Oregon State Police Automated Biometric Identification System (ABIS) unit. Once received the ABIS unit processes and either establishes creates a new Criminal History record if there is no other record for the person or if the person already has an Oregon Criminal History, they add the arrest information to the person's existing record.

All fingerprint-based background checks for the purpose of accessing a criminal history record, whether it is for individual, business, or agency use, both state and nationwide, are run against our Oregon criminal history repository built on positive identification.



Currently, a person requesting a set-aside files a motion for set-aside with the court and simultaneously provides OSP a set of fingerprints along with a request to provide their criminal history record based on positive identification to the appropriate prosecutor or prosecutors. This information allows for OSP to start the set-aside process and put the criminal history in a queue for processing an approval or a denial in the future when a signed order is received. The criminal history record based on positive identification that is sent to the prosecutor(s) informs them of what the exact comprehensive Oregon criminal history record is for the person filing the motion seeking a set-aside. This positive identification record will include their complete Oregon Record built on positive identification as well as the FBI number and an indicator if they have a record in other states based on positive identification. OSP also provides any record of previously approved or denied set-aside orders to prosecutors in counties that have presiding judge orders requiring Oregon State Police to provide this information as part of the process. This information is used by prosecutor(s) to determine if the person is qualified for a new set-aside. Currently, Oregon State Police CCH unit is turning these requests around within 5 or less business days.

Positive identification is necessary for OSP to identify the records to be set-aside. If we are to receive orders without having completed positive identification through fingerprints, we may not be able to locate the record for a set-aside based only on the demographics provided. This could have unintended consequences. Without positive identification OSP would be left to match orders to records bases on non-unique demographic identifiers. This could result in OSP setting aside a record that is not eligible and/or has not been ordered by the court to be set-aside. For example, a record could have a name and DOB that matches the demographics on the order but may not be the intended person's record an example of this would be a person with a common name such as "John Smith / Jane Jones". Alternatively, the intended person's record would not be set-aside therefore upon a future background check could lead to denials of things such as employment, housing, licensing. Positive identification safeguards from the errant sealing of the incorrect individuals record or failure to seal the intended record.

Additionally, without positive identification based on fingerprints provided by the person filing a motion seeking a set-aside, the prosecutors and judges may not be able to locate the full Oregon criminal history record built on positive identification. They would also not receive the FBI number or the indicator of a record in other states repositories which are also built on positive identification. These criminal histories are used to determine if the person's record qualifies for set-aside.

SB 698 implements an automated system that identifies convictions, arrests, citations, charges, and judgments of guilty except for insanity that are eligible to be automatically sealed. The State of Oregon ratified the National Crime Prevention and Privacy Compact Act (Title 34, United States Code, sections 40311-40316) with the enactment of Oregon Revised Statutes, section 181.036, which became effective January 1, 2006, and is one of 34 compact states. In general, the Compact Act provides a legal framework for the establishment of an electronic information sharing system among the Federal Government and the States to exchange criminal history records for noncriminal justice purposes authorized by Federal or State law, such as background checks for governmental licensing and employment.

Under this Compact, the FBI and the compact states agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the Federal Government and to compact states for authorized purposes.



Compact ratification provides for the availability and use of the most complete and accurate criminal history record information on an interstate basis. The Compact requires the establishment of positive identification to obtain criminal history record information for a background check for employment and licensing. This positive identification requirement guards against the use of fraudulent identity documents by an individual attempting to conceal a criminal past.

As a party to the compact we are obligated to abide by the law and their rules. Automatic sealing is in conflict of the law and would put Oregon in conflict with said law and the compact.

The compact resource material explains that Sealed Record Information permits the FBI and state criminal history record repositories to delete sealed record information when responding to an interstate record request pursuant to the Compact.

The resource material further explains that “automatic” sealing laws, which restrict the noncriminal justice use of the records of certain defined classes of individuals, do not satisfy the definition for sealed records, because they do not require the filing of individual petitions and the issuance of individualized sealing orders.

Non-compliance would lead to sanctions for the State of Oregon by the Compact Council’s sanctions committee. Sanctions would allow the Compact Council to authorize the FBI to refuse to process requests for criminal history record checks for noncriminal justice purposes. As a criminal justice agency, the council could request the Director of the FBI to take appropriate action against OSP consistent with the recommendations of the Compact Council. Sanctions may be imposed that could result in suspension of the OSP access to the III System for noncriminal justice purposes.

The implications of these sanctions for the people of Oregon would be the elimination of interstate background checks for various state agencies that work with vulnerable populations such as DHS, OHA, Teachers Standards and practices and the Nursing Board.

Oregon State Police is happy to work through these logistics and details of the bills with the appropriate parties if that should become necessary.

This concludes my testimony. Thank you for the opportunity to provide this information to you. I am available to answer any questions you may have.