

## HB 4122 -1, -2, -4 STAFF MEASURE SUMMARY

### House Committee On Judiciary

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**Meeting Dates:** 2/8, 2/15

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#### **WHAT THE MEASURE DOES:**

The measure amends Oregon’s voluntary record of arrest and prosecution background (“rap back”) program by adding language necessary to implement the program and integrate it with the federal rap back system.

#### Detailed Summary:

Adds language allowing the Oregon Department of State Police to submit fingerprints of participants in Oregon’s rap back program to the FBI and permits the FBI to retain the submitted fingerprints to be searched by future submissions to the federal rap back system, including latent fingerprint searches.

#### **ISSUES DISCUSSED:**

- Level of crimes subject to reporting under the program
- Scope of entities able to participate in the program
- Potential for and ability to correct erroneous identification

#### **EFFECT OF AMENDMENT:**

-1 The amendment would remove individual voluntary participation in the program, instead allowing any state or local government agencies authorized to submit fingerprint-based background check requests for employment and licensing purposes to enroll in the rap back program and would require individuals to participate in the rap back program if they are in positions requiring criminal background checks with those agencies and districts.

#### Detailed Summary:

Replaces the measure. Removes voluntary individual participation in the rap back program and makes participation mandatory for positions requiring criminal background checks with participating agencies. Removes ability for an individual to stop participating in the program at any time and removes prohibition on conditioning employment on participation in the rap back program. Expands agencies who may participate in the rap back program to all state or local government agencies authorized by law to request background checks and receive criminal history record information. Requires that:

- individuals in those positions participate in the rap back program if the authorized agency subscribes to it;
- the agency or district notify the Oregon Department of State Police (OSP) when a participant in the rap back program is no longer employed by the agency or district; and
- OSP destroy any retained fingerprint cards after receiving such notification and request that the Federal Bureau of Investigation do the same.

Clarifies that fingerprint cards may be either electronic or printed.

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-4 The amendment corrects a reference to the "Rap Back program" in the -2 amendment and clarifies that criminal history information received by the department may be from both within and outside of Oregon.

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*FISCAL: Fiscal impact issued*

*REVENUE: No revenue impact*

### **BACKGROUND:**

Rap back programs allow an agency or employer requiring background checks ("subscribing agency") to subscribe to alerts for individual participants whose positions require the checks. The person's fingerprints are kept after the initial background check, and any new criminal arrests or prosecutions are reported to the subscribing entity.

House Bill 2228 (2015) attempted to establish a voluntary rap back program in Oregon as an alternative to the standard procedure for the criminal records checks required for certain positions with authorized agencies, agencies and districts listed and defined in ORS 181A.190, ORS 181A.195, 181A.200 and 267.237. Under the standard background check program, once the background check is completed, OSP and the FBI are required to destroy any fingerprint cards they collected or received to perform the background check.

Under [ORS 181A.205](#), an individual subject to background checks under ORS 181A.190, 181A.195, 181A.200, and 267.237 can choose to participate in the Rap Back program and the authorized agencies, agencies, and districts in those statutes may subscribe to the program. The participant may, at any time, choose to stop participating in the program, and if they do so, OSP is required to destroy the fingerprint cards kept for the program, to direct the FBI

to do the same, and to notify the subscribers for that person that they are no longer participating in the program. The statute prohibits requiring a person to participate in the program as a condition of employment with the agency or district. Oregon's current statute does not allow the FBI to retain the fingerprints they receive under the program for the purpose of searching them by future submissions to their Rap Back system, including for latent fingerprint searches. However, [federal guidance](#) requires that a participating entity that submits the fingerprints ("submitting agency"), like OSP, must have the authority to submit the fingerprints to the [federal rap back system](#) and the FBI must be authorized to retain and search the fingerprints using new fingerprint submissions to the federal system, including latent fingerprint searches, and to send appropriate responses to submitting and subscribing entities. Latent fingerprints are fingerprints collected from surfaces.