CHAPTER 758

AN ACT HB 2250

Relating to criminal records checks; creating new provisions; amending ORS 8.100, 181.516, 181.533, 181.534, 181.537, 181.547, 181.612, 242.550, 267.237, 326.604, 329A.270, 329A.300, 329A.330, 329A.370, 329A.390 and 443.004; and declaring an emergency.

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

ELECTRONIC FINGERPRINT CAPTURE

SECTION 1. ORS 181.516 is amended to read:

181.516. (1)(a) Except as provided in subsection (2) of this section, the Department of State Police and any other governmental agency authorized to report, receive or disseminate criminal offender information shall use electronic fingerprint capture technology to take and submit a person's fingerprints for purposes of conducting criminal records checks under ORS 181.533, 181.534 or 267.237 or for any other purpose authorized by law.

(b)(A) The Oregon Department of Administrative Services shall adopt rules to implement this section.

[*(b)*] **(B) In adopting rules under this paragraph,** the **Oregon** Department **of Administrative Services** may adopt [*by rule*] exemptions from the requirement described in paragraph (a) of this subsection.

(2)(a) This section applies to the Department **of State Police** only with respect to the administration of criminal records checks under ORS 181.533, 181.534 and 267.237.

(b) This section does not apply to 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.

(3) To meet the requirements of this section, the Department **of State Police** and other governmental agencies described in subsection (1) of this section may:

(a) Directly provide electronic fingerprint capture services; [*or*]

(b) Enter into a contract described in subsection (4) of this section for the provision of electronic fingerprint capture services[.]**; or**

(c) Provide electronic fingerprint capture services in any other manner allowed by the Oregon Department of Administrative Services by rule or order.

(4) The Oregon Department of Administrative Services shall develop a standard contract by which the Department of State Police and other governmental agencies described in subsection (1) of this section may contract for the provision of electronic fingerprint capture services. Contracts developed under this subsection must account for the variety of uses and levels of service necessary to accommodate the needs of the Department of State Police, other governmental agencies described in subsection (1) of this section, qualified entities as defined in ORS 181.533, qualified entities as defined in ORS 181.537, qualified entities as defined in ORS 267.237 and any other entity required by law or rule to conduct criminal records checks for purposes not related to the administration of the criminal justice system.

UNIFORM RULES FOR FITNESS DETERMINATIONS

SECTION 2. ORS 181.547 is amended to read:

181.547. (1) As used in this section[,]**:**

(a) "Authorized agency" means an authorized agency as defined in ORS 181.533 or 181.534.

(b) "Direct access" means access to an individual or the personal information of an individual.

(c) "District" has the meaning given that term in ORS 267.237.

(d) "Qualified entity" has the meaning given that term in ORS 181.537.

(2) **Subject to ORS 8.100,** the Oregon Department of Administrative Services, in consultation with the Department of State Police, shall adopt rules [*specifying*]:

(a) **Specifying** categories of individuals who are subject to criminal records checks that:

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

(B) [*Qualified entities*] **A qualified entity** may use to make fitness determinations under ORS 181.537 [*(10)(c).*]**; or**

(C) A district may use to make fitness determinations under ORS 267.237.

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

(c) **Specifying** the types of crimes that may be considered in reviewing criminal offender information of a subject individual for each category.

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

(e) Establishing the process for appealing a fitness determination, except as otherwise provided by law.

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

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

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

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

(c) Individuals who have direct access to or who provide services for persons with disabilities;

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

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

(f) Individuals licensed, registered, certified or otherwise authorized to practice a profession or trade in this state and individuals applying for licensure, registration, certification or authorization to practice a profession or trade in this state; and

(g) Any other population of individuals specified by the Oregon Department of Administrative Services by rule.

(5) An authorized agency, qualified entity or district, or an employee of an authorized agency, qualified entity or district who is acting within the course and scope of the employee's employment, is immune from any civil liability that might otherwise be incurred or imposed for making a fitness determination in accordance with this section and ORS 181.533, 181.534, 181.537 and 267.237.

SECTION 3. ORS 8.100 is amended to read:

8.100. **(1)** For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Judicial Department may require the fingerprints of a person who:

[*(1)*] **(a)** Is employed or applying for employment by the department; or

[*(2)*] **(b)** Provides services or seeks to provide services to the department as a contractor, vendor or volunteer.

(2) After considering the rules adopted by the Oregon Department of Administrative Services under ORS 181.547, the Chief Justice of the Supreme Court may, by order, adopt rules used to determine whether a person described in subsection (1) of this section is fit to be employed by, or provide services to, the Judicial Department. The order may incorporate, in whole or in part, the rules adopted by the Oregon Department of Administrative Services under ORS 181.547.

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. 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 shall destroy the fingerprint cards and shall retain no facsimiles or other material from which a fingerprint can be reproduced.

(7) If only a state criminal records check is conducted, 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 facsimiles or other material from which a fingerprint can be reproduced.

(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*] **subject to rules adopted by the Oregon Department of Administrative Services under ORS 181.547**, 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*] **a** 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*]**, such as:**

(i) The passage of time since the commission of the crime[,]**;**

(ii) The age of the person at the time of the crime[,]**;**

(iii) The likelihood of a repetition of offenses[,]**; and**

(iv) The subsequent commission of another relevant crime and [*a*] **the** 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)*] **(10)** 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)*] **(11)** 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*] **may** include but need not be limited to:

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

(b) [*Specifying*] **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 district**;

(c) [*Specifying the*] **Identifying applicable** information[*, including fingerprints,*] 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**;

(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)*] **(e)** 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)*] **(10)** of this section; and

[*(h)*] **(f)** Determining when a subject individual may be hired on a probationary basis pending a criminal records check[. *At a minimum*], **provided that** 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)*] **(12)** 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)*] **(13)** 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)*] **(14)** 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)*] **(15)** 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 181.533 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; **and**

[*(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)*] **(b)** 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 **submit the criminal offender information to the Department of Human Services. The Department of Human Services shall, subject to** [*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.*] **After making a fitness determination under this subsection, the Department of Human Services shall inform the qualified entity of the results of the fitness determination.**

[*(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.]

(b) In making the fitness determination, the Department of Human Services shall consider:

(A) The nature of the crime;

(B) The facts that support the conviction or pending indictment or indicate the making of a 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, such as:

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

(ii) The age of the person at the time of the crime;

(iii) The likelihood of a repetition of offenses; and

(iv) The subsequent commission of another relevant crime and the recommendation of an employer.

(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) If the public agency or person returns a fingerprint card to the authorized agency, the authorized agency shall destroy the fingerprint card. The authorized agency may not keep a record of the fingerprints.

(7) The authorized agency **or the Department of Human Services** 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 6. 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 Department 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. 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 shall destroy the fingerprint cards and shall retain no facsimiles or other material from which a fingerprint can be reproduced.

(6) If only a state criminal records check is conducted, 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 facsimiles or other material from which a fingerprint can be reproduced.

(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*] **may** adopt rules to implement this section and other statutes relating to criminal offender information obtained

through fingerprint-based criminal records checks. The rules [*shall*] **may** 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)*] **(10)(a)** Except as otherwise provided in ORS 181.612, 342.143, 342.223, 443.735 [*and 475.304*] **and 475.300 to 475.346** 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 **by rule** under ORS 181.547; and

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

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

[*(a)*] **(A)** The nature of the crime;

[*(b)*] **(B)** The facts that support the conviction or pending indictment or that indicate the making of [*the*] **a** false statement;

[*(c)*] **(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)*] **(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*]**, such as**:

[*(A)*] **(i)** The passage of time since the commission of the crime;

[*(B)*] **(ii)** The age of the subject individual at the time of the crime;

[*(C)*] **(iii)** The likelihood of a repetition of offenses or of the commission of another crime;

[*(D)*] **(iv)** The subsequent commission of another relevant crime;

[*(E)*] **(v)** Whether the conviction was set aside and the legal effect of setting aside the conviction; and

[*(F)*] **(vi)** [*A*] **The** recommendation of an employer.

(e) 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 this subsection.

[*(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 dis-*

semination 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 position, 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)*] **(11)** 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)*] **(12)** 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)*] **(13)** 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 7. ORS 181.537 is amended to read:

181.537. (1) As used in this section:

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

(b) "Native American tribe" has the meaning given that term in ORS 181.538 (4).

(c) "Qualified entity" means a community mental health program, a community developmental disabilities program, a local health department, the government of a Native American tribe or an agency of a Native American tribe responsible for child welfare or an individual or business or organization, whether public, private, for-profit, nonprofit or voluntary, that provides care, including a business or organization that licenses, certifies or registers others to provide care.

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

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

(b) Who provides or seeks to provide services to either department or the authority as a contractor, subcontractor, vendor or volunteer who:

(A) May have contact with recipients of care;

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

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

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

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

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

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

(iii) Purchasing or selling property;

(F) Provides security, design or construction services for government buildings, grounds or facilities;

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

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

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

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

(e) For the purposes of employment decisions made by a mass transit district or transportation district for qualified entities that, under contracts with the district or the Oregon Health Authority, employ persons to operate motor vehicles for the transportation of medical assistance program clients; or

(f) For the purposes of licensure, certification or registration of foster homes by the government of a Native American tribe or an agency of a Native American tribe responsible for child welfare.

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

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

(5)(a) Except as otherwise provided in ORS 443.735 and [*475.304*] **475.300 to 475.346**, a qualified entity, [*using*] **subject to** rules adopted by [*the Department of Human Services or the Oregon Health Authority under ORS 181.534 (9) and rules adopted by*] the Oregon Department of Administrative Services under ORS 181.547, shall determine under this section whether a person is fit to hold a position, provide services, be employed or, if the qualified entity has authority to make such a determination, be licensed, certified or registered[*, based on the criminal records check obtained pursuant to ORS 181.534, any false statements made by the person regarding the criminal history of the person and any refusal to submit or consent to a criminal records check including fingerprint identification*]. If a person is determined to be unfit, then that person may not hold the position, provide services or be employed, licensed, certified or registered.

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

[*(6)*] **(c)** In making the fitness determination under [*subsection (5) of this section*] **this subsection**, the qualified entity shall consider:

[*(a)*] **(A)** The nature of the crime;

[*(b)*] **(B)** The facts that support the conviction or pending indictment or indicate the making of [*the*] **a** false statement;

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

[*(d)*] **(D)** Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, certification or registration[*. Intervening circumstances include but are not limited to*]**, such as:**

(i) The passage of time since the commission of the crime[,]**;**

(ii) The age of the person at the time of the crime[,]**;**

(iii) The likelihood of a repetition of offenses[,]**;**

(iv) The subsequent commission of another relevant crime**;** and [*a*]

(v) The recommendation of an employer.

[*(7) The Department of Human Services, the Oregon Health Authority and the Employment Department may make fitness determinations based on criminal offender records and information furnished by the Federal Bureau of Investigation through the Department of State Police only as described in ORS 181.534.*]

[*(8) A qualified entity and an employee of a qualified entity 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 (5) of this section that a person is fit or not fit to hold a position, provide services or be employed, licensed, certified or registered. A qualified entity, employee of a qualified entity acting within the course and scope of employment and an employer or employer's agent who in good faith comply with this section and the decision of the qualified entity or employee of the qualified entity acting within the course and scope of employment are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of the qualified entity's decision. An employee of the state 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.*]

[*(9)*] **(6)** The Department of Human Services and the Oregon Health Authority, subject to rules adopted by the Oregon Department of Administrative Services under ORS 181.547, shall develop systems that maintain information regarding criminal records checks in order to minimize the administrative burden imposed by this section and ORS 181.534. Records maintained under this subsection are confidential and may not be disseminated except for the purposes of this section and in accordance with the rules of the Department of Human Services, the Oregon Health Authority and the Department of State Police. Nothing in this subsection permits the Department of Human Services to retain fingerprint cards obtained pursuant to this section.

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

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

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

(c) Specifying which qualified entities are responsible for deciding, subject to rules adopted by the Oregon Department of Administrative Services under ORS 181.547, whether a subject individual is not fit for a position, service, license, certification, registration or employment; and

(d) Specifying when a qualified entity, in lieu of conducting a completely new criminal records check, may proceed to make a fitness determination under subsection (5) of this section using the information maintained by the Department of Human Services and the Oregon Health Authority pursuant to subsection [*(9)*] **(6)** of this section.

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

[*(12)*] **(9)** If the qualified entity requires a criminal records check of employees or other persons, the application forms of the qualified entity must contain a notice that employment is subject to fingerprinting and a criminal records check.

CLARIFYING REFERENCES

SECTION 8. ORS 329A.270 is amended to read:

329A.270. (1) A certification or registration authorized by ORS 329A.030 and 329A.250 to 329A.450 and issued to a child care facility may be renewed upon submission of an application and payment of the required fee not later than 30 days prior to the expiration date of the current certification or registration if the Office of Child Care finds that the child care facility that is seeking renewal of the certification or registration is in compliance with the requirements of ORS 181.537, 329A.030 and 329A.250 to 329A.450 and the rules promulgated pursuant to ORS 181.534, 181.537, **181.547,** 329A.030 and 329A.250 to 329A.450.

(2) Upon submission of an application for renewal in proper time, manner and form, and payment of the required fee, the current certification or registration, unless officially revoked, shall remain in force until the Office of Child Care has acted on the application for renewal and has given notice of the action taken.

SECTION 9. ORS 329A.300 is amended to read:

329A.300. (1) Upon receipt of an application for a certification, accompanied by the required fee, the Office of Child Care shall issue a certification if the office finds that the child care facility and its operations are in compliance with the requirements of ORS 181.537, 329A.030 and 329A.250 to 329A.450 and the rules promulgated pursuant to ORS 181.534, 181.537, **181.547,** 329A.030 and 329A.250 to 329A.450.

(2) The Office of Child Care may issue a temporary certification, subject to reasonable terms and conditions, for a period not longer than 180 days to a child care facility that does not comply with the requirements and rules if the office finds that the health and safety of any child will not be endangered thereby. Not more than one temporary certification shall be issued for the same child care facility in any 12-month period.

(3) The Office of Child Care shall serve as the state agency authorized, upon request, to certify compliance with applicable federal child care standards or requirements by any facility providing child care in the state.

SECTION 10. ORS 329A.330 is amended to read:

329A.330. (1) A provider operating a family child care home where care is provided in the family living quarters of the provider's home that is not subject to the certification requirements of ORS 329A.280 may not operate a child care facility without registering with the Office of Child Care.

(2) A child care facility holding a registration may care for a maximum of 10 children, including the provider's own children. Of the 10 children:

(a) No more than six may be younger than school age; and

(b) No more than two may be 24 months of age or younger.

(3)(a) To obtain a registration, a provider must apply to the Office of Child Care by submitting a completed application work sheet and a nonrefundable fee. The fee shall vary according to the number of children for which the facility is requesting to be registered, and shall be determined and applied through rules adopted by the Early Learning Council under ORS 329A.275. The fee shall be deposited as provided in ORS 329A.310 (2). The office may waive any or all of the fee if the office determines that imposition of the fee would impose a hardship on the provider.

(b) Upon receipt of an initial or renewal application satisfactory to the office, the office shall conduct an on-site review of the child care facility under this section. The on-site review shall be conducted within 30 days of the receipt of a satisfactory application.

(4) The office shall issue a registration to a provider operating a family child care home if:

(a) The provider has completed a child care overview class administered by the office;

(b) The provider has completed two hours of training on child abuse and neglect issues;

(c) The provider is currently certified in infant and child first aid and cardiopulmonary resuscitation;

(d) The provider is certified as a food handler under ORS 624.570; and

(e) The office determines that the application meets the requirements of ORS 181.537, 329A.030 and 329A.250 to 329A.450 and the rules promulgated pursuant to ORS 181.534, 181.537, **181.547,** 329A.030 and 329A.250 to 329A.450, and receives a satisfactory

records check, including criminal records and protective services records.

(5) Unless the registration is revoked as provided in ORS 329A.350, the registration is valid for a period of two years from the date of issuance. The office may renew a registration of a provider operating a family child care home if the provider:

(a) Is currently certified in infant and child first aid and cardiopulmonary resuscitation;

(b) Has completed a minimum of eight hours of training related to child care during the most recent registration period; and

(c) Is certified as a food handler under ORS 624.570.

(6) A registration authorizes operation of the facility only on the premises described in the registration and only by the person named in the registration.

(7) The Early Learning Council shall adopt rules:

(a) Creating the application work sheet required under subsection (3) of this section;

(b) Defining full-time and part-time care;

(c) Establishing under what circumstances the adult to child ratio requirements may be temporarily waived; and

(d) Establishing health and safety procedures and standards on:

(A) The number and type of toilets and sinks available to children;

(B) Availability of steps or blocks for use by children;

(C) Room temperature;

(D) Lighting of rooms occupied by children;

(E) Glass panels on doors;

(F) Condition of floors;

(G) Availability of emergency telephone numbers; and

(H) Smoking.

(8) The office shall adopt the application work sheet required by subsection (3) of this section. The work sheet must include, but need not be limited to, the following:

(a) The number and ages of the children to be cared for at the facility; and

(b) The health and safety procedures in place and followed at the facility.

(9) The office, upon good cause shown, may waive one or more of the registration requirements. The office may waive a requirement only if appropriate conditions or safeguards are imposed to protect the welfare of the children and the consumer interests of the parents of the children. The office may not waive the on-site review requirement for applicants applying for an initial registration or renewal of a registration.

(10) The Early Learning Council, by rule, shall develop a list of recommended standards consistent with standards established by professional organizations regarding child care programs for child care facilities. Compliance with the standards is not required for a registration, but the office shall encourage voluntary compliance and shall provide technical assistance to a child care facility attempting to comply with the standards. The child care facility shall distribute the list of recommended minimum standards to the parents of all children cared for at the facility.

(11) In adopting rules relating to registration, the Early Learning Council shall consult with the appropriate legislative committee in developing the rules to be adopted. If the rules are being adopted during a period when the Legislative Assembly is not in session, the Early Learning Council shall consult with the appropriate interim legislative committee.

SECTION 11. ORS 329A.370 is amended to read:

329A.370. Without the necessity of prior administrative proceedings or hearing and entry of an order or at any time during such proceedings if they have been commenced, the Office of Child Care may institute proceedings to enjoin the operation of any child care facility operating in violation of ORS 181.537, 329A.030 and 329A.250 to 329A.450 or the rules promulgated pursuant to ORS 181.534, 181.537, **181.547,** 329A.030 and 329A.250 to 329A.450.

SECTION 12. ORS 329A.390 is amended to read:

329A.390. (1) Whenever an authorized representative of the Office of Child Care is advised or has reason to believe that child care that is subject to regulation by the office is being provided without a certification, registration or record, the authorized representative may visit and conduct an on-site investigation of the premises of the facility at any reasonable time to determine whether the facility is subject to the requirements of ORS 181.537, 329A.030 and 329A.250 to 329A.450.

(2) At any reasonable time, an authorized representative of the Office of Child Care may conduct an on-site investigation of the premises of any certified or registered child care facility to determine whether the child care facility is in conformity with ORS 181.537, 329A.030 and 329A.250 to 329A.450 and the rules promulgated pursuant to ORS 181.534, 181.537, **181.547,** 329A.030 and 329A.250 to 329A.450.

(3) An authorized representative of the Office of Child Care shall conduct an on-site investigation of the premises of any certified or registered child care facility or of any other child care facility that is subject to regulation by the office if the office receives a serious complaint about the child care facility. The Early Learning Council, by rule, shall adopt a definition for "serious complaint."

(4) Any state agency that receives a complaint about a certified or registered child care facility, a preschool recorded program or a school-age recorded program shall notify the Office of Child Care about the complaint and any subsequent action taken by the state agency based on that complaint.

(5) The director and operator of a child care facility, a preschool recorded program or a school-age recorded program shall permit an authorized representative of the office to inspect records of the facility or program and shall furnish promptly reports and information required by the office.

CONFORMING AMENDMENTS

SECTION 13. ORS 181.612 is amended to read:

181.612. (1) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Department of Public Safety Standards and Training may require the fingerprints of a person who:

(a) Is employed or applying for employment by the department;

(b) Provides services or seeks to provide services to the department as a contractor, vendor or volunteer; or

(c) Is applying for a license or certificate, or for reissuance of a license or certificate, that is issued by the department or is under investigation by the department.

(2) ORS 181.534 [*(11) and (12)*] **(10)** does not apply to the department when the department makes denial or revocation decisions regarding persons described in subsection (1)(c) of this section or ORS 181.880 or 703.090.

(3) The department and an employee of the department acting within the course and scope of employment are immune from any civil liability that might otherwise be incurred or imposed for making denial or revocation decisions regarding persons described in subsection (1)(c) of this section or ORS 181.880 or 703.090. The department, an employee of the department acting within the course and scope of employment and an employer or employer's agent who in good faith comply with the requirements of ORS 181.662, 181.875 or 703.090, any rules adopted by the department and the decision of the department or employee of the department acting within the course and scope of employment are not liable for employment-related decisions based on decisions made under ORS 181.662, 181.875 or 703.090. The department or an employee of the department 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 ORS 181.534.

SECTION 14. ORS 242.550 is amended to read:

242.550. **Subject to rules adopted by the Oregon Department of Administrative Services under ORS 181.547,** the civil service board may require an applicant for a custodial position to furnish evidence satisfactory to the board of good character, mental and physical health, and such other evidence as [*it may deem*] **the civil service board deems** necessary to establish the applicant's fitness[*, including any information concerning a criminal conviction for a crime involving the possession, use, sale or distribution of a controlled substance, sexual misconduct listed in ORS 342.143 (3), theft or a crime of violence. The board shall not approve the employment of any applicant unless the board is satisfied that the applicant poses no danger to school children*].

SECTION 15. ORS 326.604 is amended to read:

326.604. (1) As used in this section, "care" means the provision of care, treatment, education, training, instruction, supervision, placement services, recreation or support to children, youth or persons with disabilities.

(2) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Department of Education may require the fingerprints of a person who:

(a)(A) Is employed or applying for employment by the department; or

(B) Provides services or seeks to provide services to the department as a contractor, subcontractor, vendor or volunteer; and

(b) Is, or will be, working or providing services in a position:

(A) In which the person may have unsupervised access to children;

(B) In which the person may have contact with recipients of care;

(C) In which the person has access to confidential or personal information about children, as may be further defined by the State Board of Education by rule;

(D) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(E) In which the person has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations;

(F) That has payroll functions or in which the person has responsibility for receiving, receipting or depositing money or negotiable instruments, for billing, collections or other financial transactions or for purchasing or selling property or has access to property held in trust or to private property in the temporary custody of the department;

(G) That has mailroom duties as the primary duty or job function of the position;

(H) In which the person has responsibility for auditing the department;

(I) That has personnel or human resources functions as one of the position's primary responsibilities; or

(J) In which the person has access to personal information about employees or members of the public, including Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information or criminal background information.

(3) In addition to the authority granted by subsection (2) of this section and for the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Department of Education may require the fingerprints of a person for the purposes of licensing, certifying, registering or otherwise regulating or administering programs under the authority of the department.

(4) The Department of Education**, subject to rules adopted by the Oregon Department of Administrative Services under ORS 181.547,** may make fitness determinations based on criminal offender records and information furnished by the Federal Bureau of Investigation through the Department of State Police as provided by ORS 181.534.

SECTION 16. ORS 443.004 is amended to read:

443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete a criminal records check under ORS 181.534 on:

(a) An employee of a residential facility or an adult foster home;

(b) Any individual who is paid directly or indirectly with public funds who has or will have contact with a recipient of support services or a resident of an adult foster home or a residential facility; and

(c) A home care worker registering with the Home Care Commission or renewing a registration with the Home Care Commission.

(2)(a) A home health agency shall conduct a criminal background check before hiring or contracting with an individual and before allowing an individual to volunteer to provide services on behalf of the home health agency, if the individual will have direct contact with a patient of the home health agency.

(b) An in-home care agency shall conduct a criminal background check before hiring or contracting with an individual and before allowing an individual to volunteer to provide services on behalf of the in-home care agency, if the individual will have direct contact with a client of the in-home care agency.

(c) The authority shall prescribe by rule the process for conducting a criminal background check.

(3) Public funds may not be used to support, in whole or in part, the employment in any capacity having contact with a recipient of support services or a resident of a residential facility or an adult foster home, of an individual, other than a mental health or substance abuse treatment provider, who has been convicted:

(a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165, 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465, 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800, 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322;

(b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465, 163.467, 163.700, 164.055, 164.125 or 164.377, the date of conviction for which was within the five years immediately preceding employment in any capacity of an individual, other than a mental health or substance abuse treatment provider, having contact with a recipient of support services, a resident of a residential facility or a resident of an adult foster home, when the recipient or resident is 65 years of age or older;

(c) Of a crime listed in ORS 181.805;

(d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(e) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to (d) of this subsection; or

(f) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to a crime described in paragraphs (a) to (e) of this subsection.

(4) If the criminal background check conducted by a home health agency or in-home care agency under subsection (2) of this section reveals that the individual who is subject to the criminal background check has been convicted of any of the crimes described in subsection (3) of this section, the home health agency or in-home care agency may not employ the individual.

(5) Public funds may not be used to support, in whole or in part, the employment, in any capacity having contact with a recipient of support services or a resident of a residential facility or an adult foster home, of a mental health or substance abuse treatment provider who has been convicted of committing, or convicted of an attempt, conspiracy or solicitation to commit, a crime described in ORS 163.095, 163.115, 163.375, 163.405, 163.411 or 163.427.

(6) Upon the request of a mental health or substance abuse treatment provider, the department or authority shall maintain a record of the results of any fitness determination made under ORS 181.534 [*(11) and (12)*] **(10)**. The department or authority may disclose the record only to a person the provider specifically authorizes, by a written release, to receive the information.

(7) If the department or authority has a record of substantiated abuse committed by an employee or potential employee of a home health agency, in-home care agency, adult foster home or residential facility, regardless of whether criminal charges were filed, the department or authority shall notify, in writing, the employer and the employee or potential employee.

(8) As used in this section:

(a) "Adult foster home" has the meaning given that term in ORS 443.705.

(b) "Home care worker" has the meaning given that term in ORS 410.600.

(c) "Home health agency" has the meaning given that term in ORS 443.005.

(d) "In-home care agency" has the meaning given that term in ORS 443.305.

(e) "Mental health or substance abuse treatment provider" means:

(A) A peer support specialist;

(B) An employee of a residential treatment facility or a residential treatment home that is licensed under ORS 443.415 to provide treatment for individuals with alcohol or drug dependence;

(C) An individual who provides treatment or services for persons with substance use disorders; or

(D) An individual who provides mental health treatment or services.

(f) "Peer support specialist" means a person who:

(A) Is providing peer support services as defined by the authority by rule;

(B) Is under the supervision of a qualified clinical supervisor;

(C) Has completed training required by the authority; and

(D) Is currently receiving or has formerly received mental health services, or is in recovery from a substance use disorder and meets the abstinence requirements for staff providing services in alcohol or other drug treatment programs.

(g) "Residential facility" has the meaning given that term in ORS 443.400.

TRANSITIONAL PROVISIONS

SECTION 17. The rules of the Department of State Police adopted pursuant to ORS 181.516 before the operative date specified in section 25 of this 2015 Act continue in effect until superseded or repealed by rules of the Oregon Department of Administrative Services. Until superseded or repealed, references in rules of the Department of State Police adopted pursuant to ORS 181.516 before the operative date specified in section 25 of this 2015 Act to the Department of State Police or an officer or employee of the Department of State Police are considered to be references to the Oregon Department of Administrative Services or an officer or employee of the Oregon Department of Administrative Services.

APPLICABILITY

SECTION 18. The amendments to ORS 8.100, 181.533, 181.534, 181.537, 267.237 by sections 3 to 7 of this 2015 Act apply to information submitted for purposes of conducting criminal records checks that is received on or after the operative date specified in section 25 of this 2015 Act.

CONTINUATION OF WORK GROUP

SECTION 19. The Oregon Department of Administrative Services shall continue to convene the work group that the department convened to implement the provisions of chapter 285, Oregon Laws 2013, for the purposes of implementing the provisions of this 2015 Act. As part of its duties, the work group shall study further statutory changes that are necessary for the efficient administration of criminal records checks conducted pursuant to the statutory laws of this state for purposes related to making fitness determinations. On the basis of the findings of the work group, the department shall submit a report in the manner provided by ORS 192.245, and may include recommendations for legislation, to an interim committee of the Legislative Assembly related to government efficiency no later than December 15, 2015.

INCREASES IN APPROPRIATIONS AND INCREASES AND DECREASES IN EXPENDITURE LIMITATIONS

SECTION 20. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Human Services by section 1 (1), chapter 760, Oregon Laws 2015 (Enrolled House Bill 5026), for the biennium beginning July 1, 2015, for central services, statewide assessments and enterprise-wide costs and program design services, is increased by $144,705 for the purpose of implementing the amendments to ORS 8.100, 181.516, 181.533, 181.534, 181.537, 181.547, 181.612, 242.550, 267.237, 326.604, 329A.270, 329A.300, 329A.330, 329A.370, 329A.390 and 443.004 by sections 1 to 16 of this 2015 Act.

SECTION 21. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (1), chapter 760, Oregon Laws 2015 (Enrolled House Bill 5026), for the biennium beginning July 1, 2015, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and Medicare receipts and including federal funds for indirect cost recovery, Social Security Supplemental Security Income recoveries and the Child Care and Development Fund, but excluding lottery funds and federal funds not described in this section, collected or received by the Department of Human Services, for central services, statewide assessments and enterprise-wide costs and program design services, is increased by $187,768 for the purpose of implementing the amendments to ORS 8.100, 181.516, 181.533, 181.534, 181.537, 181.547, 181.612, 242.550, 267.237, 326.604, 329A.270, 329A.300, 329A.330, 329A.370, 329A.390 and 443.004 by sections 1 to 16 of this 2015 Act.

SECTION 22. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (4), chapter 760, Oregon Laws 2015 (Enrolled House Bill 5026), for the biennium beginning July 1, 2015, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and Medicare receipts and including federal funds for indirect cost recovery, Social Security Supplemental Security Income recoveries and the Child Care and Development Fund, but excluding lottery funds and federal funds not described in this section, collected or received by the Department of Hu-

man Services, for shared services is increased by $117,981 for the purpose of implementing the amendments to ORS 8.100, 181.516, 181.533, 181.534, 181.537, 181.547, 181.612, 242.550, 267.237, 326.604, 329A.270, 329A.300, 329A.330, 329A.370, 329A.390 and 443.004 by sections 1 to 16 of this 2015 Act.

SECTION 23. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (1), chapter 760, Oregon Laws 2015 (Enrolled House Bill 5026), for the biennium beginning July 1, 2015, as the maximum limit for payment of expenses from federal funds, excluding federal funds described in section 2, chapter 760, Oregon Laws 2015 (Enrolled House Bill 5026), collected or received by the Department of Human Services, for central services, statewide assessments and enterprise-wide costs and program design services, is increased by $177,000 for the purpose of implementing the amendments to ORS 8.100, 181.516, 181.533, 181.534, 181.537, 181.547, 181.612, 242.550, 267.237, 326.604, 329A.270, 329A.300, 329A.330, 329A.370, 329A.390 and 443.004 by sections 1 to 16 of this 2015 Act.

SECTION 24. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (4), chapter 696, Oregon Laws 2015 (Enrolled Senate Bill 5531), for the biennium beginning July 1, 2015, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Department of State Police, for administrative services, agency support, criminal justice information services and office of the State Fire Marshal, is decreased by $90,049 for purposes related to implementing the amendments to ORS 8.100, 181.516, 181.533, 181.534, 181.537, 181.547, 181.612, 242.550, 267.237, 326.604, 329A.270, 329A.300, 329A.330, 329A.370, 329A.390 and 443.004 by sections 1 to 16 of this 2015 Act.

OPERATIVE DATE

SECTION 25. (1) The amendments to ORS 8.100, 181.516, 181.533, 181.534, 181.537, 181.547, 181.612, 242.550, 267.237, 326.604, 329A.270, 329A.300, 329A.330, 329A.370, 329A.390 and 443.004 by sections 1 to 16 of this 2015 Act become operative on January 1, 2016.

(2) The Oregon Department of Administrative Services and the Department of Human Services may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the Oregon Department of Administrative Services and the Department of Human Services to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the Oregon Department of Administrative Services and the Department of Human Services by the amendments to ORS 8.100, 181.516, 181.533, 181.534, 181.537, 181.547, 181.612, 242.550, 267.237, 326.604, 329A.270, 329A.300, 329A.330, 329A.370, 329A.390 and 443.004 by sections 1 to 16 of this 2015 Act.

CAPTIONS

SECTION 26. The unit captions used in this 2015 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2015 Act.

EMERGENCY CLAUSE

SECTION 27. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Approved by the Governor July 27, 2015
Filed in the office of Secretary of State July 27, 2015
Effective date July 27, 2015