Oregon
Kate Brown, Governor

Department of Administrative Services
Office of the Chief Operating Officer
155 Cottage Street NE
Salem, OR 97301
PHONE: 503-378-3104
FAX: 503-373-7643

December 8, 2015

Members of the Oregon Legislature
Oregon State Capitol
900 Court St. NE
Salem, OR 97301

Re: Criminal Records Check Legislative Report

Dear members of the Oregon Legislature:

HB 2250 (2015) required the Department of Administrative Services to reconvene a workgroup to streamline background checks by creating uniformity in the fitness determination process and report back to the Legislature no later than December 15, 2015. Below is the aforementioned report.

Background

HB 3168, passed in 2013, designated authority to the Department of Administrative Services to develop state-wide criminal records administrative rules. To adopt those rules, DAS reconvened a prior workgroup, developed for HB 4091 from the 2011 legislative session. The workgroup was reconvened in November of 2014, with the addition of agencies not previously involved, districts and qualified entities, to discuss state-wide streamlining efforts, while maintaining high levels of safety. Twenty-five meetings were held, five of which were with the primary workgroup. Additional meetings were held to meet with smaller focus groups representing specific populations including children, the elderly, people with disabilities and people with mental illness, as well as groups addressing specific issues such as high risk personal information, medical licensing, peer support and transportation services. Consensus was reached within all workgroups that consideration should be given to all criminal history, without exclusionary crime lists, in order to give the agency or district the opportunity to gather more information to review mitigating circumstances when making a fitness determination.

Progress to Date

During the 2015 legislative session, HB 2250 as introduced, directed further streamlining efforts by creating uniformity in the fitness determination process. The bill removed all exclusionary crimes from statutes and provided uniform fitness determination language for all authorized agencies, districts and qualified entities. The bill was amended and the enrolled version removed uniform fitness determination language, removed exclusionary crimes for specific programs, and put in place further requirements for establishing state-wide administrative rules.

In 2015, the Department of Administrative Services continued outreach with specific populations to gain input and provide information about the streamlining efforts for criminal records checks purposes including; public interest groups, indigent and vulnerable population advocates, labor and non-profit organizations.

The Department of Administrative Services facilitated a meeting on October 1, 2015, to provide historical information to all interested parties regarding criminal records check legislation and progress

of the state-wide administrative rule implementation. More than 100 public and private sector individuals registered and attended the meeting.

The Department of Administrative Services started the formal rule making process to implement the state-wide administrative rules providing a streamlined criminal records check process. The public hearing is scheduled for December 15, 2015. The administrative rules are scheduled for adoption on January 4, 2016.

Administrative Rule Overview

The Department of Administrative Services' state-wide administrative rules streamline the criminal records check process by defining subject individual categories, what information may be required as part of a criminal records check and types of crimes considered in determining fitness for employment, credentials, such as licensing, and providing direct care or services to a vulnerable population. The rules also establish a process for appealing a fitness determination, and provide agencies the ability to share final fitness determination results.

Rule Exceptions:

- Specific state agencies, eighty-six statutes, have authority under ORS 181.534 for purposes of conducting criminal records checks and requesting fingerprints. In most cases, these agency specific statutes cite the fitness determination process. Those agencies governed by these rules will defer to their agency specific statute for fitness determinations language as it may differ from statute to statute.
- Exclusionary crime lists still exist in specific state agency program statutes and federal law, which provide exemptions to state-wide administrative rules.
- State agencies and districts may continue to use 3rd party vendors to provide criminal records checks, when a fingerprint-based criminal records check is not required, which are not subject to the state-wide administrative rules.

Summary

More than sixty individuals have participated in the various workgroups since 2012. The workgroup has concluded its efforts in the preparation and input for state-wide administrative rules.

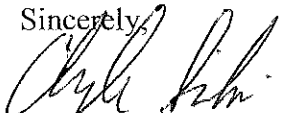
Upon adoption of the rules, agencies will begin the process of revising or repealing existing program or agency specific administrative rules as required in the Enrolled, HB 3168, section 6, from the 2012 legislative session.

The workgroup presents no recommendations for future legislative changes regarding criminal records check processes.

An electronic version of this report is available at: http://www.oregon.gov/das/chro/pages/cbc.aspx

Please let me know if you have any questions or concerns.

Sincerely,



Clyde Saiki, COO
DAS Director