

Policy Title:	Oregon Computerized Criminal History Checks and Nationwide Criminal History Checks through the FBI for Foster Parents and Adoptive Parents for SOSCF Children -- OAR		
Policy Number:	I-G.1.4 413-120-0400 thru 0470		Effective Date: 7/13/00

Approved By: *on file*

Date Approved:

Policy

Forms, etc.

Definitions

References

Contact

History

Reference(s):

- ORS 181.010 to 181.560
- OAR 413-120-0200 through 413-120-0230
- OAR 413-120-0300 through 413-120-0310
- FD 258, "Fingerprint Card"

Form(s) that apply:

- CF 117, "Request for Exception to a Rule"
- CF 1011F, "Consent for Criminal Records and Fingerprint Check"

Rules:

PURPOSE

413-120-0400 (1) It is the goal of the State Office for Services to Children and Families (SOSCF) to reduce the risk of exploitation and/or abuse of children entrusted in the care of or receiving services from SOSCF. Therefore, SOSCF will conduct criminal offender information background checks as described in these rules.

(2) These rules establish procedures by which SOSCF obtains criminal offender information on subject individuals who are seeking to be foster or adoptive parents of children in SOSCF custody, and how SOSCF applies such information to determine the suitability of the subject individual to be a foster or adoptive parent.

(3) These rules provide guidelines on the procedures SOSCF will use when SOSCF receives requests to conduct criminal offender information record checks from licensed private agencies who are studying adoptive families for placement of SOSCF children.

(4) These rules provide guidelines on the procedures SOSCF will use granting exceptions for subject individuals convicted of certain felony and misdemeanor crimes not covered under the Adoptions and Safe Families Act (ASFA).

(5) These rules also provide guidelines on the procedures SOSCF will use when a member of a family foster home, certified prior to November 19, 1997 applies to renew a foster home certificate or submits an adoption application and has a disqualifying felony conviction(s) prior to November 19, 1997.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010-181.560,

SCOPE OF RULES

413-120-0410 (1) Consistent with the purpose of these rules, SOSCF will issue decisions regarding the suitability for approval of subject individuals applying to be foster or adoptive parents, or other persons in the household.

(2) The criminal record check rules in OAR 413-120-0400 through 413-120-0470 shall be construed and implemented consistent with the existing requirements in OAR 413-120-0200 through 413-120-0230. If there is an inconsistency between these criminal record check rules and existing adoption requirements, the rules in OAR 413-120-0300 to 413-120-0310 will supersede existing adoption requirements.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010-181.560

DEFINITIONS

413-120-0420 (1) "Administrator" means the administrator of SOSCF, who is an assistant director of the Department of Human Services.

(2) **"Adoptive Applicant"** means an individual who has completed an application to receive placement of a child with the intent to legally adopt said child.

(3) **"Agency Agreement"** means a written agreement between the Oregon State Police and a Criminal Justice or designated agency as defined by ORS 181.010 authorized to receive criminal offender information, specifying the terms and conditions of accessing and receiving Oregon computerized criminal history information to assure compliance with state and federal regulations.

(4) **"Child or Children"** means a person 18 years of age or under. A person who is between 18 and 21 years of age, who is in SOSCF custody, is also considered a child for purposes of these rules.

(5) **"Computerized Criminal History (CCH) System"** means the administration and maintenance of on-line computer files of significant criminal offender information by OSP.

(6) **"Contested Case Hearing"** means a quasi-judicial hearing before an impartial hearing officer in which the complainant and/or his or her representative may present all

pertinent facts and evidence in order to show why the action or inaction of SOSCF should be reconsidered. As a result of the hearing, the hearings officer reports findings and recommendations to the SOSCF Administrator, who makes a final order on the matter.

(7) "Criminal Offender Information" means records, including fingerprints and photographs, received, compiled and disseminated by the Oregon State Police for purposes of identifying criminal offenders and alleged offenders and maintained as to such persons' records of arrest, the nature and disposition of criminal charges, sentencing, confinement and release, and includes the OSP Computerized Criminal History System.

(8) "Designated Agency" means any DHS division or Administrator's Office, where applicable, required to access Oregon criminal offender information to implement a federal or state statute, executive order or administrative rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct, or for agency employment purposes, or licensing purposes or other demonstrated and legitimate needs when designated by order of the Governor.

(9) "DHS Division" means a division of the Department of Human Services and the Director's Office, where applicable, which accesses criminal offender information as a designated agency or a criminal justice agency, and requests fingerprint-based criminal offender information from the FBI on persons or programs who provide care or treatment to children as regulated by that DHS division.

(10) "Division" means the State Office for Services to Children and Families of the Department of Human Services.

(11) "FBI" means the Federal Bureau of Investigation.

(12) "Family Foster Home" refers to any certified foster family, kinship, shelter home, or family group home, which is maintained and lived in by a person who cares for any child(ren) unattended by parents or guardian for the purpose of providing the child(ren) with care, food and lodging.

(13) "Fee" means the charges assessed any DHS division, or the DHS Director's Office, by SOSCF for processing each criminal offender information record check and/or fingerprint-based criminal offender record check request.

(14) "Fingerprint-Based Criminal Offender Information" means criminal offender information compiled and maintained by the Bureau of Criminal Identification regarding persons who have been arrested for crimes where law enforcement agencies have submitted fingerprints and other identifying data as required by ORS 181.515 and/or federal statutes, or as deemed appropriate by the submitting law enforcement agency for the purpose of identification.

(15) "Foster Parent" refers to a provider certified under OAR 413-200-0100 through 413-200-0230.

(16) "Information Required" means all information requested by the State Office for Services to Children and Families for processing criminal record checks, including fingerprint checks.

(17) "OSP" means the Oregon State Police.

(18) "Other Person in Household" means a person 18 years of age or older living in the home or assisting in the home to enrich the care provided to children placed in the home by tutoring, providing recreation, relief care or other services such as household chores, whether paid or unpaid. It also means a member of the household under 18 years of age if there is reason to believe that member may pose a risk to children placed in the home.

(19) "Private Adoption Agency" means an agency licensed by the State of Oregon to provide adoption services within the state and which contracts with SOSCF to study adoptive parents seeking to adopt children in the custody of SOSCF.

(20) "SOSCF" means the State Office for Services to Children and Families.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010-181.560

SUBJECT INDIVIDUALS

413-120-0430 (1) For purposes of this rule, "Subject Individual" means a person who, as of the effective date of these rules:

(a) Applies to adopt a child in the custody of SOSCF as described in OAR 413-120-0200 through 413-120-0230 and 413-120-0300 through 413-120-0310, or

(b) Applies to be a foster parent as described in OAR 413-200-0100 through 413-200-0230, or

(c) Is an other person in household as described in 413-120-0420(18), or

(d) Is a kinship care resource as described in 413-200-0140(20), or

(e) Is a member of household as described in 413-200-0140(23), or

(f) Is a volunteer as described in OAR 413-200-0140(34).

(2) Adoptive applicants who have been certified as foster parents and who have submitted to a criminal history check within the last 12 months will be exempt from a criminal records check at the time they apply to adopt.

Statutory Authority: ORS 418-005

Stats. Implemented: ORS 181.537, 181.010-181.560

LIMITATIONS OF INQUIRIES

413-120-0440 (1) Only SOSCF employees who have been fingerprinted and cleared by the Oregon State Police shall access or have access to criminal offender information pursuant

to a valid agency agreement. All such information shall be handled in compliance with the agency agreement and rules and procedures of the Oregon State Police relating to the criminal offender information (OAR 257-10-010 to 257-10-050). It is the responsibility of SOSCF to assure strict compliance with federal and state laws, rules and procedures regarding criminal offender information access and dissemination.

(2) Criminal offender information obtained from OSP and/or the FBI will not be used for any purpose other than that for which it was obtained nor given to unauthorized persons or agencies.

(3) Criminal offender information, including fingerprint-based criminal offender information, shall be obtained by SOSCF to ascertain whether a subject individual has been convicted of a crime which is substantially related to their qualifications as an adoptive parent or as a foster parent.

Statutory Authority: OAR 418.005

Stats. Implemented: ORS 181.537, 181.010-181.560

CRIMES TO BE CONSIDERED

413-120-0450 (1) SOSCF has determined that persons who engage in certain criminal conduct may not be qualified to be foster or adoptive parents because such conduct is fundamentally inconsistent with any responsibility for care, treatment or supervision of children or other vulnerable persons. Unless an exception is allowed under these rules, convictions for crimes listed in this section or a false statement about a conviction for any of the listed crimes may disqualify a subject individual from being approved as a foster or adoptive parent.

(2) SOSCF will not issue or renew a foster home certificate or approve an adoption application if the subject individual has been convicted in Oregon or any other jurisdiction of a felony crime except as provided in 413-120-0450(4):

(a) Involving child abuse or neglect;

(b) Against children;

(c) Involving spousal abuse;

(d) Involving violence, except assault or battery;

(e) These felonies include, but are not limited to, the following crimes under Oregon law or substantially similar crimes in Oregon or any other jurisdiction:

162.155 Escape in the second degree, if the offense involves the use or threatened use of physical force

162.165 Escape in the first degree, if the offense involves the use or threatened use of physical force or a dangerous or deadly weapon

162.325 Hindering prosecution, if the crime involves the use of force

163.095 Aggravated murder

163.115 Murder

163.118 Manslaughter in the first degree

163.125 Manslaughter in the second degree

163.145 Criminally negligent homicide

163.160 Assault in the fourth degree, if the victim is a spouse or a child and the person has previously been convicted of assaulting the same victim

163.165 Assault in the third degree, if the victim is a child or a spouse

163.175 Assault in the second degree, if the victim is a child or a spouse

163.185 Assault in the first degree, if the victim is a child or a spouse

163.205 Criminal mistreatment in the first degree, if the victim is a child or if the crime involves violence

163.213 Unlawful use of an electrical stun gun, tear gas or mace in the first degree

163.225 Kidnapping in the second degree, if the victim is a child or spouse or if the crime involves violence

163.235 Kidnapping in the first degree, if the victim is a child or spouse or if the crime involves violence

163.355 Rape in the third degree

163.365 Rape in the second degree

163.375 Rape in the first degree

163.385 Sodomy in the third degree

163.395 Sodomy in the second degree

163.405 Sodomy in the first degree

163.408 Unlawful sexual penetration in the second degree

163.411 Unlawful sexual penetration in the first degree

163.425 Sexual abuse in the second degree

163.427 Sexual abuse in the first degree

163.525 Incest, if the victim of the offense is a child

163.535 Abandonment of a child

163.537 Buying or selling a person under 18 years of age

163.547 Child neglect in the first degree

163.555 Criminal nonsupport

163.670 Using a child in display of sexually explicit conduct

163.684 Encouraging child sexual abuse in the first degree

163.686 Encouraging child sexual abuse in the second degree

163.688 Possession of materials depicting sexually explicit conduct of a child in the first degree

163.689 Possession of materials depicting sexually explicit conduct of a child in the second degree

164.125 Theft of services, if the theft is by force for services valued at \$750 or more

164.225 Burglary in the first degree, if the offense involves violence

164.395 Robbery in the third degree

164.405 Robbery in the second degree

164.415 Robbery in the first degree

166.015 Riot

166.165 Intimidation in the first degree

166.220 Unlawful use of weapon

167.017 Compelling prostitution

(3) SOSCF will not issue or renew a foster home certificate or approve an adoption application if a subject individual has been convicted of a felony, within the five years preceding application to be a foster or adoptive parent, except as provided in 413-120-0450(4), involving:

(a) A crime of physical assault or battery; or

(b) A drug-related offense.

(c) These felonies include, but are not limited to, the following crimes currently listed under Oregon law or substantially similar crimes in Oregon or any other jurisdiction:

163.160 Assault in the fourth degree, if person previously convicted of assaulting same victim or assault witnessed by child/step child of defendant or victim or other child living in household of defendant or victim

163.165 Assault in the third degree, not involving a child or a spouse

163.175 Assault in the second degree, not involving a child or a spouse

163.185 Assault in the first degree, not involving a child or a spouse

167.212 Tampering with drug records

167.262 Adult using minor in commission of controlled substance offense (for controlled substance other than less than 5 grams of marijuana)

475.992 Subsection (1) Manufacture or delivery of Schedule I, II or III counterfeit substance

Subsection (2) Delivery of marijuana for consideration

Subsection (3) Creation or delivery of Schedule I, II or III counterfeit substance

Subsection (4) Possession of Schedule I or II controlled substance

475.993 Prohibited acts for registrants related to Schedule I controlled substance

475.995 Distribution of Schedule I, II or III controlled substances to minors

475.999 Manufacture or delivery of Schedule I, II or III controlled substance within 1000 feet of school

(4) No exceptions may be granted to the prohibitions contained in subsections (2) and (3) except, if a family foster home was certified or approved as an adoptive home before November 19, 1997, SOSCF may place additional children in the home, renew the family's foster home certificate or approve the home as an adoptive placement if the Administrator or the Administrator's designee has determined that:

(a) Denial of the renewal or adoption application would result in the disruption of a child(ren)'s placement or prevent future substitute care or adoptive placements of the child(ren)'s siblings; and

(b) The certification, adoption or licensing file for the foster family, adoptive family or relative placement contains documentation that safety considerations with respect to the foster family, adoptive family, relative or caretaker(s) have been addressed.

(5) Unless an exception is granted as provided in OAR 413-120-0450(7), SOSCF will not issue or renew a foster home certificate or approve an adoption application if the subject individual has been convicted of any felony or misdemeanor.

Approval authority for criminal record exceptions (where exceptions are allowed) shall be as follows:

(a) For all misdemeanor convictions, branch manager or branch manager designee approval is required;

(b) For all felony convictions, branch manager or branch manager designee approval and regional administrator or regional administrator designee approval is required.

(6) SOSCF may grant an exception (where exceptions are allowed) and document that exception on a Request for Exception to a Rule form (CF 117) if, based upon the following, SOSCF determines that the subject individual possesses the qualifications to be a foster or adoptive parent despite a criminal record:

(a) The severity and nature of the crime;

(b) The number of criminal offenses;

(c) The time elapsed since commission of the crime;

(d) The circumstances surrounding the crime;

(e) The subject individual's participation in counseling, therapy, education or employment evidencing rehabilitation or a change in behavior; and

(f) A review of the police or arrest report confirms the subject individual's explanation of the crime.

(7) Where allowed, exceptions for a specific misdemeanor or felony conviction need only be granted one time for a specific subject individual.

(8) Granting an exception for a specific misdemeanor or felony crime does not establish a precedent for other cases in which the same crime is being considered.

(9) Criminal History Arrests:

(a) A history of arrests may raise concerns about a subject individual's suitability to be a foster or adoptive parent. If a subject individual has a history of arrest(s) for any of the following, the branch must assess whether the subject individual meets the qualifications to be a foster or adoptive parent:

- (A)** Child abuse or neglect;
- (B)** Spousal abuse;
- (C)** A crime against children, including pornography;
- (D)** A crime involving violence, including rape, sexual abuse, manslaughter or homicide;
- (E)** Physical assault;
- (F)** Battery;
- (G)** Drug or alcohol offenses; and
- (H)** Weapons-related offenses.

(b) If a subject individual has been arrested (not convicted) for any of the crimes listed in these rules, the supervisor and caseworker/certifier, in consultation with the branch manager, must assess the suitability of the subject individual to be a foster or adoptive parent and document their findings. Documentation shall indicate that they have considered the arrest(s), give information about the issues considered and state their decision with regards to the suitability of the subject individual to be a foster or adoptive parent. The supervisor and caseworker shall consider the following when assessing the suitability of a subject individual who has been arrested for one of the crimes listed under this subsection:

- (A)** The severity and nature of the crime;
 - (B)** The number of arrests in the subject individual's history;
 - (C)** The time elapsed since the arrest(s);
 - (D)** The circumstances surrounding the arrest(s);
 - (E)** Whether the subject individual was charged or indicted for a crime related to the arrest;
 - (F)** If applicable, whether the subject individual has participated in counseling, therapy, educational or employment opportunities since the arrest(s);
 - (G)** The relationship between the circumstances of the arrest and the subject individual's ability to meet the qualifications of a foster or adoptive parent;
- (c)** The supervisor and worker may also obtain and review a copy of the police report of the arrest and interview the subject individual about the arrest.

(10) Under no circumstances will SOSCF bar or refuse to approve an individual because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 or 419A.262.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010-181.560

PROCEDURES

413-120-0460 (1) Any subject individual applying to be a foster or adoptive parent and all other persons in the household of the subject individual, shall consent to a fingerprint-based criminal offender information records check. All applicants shall be notified of this requirement at the time they apply for foster home certification or adoptive approval. Criminal record check consent forms shall contain a notice that applicants for foster home certification or adoption approval are subject to a fingerprint-based criminal offender information records check that will be conducted as required by ORS 181.537 and ORS 181.557.

(2) SOSCF shall not certify or approve a subject individual if the subject individual or a person in the household of the subject individual refuses to be fingerprinted. SOSCF may deny certification or approval of an adoption application if the subject individual or a person in the household of the subject individual makes a false statement about having been convicted of any of the crime(s).

(3) Subject individuals shall provide all information required for a criminal offender information records check, including fingerprints where required, on forms and fingerprint cards provided by SOSCF and according to procedures established by SOSCF, including:

(a) Two properly completed FBI fingerprint cards (FD 258) with red overprinting in the reason fingerprinted block from the subject individual and other persons in the household;

(b) A properly completed and signed form CF 1011F from the subject individual and other persons in the household;

(c) If the subject individual or other person in the household acknowledges a prior conviction for a crime listed in these administrative rules, an explanation of the relationship of the facts that support the conviction and all intervening circumstances and authorization for SOSCF to verify the information;

(4) As part of the consent to a criminal records check, SOSCF may request subject individuals or other persons in the household to consent to the use of their social security numbers in conducting the criminal record check. Subject individuals will indicate their consent by their signatures.

(5) SOSCF shall request criminal offender information on subject individuals from OSP and FBI as follows:

(a) If the subject individual has disclosed, or their Oregon record indicates that they now live or have lived outside the State of Oregon anytime during the five years

prior to application, SOSCF shall instruct OSP to conduct a fingerprint criminal offender records check through the FBI;

(b) If the subject individual has disclosed a conviction for a crime, SOSCF shall instruct OSP to conduct a fingerprint-based criminal offender records check through the FBI;

(c) If the subject individual's Oregon record indicates a conviction for a crime, SOSCF shall forward the fingerprint cards to OSP for a positive identification verification prior to issuing a denial and may instruct OSP to conduct a fingerprint criminal offender records check through the FBI.

(6) SOSCF shall forward fingerprint cards of other persons in the household to OSP for a positive identification verification as follows:

(a) If the other person in the household has disclosed, or their Oregon record indicates, that they now live or have lived outside the state of Oregon anytime during the five years prior to the subject individual's application;

(b) If the other person in the household has disclosed a conviction for a crime;

(c) If the other person in the household's Oregon record indicates a conviction for a crime, the positive identification verification must be obtained prior to issuing a denial.

(7) No applicant for certification as a foster parent or approval as an adoptive parent will be provisionally approved prior to initiation of the criminal record check process, including fingerprint-based criminal offender checks where required for the applicant and under ORS 181.557, for any other persons in the household of the applicant.

(8) SOSCF will review the criminal offender information, including fingerprint-based criminal offender information, of subject individuals seeking certification as a foster parent or seeking to adopt, and under ORS 181.557 for other persons in the household. A statement of the assessment of suitability, based on the criminal history and reflecting the decision-making criteria, shall be filed in the foster home certification record or the adoption record. The LEDS reports must not be filed in these records and must be destroyed within 90 days. A denial of the application or certification, based on criminal history, will be considered preliminary until the applicant has been given notice of an opportunity to challenge the criminal record report, or to request a contested case hearing pursuant to OAR 413-120-0460. A finding of suitability based on criminal history is only one factor SOSCF will use in deciding whether to approve a foster or adoptive parent. The final determination to grant or deny certification based solely on criminal history, will be made by the SOSCF Administrator or designee. Criminal offender information received from the OSP or the FBI is confidential and shall not be released to unauthorized persons or agencies.

(9) Subject individuals who have been determined not suitable to be certified or approved as an adoptive resource pursuant to these rules shall be denied approval for adoption of a child in the custody of SOSCF.

(10) SOSCF shall revoke a foster home certificate, deny a renewal application, or remove from consideration an approved family foster home or approved adoption applicant if the subject individual or a person in the household of the subject individual is convicted of a crime in Oregon or any other jurisdiction as listed in 413-120-0450(2) and (3) since the time of their last certification or approval.

(11) If SOSCF determines that the subject individual is not suitable for foster care certification or adoption approval based on criminal history or false statement on the application related to criminal history, unless the subject individual voluntarily withdraws from the process, the SOSCF branch or regional office will notify the subject individual, via certified mail, that the subject individual:

(a) Has a right to inspect and challenge their Oregon criminal offender information through the Oregon State Police procedures as adopted per ORS 181.555 (3) and OAR 257-10-035;

(b) May challenge the accuracy or completeness of any entry on the subject individual's criminal records provided by the FBI by filing a challenge with the Assistant Director of the FBI Identification Division, Washington, DC, 20537-9700; and

(c) May appeal SOSCF's determination of unsuitability, and/or indicate an intent to challenge information in the OSP or FBI report, by requesting a contested case hearing pursuant to ORS 183.413 to 183.470 and OAR 413-120-0470 provided that SOSCF receives their request for a contested case hearing in writing within 10 calendar days of mailing the notice. After said 10 days have elapsed, SOSCF will inform the SOSCF branch certifier or adoption worker or private agency adoption worker that either:

(A) The subject individual has been notified that they are not suitable for approval for foster care certification or adoption based on criminal history or false statement in the application about criminal history and that the worker may not approve the certification or adoption application because the subject individual has waived, or timely declined, to exercise their right to a contested case hearing regarding their suitability; or

(B) The subject individual has requested a contested case hearing and that the branch will be notified of the subject individual's suitability for certification upon issuance of the hearing decision.

(12) Upon SOSCF's determination that an applicant for foster care certification or adoption of a child in the custody of SOSCF is not suitable based on the criminal history of a person in the household or false statement of criminal history of a person in the household, the certifier, branch adoption worker, or private agency adoption worker shall:

(a) Inform the person in the household whose record was reviewed of the right to inspect and challenge their Oregon criminal offender information through OSP procedures as adopted per ORS 181.555 (3) and OAR 257-10-035 and their rights under ORS 181.557 (2)(b);

(b) Inform the foster care or adoption applicant whose approval is affected by the other person's criminal history or false statement about criminal history, via certified mail, that:

(A) SOSCF may not approve the foster care or adoption applicant as long as the other person remains in the household or has contact with children in the home based on the information contained in the criminal record check about the other person or the person's false statement about criminal history; and

(B) The foster care or adoption applicant may appeal in a contested case hearing SOSCF's determination of unsuitability based on the criminal history or false statement of criminal history concerning a person in the home, provided that SOSCF receives the applicant's request for a contested case hearing in writing within 10 calendar days of the date of mailing the notice to the applicant.

(13) The SOSCF foster care certifier or branch adoption worker or private adoption agency worker shall, after said 10 days have elapsed, either:

(a) Notify the foster care or adoption applicant that they are not suitable for approval for placement of a child in the custody of SOSCF based on criminal history of a person in the household, or false statement in the application of the other person, and that SOSCF may not approve the applicant because the applicant has waived or timely declined to exercise their right to a contested case hearing regarding their suitability; or

(b) Notify the foster care or adoption applicant that since he or she has requested a contested case hearing, the branch will be notified of the applicant's suitability for certification upon issuance of the hearing decision.

(14) SOSCF will charge all DHS divisions and the Director's Office a fee in an amount not to exceed the actual cost of acquiring and processing criminal offender information, including fingerprint-based criminal offender information records checks. The total fee charged, per request, shall be determined as follows:

(a) A fee of \$15 shall be charged for each criminal record check request processed by SOSCF when the record check is requested by another DHS division;

(b) An additional fee of \$12 shall be charged when SOSCF must forward fingerprint cards to OSP;

(c) An additional fee of \$24 shall be charged when SOSCF must forward fingerprint cards through OSP to the FBI.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010-181.560

RIGHTS FOR REVIEW AND CONTESTED CASE HEARINGS

413-120-0470 (1) SOSCF shall conduct contested case hearings per ORS 183.413 to 183.470, and in accordance with DHS rules OAR 410-007-0010 through 410-007-0185 (for criminal records), and afford foster care or adoption applicants the right to appeal a decision

made by SOSCF that the applicant is not suitable for approval for placement of a child in the custody of SOSCF based on an authorized criminal offender information records check, or a false statement concerning such criminal records check of the applicant or other person in the household. Applicants must notify SOSCF in writing of their request for a contested case hearing within 10 calendar days after the notice is mailed by SOSCF to the applicant.

(2) SOSCF has no jurisdiction in a contested case hearing over allegations that the criminal offender information received from OSP or the FBI is inaccurate, incomplete or maintained in violation of any federal or state law.

(3) SOSCF is entitled to rely on the criminal offender information supplied by OSP or the FBI until OSP or the FBI notifies SOSCF that information has been changed or corrected. If a subject individual has timely requested a contested case hearing, SOSCF will stay the hearing until the subject individual has been afforded a reasonable time to correct or complete the record, or has declined to do so.

(4) To preserve the confidentiality of the records and the privacy of the subject individual, any contested case hearing under this rule will not be open to the public.

(5) Prior to a contested case hearing being scheduled, a mandatory pre-hearing conference between SOSCF, the subject individual and their legal representation shall be convened to review all available information and determine the need for a contested case hearing. At the pre-hearing conference, the subject individual must verify whether they have used their right to inspect or challenge their criminal offender information record(s) or have declined to do so.

(6) The issues at a contested case hearing shall be limited to:

(a) Whether the subject individual or other person in the household has made a false statement in the application as to the non-conviction of a crime, or has refused to consent to the criminal records check, or refused to be fingerprinted; or

(b) Whether the criminal offender information provided to SOSCF by OSP or the FBI describes any crime which SOSCF has determined is relevant to the risk of exploitation and/or abuse or safety of children; and

(c) If the subject individual seeks foster care certification or adoption approval and the subject individual and other persons in the household have admitted the commission of a crime which SOSCF has determined is relevant to the risk of exploitation and/or abuse or safety to children, whether the relationship between the facts which support the conviction and all intervening circumstances would permit the subject individual to be approved by SOSCF.

(7) Fingerprint cards required for evidence in a contested case shall be destroyed by SOSCF when the contested case hearing procedure is concluded and final, including any appellate procedures.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010-181.560, 409.015

Contact(s):

- **Name:** Harry Gilmore; **Phone:** 503-945-6685

Policy History

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