DHS Policy
Oregon Department of Human Services

Children, Adults and Families

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Policy Title:	Criminal History -- OAR				
Policy Number:	I-G.1.4 413-120-0400 thru 0470			Effective Date:	7/28/05

Approved By: *on file* Date Approved:

Policy | Forms, etc. | Definitions | References | Contact | History

Reference(s):

- ORS 181.537
- ORS 181.010 to 181.560
- I-G.1.3, Adoption Applications
- I-G.2.1, Minimum Standards for Adoptive Homes
- II-B.1, Safety Standards for Foster & Relative Care & Adoptive Families
- Criminal History tools

Form(s) that apply:

- FD 258, "Fingerprint Card"
- CF 1011F, "Consent for Criminal Records and Fingerprint Check"
- DHS 1011D "Criminal History Exception Request"

Rules:

413-120-0400
Purpose

(1) It is the goal of the DHS to reduce the risk of exploitation and/or abuse of children entrusted in the care of or receiving services from DHS. Therefore, DHS will conduct criminal offender information background checks as described in these rules.

(2) These rules establish procedures by which DHS obtains criminal offender information on subject individuals who are seeking to provide relative, foster or adoptive care to children in DHS custody under rules of CAF program and policy administration, and how DHS uses criminal offender information to determine the suitability of the subject individual to provide relative, foster or adoptive care.

(3) These rules provide guidelines on the procedures DHS will use when DHS receives requests to conduct criminal offender information record checks from licensed private

agencies who are studying adoptive families for placement of children in the custody of DHS under rules of CAF program and policy administration.

(4) These rules provide guidelines on the procedures DHS will use granting exceptions for subject individuals convicted of certain felony and misdemeanor crimes to provide relative, foster or adoptive care if an exception is permitted under these rules.

(5) These rules shall be used in conjunction with other applicable standards when determining a subject individual's suitability to provide relative, foster or adoptive care for children in DHS custody.

Stat Auth.: ORS 418.005
Stats. Implemented: ORS 181.537, 181.010-181.560, 418.016

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413-120-0410
Scope of Rules

(1) Consistent with the purpose of these rules, DHS will issue decisions regarding the suitability for approval of subject individuals to provide relative, foster or adoptive care. These rules shall apply to any application which has been neither denied nor approved as of the effective date of these rules.

(2) Notwithstanding the prohibitions contained in 413-120-0450 (2) and (3), if a subject individual was certified to provide relative or foster care or approved as an adoptive home before November 19, 1997, DHS may place additional children in the home, renew the family's relative caregiver or foster home certificate of approval or approve the home as an adoptive placement if the DHS Assistant Director for CAF and the DHS Assistant Director for CHS or their designees as described in 413-120-0450(4)(e) have 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 relative caregiver, foster family or adoptive family contains documentation that safety considerations with respect to the subject individual have been addressed; and

(c) Conviction(s) for the crime(s) described in 413-120-0450(3) occurred prior to the certification or approval.

Stat Auth.: ORS 418.005
Stats. Implemented: ORS 181.537, 181.010-181.560, 418.016

413-120-0420
Definitions

For purposes of these rules:

(1) "Adoption Applicant" is a person who applies for adoption approval.

(2) "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.

(3) "Battery" means the use of physical force to injure, damage or abuse or to cause offensive physical contact.

(4) "CAF" means the Children, Adults and Families program and policy administrative unit of DHS.

(5) "Child or Children" means a person or persons under the age of 18. A person who is between 18 and 21 years of age, who is in DHS custody under rules of CAF's program and policy administration, is also considered a child for purposes of these rules.

(6) "CHS" means the Community Human Services unit of DHS.

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

(8) "Contested Case Hearing" means a hearing conducted under ORS Chapter 183 and applicable administrative rules.

(9) "Criminal Offender Information" is defined in ORS 181.010(3) and includes records, fingerprints and photographs, received, compiled and disseminated by the Oregon State Police for purposes of identifying criminal offenders and alleged offenders, as to such persons' records of arrests, the nature and disposition of criminal charges, including sentencing, confinement and release, and includes the OSP Computerized Criminal History System.

(10) "Designated Agency" means any DHS unit 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 criminal conduct; for agency employment or licensing purposes; or for other demonstrated and legitimate needs when designated by order of the Governor.

(11) "DHS" means the Department of Human Services, which accesses criminal offender information as a designated agency or a criminal justice agency, and requests fingerprint-based criminal offender information from the FBI and OSP on certain persons or programs who provide care or treatment to children as regulated by DHS.

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

(13) "Fingerprint-Based Criminal Offender Information" means criminal offender information compiled and maintained by the Oregon State Police 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.

(14) "Foster Parent(s)" is the certified care provider(s) whose name is on the certificate of

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approval to operate a family foster home, and who resides at the address on the certificate, under OAR 413-200-0301 through 413-200-0401.

(15) "Information Required" means all information requested by DHS for processing criminal record checks, including fingerprint checks.

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

(17) "Other Person in Household" means:

(a) A person 18 years of age or older who is living in the home; and is not a child as defined by this rule; or

(b) A person 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; or

(c) 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.

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

(19) "Relative Caregiver" is the child's relative whose name appears on the Certificate of Approval and who resides at the address on the certificate under OAR 413-200-0301 through 413-200-0401.

(20) "SDA" means Service Delivery Area, an administrative subdivision of CHS.

(21) "Violence" means the use of physical force to injure, damage or abuse.

Stat Auth.: ORS 418.005
Stats. Implemented: ORS 181.537, 181.010-181.560, 418.016

413-120-0430
Subject Individuals

For purposes of these rules, "Subject Individual" means a person who:

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

(2) Applies to be a foster parent as described in OAR 413-200-0301 through 413-200-0401, or

(3) Is an other person in the household as described in 413-120-0420(17), or

(4) Applies to be a relative caregiver as described in 413-200-0301 through 413-200-0401.

Stat Auth.: ORS 418.005
Stats. Implemented: ORS 181.537, 181.010-181.560, 418.016

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413-120-0440
Limitations of Inquiries

(1) Only DHS 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 criminal offender 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 257-010-0010 to 257-010-0050). It is the responsibility of DHS 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 or the FBI may not be given to unauthorized persons or agencies or used for any purpose other than that for which the information was obtained.

(3) Criminal offender information, including fingerprint-based criminal offender information, shall be obtained by DHS under Chapter 413 of the Oregon Administrative Rules to ascertain whether a *subject individual* as defined at OAR 413-120-0430 has been convicted of a crime that is substantially related to their qualifications as a relative caregiver, foster parent, or adoptive parent, or their suitability to be an other person in the household.

(4) For purposes of emergency foster care certification, child welfare staff in a local DHS office may obtain criminal history information from the OSP Law Enforcement Data System (LEDS) accordance with OAR 413-015-1100 to 413-015-1125. In addition to any criminal history checks completed in the local DHS office for purposes of emergency foster care certification, whenever a fingerprint-based criminal history check is required, a completed and signed form 1011F and two properly completed FBI fingerprint cards (FD 258) must be provided to the DHS Criminal Records Unit (CRU) for processing.

Stat Auth.: ORS 418.005
Stats. Implemented: ORS 181.537, 181.010-181.560, 418.016

413-120-0450
Consideration of Criminal History

(1) DHS has determined that persons who engage in certain criminal conduct may not be qualified to be a relative caregiver, foster or adoptive parent, or suitable to be an other person in a relative caregiver, foster or adoptive home because that criminal 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 these rules or a false statement about a conviction for any crime may disqualify a subject individual from being approved as a relative caregiver, foster or adoptive parent, or to be an other person in the household.

(2) If a subject individual has been convicted of a crime described in subsection (3), that individual shall not be approved or certified as a relative caregiver, foster parent, adoptive parent or other person in the household and no exception may be granted. A subject individual who has been convicted of any crime other than one described in subsection (3) may be approved or certified as a relative caregiver, foster parent,

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adoptive parent or other person in the household only if an exception is granted as provided in subsections (4) - (6).

(3) **(a)** DHS shall not issue or renew a certificate of approval to operate a relative caregiver or foster home, or approve an adoption application, and no exception may be granted if a subject individual has been convicted in Oregon or any other jurisdiction of a felony crime that involves:

(A) Rape, sodomy or sexual abuse;

(B) Intentional starvation or torture;

(C) Murder or voluntary manslaughter;

(D) Abuse or neglect of a child that causes death of the child or serious physical injury to the child;

(E) Aiding, abetting, attempting, soliciting or conspiring to cause the death of a child.

(b) Crimes described under 3(a) of this section include, but are not limited to, the following crimes under Oregon law, or substantially similar crimes in Oregon or any other jurisdiction:

163.095	Aggravated murder
163.115	Murder
163.118	Manslaughter in the first degree
163.125	Manslaughter in the second degree
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
163.537	Buying or selling a person under 18 years of age
163.670	Using a child in display of sexually explicit conduct

(4) **(a)** If a subject individual has been convicted of one of the following crimes, which exclude those described in subsection (3), DHS shall not issue or renew a certificate of approval to operate a relative caregiver or foster home for children or approve an adoption application unless an exception is granted as provided in this subsection and subsection (6):

(A) Any felony or misdemeanor crime of violence against a child, or;

(B) Any felony involving:

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(i) Child abuse or neglect;

(ii) A child as the victim;

(iii) Violence, including domestic violence

(C) A felony drug related offense.

(b) Examples of Crimes described under 4(a) of this section 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 violence
162.165	Escape in the first degree, if the offense involves the use or threatened use of violence or a dangerous or deadly weapon
162.325	Hindering prosecution, if the crime involves the use of violence
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
163.160	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
163.160	Assault in the fourth degree if the victim is a child (misdemeanor)
163.165	Assault in the third degree
163.175	Assault in the second degree
163.185	Assault in the first degree
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
163.535	Abandonment of a child
163.547	Child neglect in the first degree
163.555	Criminal nonsupport
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

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166.015	Riot	
166.165	Intimidation in the first degree	
166.220	Unlawful use of weapon	
167.017	Compelling prostitution	
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	

(c) Written approval of both the DHS Assistant Director for CAF and of the DHS Assistant Director for CHS is required for an exception to operate a relative caregiver or foster home or be approved as an adoption applicant if a subject individual has been convicted of a crime described in (4). The DHS Assistant Directors for CAF and CHS may designate administrative staff not assigned to or located in a Service Delivery Area to grant an approval authorized under subsection (4).

(5) If a subject individual has been convicted of any felony or misdemeanor, other than those described in subsections (3) or (4), DHS shall not issue or renew a certificate of approval to operate a relative caregiver or foster home for children or approve an adoption application unless an exception to approve the home is granted as provided in this subsection and subsection (6). The following persons are authorized to grant an exception as provided in this subsection and subsection (6):

(a) If a subject individual has been convicted of a misdemeanor, other than one resulting from domestic violence or one described in subsections (3) or (4), written approval of the SDA Manager is required for an exception to approve the home. The SDA Manager may designate the SDA Assistant Manager, the SDA Child Welfare Manager or a child welfare supervisor to grant an exception under this subsection.

(b) If a subject individual has been convicted of a felony or any crime involving domestic violence, other than one described in subsection (3) or (4), written approval of the SDA Manager is required for an exception to approve the home. The SDA manager may designate the SDA Assistant manager or the SDA Child Welfare Manager to grant an exception under this subsection.

(6) A person authorized to grant an exception under (4) or (5) shall determine whether the subject individual possesses the qualifications to be a relative caregiver, foster parent, adoptive parent, or is suitable to be an other person in the household, regardless of the

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criminal conviction(s). The person authorized to grant an exception shall document the approval on form DHS 1011D, "Criminal History Exception Request" In determining whether to grant an exception under (4) or (5) the person authorized to grant the exception shall consider:

(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) Content of the police report(s) concerning the crime;

(f) The subject individual's explanation of the crime;

(g) The relationship of the criminal activity to the subject individual's capacity to safely provide the proposed care;

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

(i) When the person is seeking to provide care for a specific child, whether disqualification of the subject individual would create emotional harm to the child and placement of the child with the person would be a safe placement that is in the best interests of the child.

(7) Where allowed, by current or previously effective rules, 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 a conviction for the same crime is being considered.

Stat Auth.: ORS 418.005
Stats. Implemented: ORS 181.537, 181.010-181.560, 418.016

413-120-0455
Consideration of Arrests

(1) Behavior that results in an arrest or a history of arrests may raise concerns about a subject individual's suitability to be a relative caregiver, foster or adoptive parent, or other person in the household. If a subject individual has a history of arrest(s) for any of the following, the field staff must assess whether, considering the behavior that resulted in the arrest, the subject individual meets the qualifications to be a relative caregiver, foster or adoptive parent, or other person in the household:

(a) Child abuse or neglect;

(b) Spousal abuse;

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(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; or

(h) Weapons-related offenses.

(2) If a subject individual has been arrested for any of the crimes listed in subsection (1), the supervisor and caseworker/certifier, in consultation with the management staff as designated by the SDA Manager, shall assess the suitability of the subject individual to be a relative caregiver, foster or adoptive parent, or other person in the household and document their findings. The persons conducting the assessment shall consider and document their findings regarding the behavior or conduct that led to the arrest, how that behavior relates to the subject individual's qualifications to be a relative caregiver, foster or adoptive parent or other person in the household and whether, given the behavior that led to the arrest, the subject individual is qualified to be a relative caregiver, foster parent or adoptive parent or other person in the household. In conducting this assessment, the supervisor and caseworker shall consider the following:

(a) The subject individual's explanation of the circumstances surrounding and the behavior that led to the arrest(s).

(b) The severity and nature of the behavior that led to the arrest(s):

(c) The number of arrests in the subject individual's history for behavior that relates to and raises concerns about that individual's qualifications to be a relative caregiver, foster or adoptive parent or suitability to be an other person in the household;

(d) The time elapsed since the arrest(s);

(e) The circumstances surrounding the arrest(s);

(f) Whether the subject individual was charged or indicted for a crime related to the arrest(s),

(g) The disposition of any charge or indictment related to the arrest(s);

(h) If applicable, whether the subject individual has participated in counseling, therapy, educational or employment opportunities since the arrest(s);

(i) When the person is seeking to provide care for a specific child, whether disqualification of the subject individual would create emotional harm to the child and placement of the child with the person would be a safe placement that is in the best interests of the child.

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(j) Any other information related to the circumstances of the arrest(s) or the behavior that led to the arrest(s) that may relate to the subject individual's qualifications to be a relative caregiver, foster parent, adoptive parent or other person in the household.

(3) 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.

(4) Under no circumstances will DHS 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.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 181.537, 181.010-181.560

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413-120-0460
Procedures

(1) Any subject individual applying to be a relative caregiver, foster or adoptive parent, or an other person in the household shall consent to a criminal offender information records check at the time of application, and annually thereafter. All applicants shall be notified of this requirement at the time they apply for a certificate of approval or adoption approval. Criminal record check consent forms shall contain a notice that applicants for a certificate of approval, or adoption approval and an other person in a household 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 and OAR 413-120-0460(5) and (6).

(2) Adoptive applicants who have been approved as relative caregivers, foster parents or adoptive parents and who have submitted to a criminal history check within the 12 months preceding the date on which they apply to adopt may be exempt from a new criminal records check.

(3) DHS shall not issue a certificate of approval for relative or foster care or approve an adoption home if a subject individual refuses to be fingerprinted when required. DHS may deny a certificate of approval or approval as an adoptive home if a subject individual makes a false statement about having been arrested for or convicted of any crime(s).

(4) 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 DHS and according to procedures established by DHS, including:

(a) A properly completed and signed form CF 1011F from the subject individual;

(b) If the subject individual acknowledges a prior arrest or conviction for a crime listed in these administrative rules, an explanation of the relationship between the facts that support the arrest or conviction and all intervening circumstances and written authorization for DHS to verify the information;

(c) Two properly completed FBI fingerprint cards (FD 258) with red overprinting in

the reason fingerprinted block from the subject individual when required.

(5) As part of the consent to a criminal records check, DHS may request subject individuals to consent to the use of their social security numbers in conducting the criminal records check. Subject individuals will indicate their consent by their signatures.

(6) DHS shall obtain and forward fingerprint cards to 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, DHS shall instruct OSP to conduct a fingerprint criminal offender records check through the FBI;

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

(c) If the subject individual's Oregon record indicates an arrest or conviction for a crime, DHS 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.

(7) DHS may grant an exception to the fingerprint requirement as described in (5) above if DHS determines that the subject individual is unable to submit fingerprints due to a physical or mental condition that makes compliance impossible or presents an undue safety risk to applicant or staff. The Criminal History Exception Request (DHS 1011D) must be signed by the SDA manager or designee.

(8) No applicant may be issued or may retain a certificate of approval as a relative caregiver or a foster parent, or approval as an adoptive parent unless these criminal history safety standards are met;

(a) Completion of a documented check of Oregon LEDS;

(b) Authorization and initiation of the other requirements to complete the criminal history check process, including a fingerprint based criminal offender check when required for subject individuals;

(c) Granting of exceptional approval as required and authorized by 413-120-0450 for any criminal convictions either acknowledged by the applicant or reported by the criminal offender information system; and

(d) Reconsideration of the approval upon receipt of any criminal history information not available at the time of previous approval.

(9) DHS will review the criminal offender information, including fingerprint-based criminal offender information when obtained, of subject individuals. The assessment of suitability, based on the criminal history, that reflects the decision-making criteria, shall be documented and filed in the relative caregiver, foster home, or adoption home record. The LEDS, OSP and FBI reports shall not be filed in these records and shall be destroyed within 90 days. A denial of the application or certification, based on criminal history, will be considered preliminary until the subject individual has been given notice

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of an opportunity to challenge the criminal record report, or to request a contested case hearing pursuant to OAR 413-120-0460. Except as provided in OAR 413-120-0450(3), a finding of suitability based on criminal history is only one factor DHS will use in deciding whether to issue a certificate of approval for a relative caregiver or foster home, or approve an adoption home. The final determination to grant or deny a certificate of approval or approval of an adoption home based solely on criminal history will be made by the SDA Manager or designee. Criminal offender information received from the OSP or the FBI is confidential and shall not be released to unauthorized persons or agencies.

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(10) Subject individuals who have been determined not suitable to be approved as an adoptive resource pursuant to these rules shall be denied approval for adoption of a child in the custody of DHS under rules of CAF program and policy administration.

(11) Unless an exception for approval is granted under these rules, DHS shall revoke a certificate of approval for a foster parent or relative caregiver, deny a renewal application, or remove from consideration for child placement an approved relative caregiver, family foster home, or approved adoption applicant if a subject individual is convicted of a crime in Oregon or any other jurisdiction since the time of the last approval.

(12) If DHS determines that the subject individual is not suitable for a certificate of approval for relative care or foster care, 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 CHS field 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 DHS'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 DHS receives the request for a contested case hearing in writing within 30 days from the date of mailing the notice. After 30 days from the date of mailing have elapsed, designated staff within the SDA will inform the certifier or adoption worker or private agency adoption worker that either:

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

(B) The subject individual has requested a contested case hearing and that

the field office will be notified of the subject individual's suitability as a relative caregiver, foster care, or adoptive home provider upon issuance of the hearing decision.

(13) Upon DHS's determination that an applicant for relative care, foster care, or adoption of a child in the custody of DHS under rules of CAF program and policy administration is not suitable based on the criminal history of an other person in the household or false statement of criminal history of an other person in the household, the certifier, adoption worker, or private agency adoption worker shall:

(a) Inform the other 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); and

(b) Inform the relative caregiver, 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) Based on the other person in the household's criminal history or false statement about their criminal history, DHS may not approve the relative care, foster care, or adoption applicant as long as the other person in the household remains in the home or provides care to children in the home; and

(B) The relative care, foster care, or adoption applicant may appeal in a contested case hearing DHS's determination of unsuitability based on the criminal history or false statement of criminal history concerning an other person in the home, provided that DHS receives the applicant's request for a contested case hearing in writing within 30 days from the date of mailing the notice to the applicant.

(14) The DHS relative care or foster care certifier, adoption worker or private adoption agency worker shall, after 30 days have elapsed from the date of mailing the notice, either:

(a) Notify the relative care, foster care, or adoption applicant that he/she is not suitable for approval for placement of a child in the custody of DHS under rules of CAF program and policy administration based on criminal history of an other person in the household or false statement in the application of the other person, and that DHS may not approve the applicant because the applicant has waived or declined to exercise his/her right to a contested case hearing regarding his/her suitability; or

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

Stat Auth.: ORS 418.005
Stats. Implemented: ORS 181.537, 181.010-181.560, 418.016

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413-120-0470
Rights for Review and Contested Case Hearings

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(1) DHS shall conduct contested case hearings per ORS Chapter 183 and OAR 137-003-0501 to 137-003-0700 and shall afford relative care, foster care, or adoption applicants the right to appeal a decision made by DHS under rules of CAF program and policy administration that the applicant is not suitable for approval for placement of a child in the custody of DHS based on an authorized criminal offender information records check, or a false statement concerning a criminal records check of the applicant or other person in the household. Applicants must notify DHS in writing of their request for a contested case hearing within 30 calendar days after the notice is mailed by DHS to the applicant.

(2) DHS 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) DHS is entitled to rely on the criminal offender information supplied by OSP or the FBI until OSP or the FBI notifies DHS that information has been changed or corrected. If an applicant has timely requested a contested case hearing, DHS 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 pre-hearing conference between DHS, the subject individual and his/her legal representative, if any, 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 he/she has exercised his/her right to inspect or challenge the criminal offender information record(s) or has declined to do so.

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

(a) Whether the subject individual has made a false statement in the application about a conviction or an arrest, has refused to consent to the criminal records check or refused to be fingerprinted; or

(b) Whether the subject individual has been convicted of a crime described in 413-120-0450(3);or

(c) If the subject individual has been convicted of any crime, other than those described in 413-120-450(3):

(A) The DHS determination that the behavior which resulted in the conviction is relevant to qualification to provide care as a relative caregiver, foster or adoptive parent, or suitability to be an other person in the household; and

(B) The relationship between the facts supporting the conviction and the intervening circumstances as affecting the qualification to provide care as a relative caregiver, foster or adoptive parent, or suitability to be an other

person in the household; or

(d) The relationship between the behavior that led to arrests as affecting the qualification to provide care as a relative caregiver, foster or adoption parent or suitability to be an other person in the household.

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

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 181.537, 181.010-181.560, 409.015

Prior Version

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- 12/29/95 *(not available electronically)*
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