

<b>Policy Title:</b>	Criminal History -- OAR		
<b>Policy Number:</b>	I-G.1.4 413-120-0400 thru 0470	<b>Effective Date:</b>	10/01/08 thru 3/30/09

Approved By: *on file*

Date Approved:

Policy

Forms, etc.

Definitions

References

Contact

History

## Reference(s):

- ORS 181.537
- ORS 181.010 to 181.560
- Title 42 USC 671
- 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
- II-B.1.1, Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents, and Pre-Adoptive Parents
- 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 DHS to reduce the risk of neglect and 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 (OAR 413-120-0400 to 413-120-0470).

- (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 Child Welfare administrative rules, and how DHS uses criminal offender information to determine the fitness 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 Child Welfare administrative rules.
- (4) These rules provide the standards DHS will use in 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 must be used in conjunction with other applicable standards when determining a subject individual's fitness to provide relative, foster, or adoptive care for children in DHS custody.

Stat Auth.: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010 to 181.560, 418.016

#### **413-120-0410**

##### **Scope of Rules**

- (1) Consistent with the purpose of these rules (OAR 413-120-0400 to 413-120-0470), DHS will issue decisions regarding the fitness for approval of subject individuals to provide relative, foster, or adoptive care.
- (2) Notwithstanding the prohibitions contained in OAR 413-120-0450(2) and (3), if a subject individual was approved to be a foster parent, a relative caregiver, an adoptive parent, or an *other person in household* prior to October 1, 2008, 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 subject individual was determined to be fit according to the criminal history rules that were in effect at the time of the original fitness determination. Any criminal convictions that occur on or after October 1, 2008, and any criminal convictions not known or evaluated prior to October 1, 2008, must be evaluated in accordance with these rules (OAR 413-120-0400 to 413-120-0470).

Stat Auth.: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010 to 181.560, 418.016

#### **413-120-0420**

##### **Definitions**

For purposes of these rules (OAR 413-120-0400 to 413-120-0470):

- (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 Division of DHS.
- (5) "Child or Children" means a person or persons under the age of 18.
- (6) "Computerized Criminal History (CCH) System" means the administration and maintenance of on-line computer files of significant criminal offender information by OSP.
- (7) "Contested case hearing" means a hearing conducted under ORS Chapter 183 and applicable administrative rules.
- (8) "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.
- (9) "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.
- (10) "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.
- (11) "FBI" means the Federal Bureau of Investigation.

- (12)** "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.
- (13)** "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.
- (14)** "Information required" means all information requested by DHS for processing criminal record checks, including fingerprint checks.
- (15)** "National crime information databases" means the National Crime Information Center and its incorporated criminal history databases managed by the Federal Bureau of Investigation.
- (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 or young adult as defined by this rule;
  - (b)** A person providing relief or respite care 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" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.
- (20)** "Relief or Respite Care" means:
- (a)** A formal planned arrangement to relieve a certified family's responsibilities by a person temporarily assuming responsibility for the care and supervision of the child or young adult; or
  - (b)** Assistance provided by a person who comes into the home of the certified family to care for the child or young adult in the care or custody of the Department.
- (21)** "Subject individual" means a person who:

- (a) Applies to adopt a child in the custody of DHS as described in Child Welfare Policies I-G.1.3, "Adoption Applications", OAR 413-120-0190 to 413-120-0240 and I-G.2.1, "Minimum Standards for Adoptive Homes", OAR 413-120-0300 to 413-120-0310;
  - (b) Applies to be a foster parent, relative caregiver, or pre-adoptive parent as described in Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0401; or
  - (c) Is an *other person in household* as described in OAR 413-120-0420.
- (22) "Violence" means the use of physical force to injure, damage, or abuse.
- (23) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat Auth.: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010 to 181.560, 418.016

#### **413-120-0440**

##### **Limitations of Inquiries**

- (1) Only DHS employees who have been fingerprinted and cleared by the Oregon State Police must access or have access to criminal offender information pursuant to a valid agency agreement. All criminal offender information must 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, must be obtained by DHS under Chapter 413 of the Oregon Administrative Rules to ascertain whether a *subject individual* as defined at OAR 413-120-0420 has been convicted of a crime that is substantially related to their qualifications as a relative caregiver, foster parent, or adoptive parent, or their fitness to be an *other person in household*.
- (4) For purposes of expedited child-specific 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 Child Welfare Policy I-AB.6, "Access to Law Enforcement Data System (LEDS) in Local Child Welfare Offices", OAR 413-015-1100 to 413-015-1125. For each and every criminal history check completed in a local DHS

office for purposes of expedited child-specific foster care certification, 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 purposes of obtaining fingerprint-based criminal offender information.

Stat Auth.: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010 to 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 fit 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 (OAR 413-120-0400 to 413-120-0470), 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 household*.
- (2)** If a subject individual has been convicted of a crime described in section (3) of this rule, that individual may not be approved or certified as a relative caregiver, foster parent, adoptive parent, or *other person in household* and no exception may be granted. A subject individual who has been convicted of any crime other than one described in section (3) of this rule may be approved or certified as a relative caregiver, foster parent, adoptive parent, or *other person in household* only if an exception is granted as provided in sections (4) - (6) of this rule.
- (3)** Crimes with no exceptions.

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

    - (A)** Violence, including rape, sexual assault, and homicide, but not including other physical assault or battery;
    - (B)** Intentional starvation or torture;
    - (C)** Abuse or neglect of a child;
    - (D)** Spousal abuse; or
    - (E)** Aiding, abetting, attempting, soliciting or conspiring to cause the death of a child;

- (F)** Sodomy or sexual abuse; or
- (G)** A child as the victim (including child pornography);
- (b)** Crimes described under subsection (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:
  - (A)** ORS 162.155 - Escape in the second degree, if the crime involves violence
  - (B)** ORS 162.165 - Escape in the first degree, if the crime involves violence
  - (C)** ORS 162.325 - Hindering prosecution, if the crime involves violence
  - (D)** ORS 163.095 - Aggravated murder
  - (E)** ORS 163.115 - Murder
  - (F)** ORS 163.118 - Manslaughter in the first degree
  - (G)** ORS 163.125 - Manslaughter in the second degree
  - (H)** ORS 163.145 - Criminally negligent homicide
  - (I)** ORS 163.149 - Aggravated vehicular homicide
  - (J)** ORS 163.160 - Assault in the fourth degree, if:
    - (i)** The subject individual has previously been convicted of assaulting the same victim and the victim is a child or the subject individual's spouse;
    - (ii)** The subject individual has previously been convicted at least three times under ORS 163.160 or under equivalent laws of another jurisdiction, all the assaults involved domestic violence, as defined in ORS 135.230, and the victim is the subject individual's spouse; or
    - (iii)** The assault is committed in the immediate presence of, or is witnessed by, the subject individual's or the victim's minor child or stepchild or a minor child residing within the household of the subject individual or victim, and the victim is a child or the subject individual's spouse.
  - (K)** ORS 163.165 - Assault in the third degree if the victim is a child or the subject individual's spouse.

- (L) ORS 163.175 - Assault in the second degree if the victim is a child or the subject individual's spouse.
- (M) ORS 163.185 - Assault in the first degree if the victim is a child or the subject individual's spouse.
- (N) ORS 163.205 - Criminal mistreatment in the first degree if the victim is a child or the subject individual's spouse, or if the crime involves violence.
- (O) ORS 163.207 - Female genital mutilation
- (P) ORS 163.213 - Unlawful use of an electrical stun gun, tear gas or mace in the first degree.
- (Q) ORS 163.225 - Kidnapping in the second degree if the victim is a child or the subject individual's spouse, or if the crime involves violence.
- (R) ORS 163.235 - Kidnapping in the first degree if the victim is a child or the subject individual's spouse, or if the crime involves violence.
- (S) ORS 163.245 - Custodial interference in the second degree if the victim is a child.
- (T) ORS 163.257 - Custodial interference in the first degree if the victim is a child.
- (U) ORS 163.355 - Rape in the third degree
- (V) ORS 163.365 - Rape in the second degree
- (W) ORS 163.375 - Rape in the first degree
- (X) ORS 163.385 - Sodomy in the third degree
- (Y) ORS 163.395 - Sodomy in the second degree
- (Z) ORS 163.405 - Sodomy in the first degree
- (AA) ORS 163.408 - Unlawful sexual penetration in the second degree
- (AB) ORS 163.411 - Unlawful sexual penetration in the first degree
- (AC) ORS 163.425 - Sexual abuse in the second degree
- (AD) ORS 163.427 - Sexual abuse in the first degree
- (AE) ORS 163.432 - Online sexual corruption of a child in the second degree
- (AF) ORS 163.433 - Online sexual corruption of a child in the first degree

- (AG)** ORS 163.452 - Custodial sexual misconduct in the first degree
- (AH)** ORS 163.479 - Unlawful contact with a child
- (AI)** ORS 163.525 - Incest, if the victim of the offense is a child
- (AJ)** ORS 163.535 - Abandonment of a child
- (AK)** ORS 163.537 - Buying or selling a person under 18 years of age
- (AL)** ORS 163.547 - Child neglect in the first degree
- (AM)** ORS 163.555 - Criminal nonsupport
- (AN)** ORS 163.670 - Using a child in display of sexually explicit conduct
- (AO)** ORS 163.684 - Encouraging child sexual abuse in the first degree
- (AP)** ORS 163.686 - Encouraging child sexual abuse in the second degree
- (AQ)** ORS 163.688 - Possession of materials depicting sexually explicit conduct of a child in the first degree
- (AR)** ORS 163.689 - Possession of materials depicting sexually explicit conduct of a child in the second degree
- (AS)** ORS 164.125 - Theft of services, if the theft involves violence and is for services valued at \$750 or more
- (AT)** ORS 164.225 - Burglary in the first degree if the crime involves violence
- (AU)** ORS 164.395 - Robbery in the third degree if the crime involves violence
- (AV)** ORS 164.405 - Robbery in the second degree if the crime involves violence
- (AW)** ORS 164.415 - Robbery in the first degree if the crime involves violence
- (AX)** ORS 166.015 - Riot if the crime involves violence
- (AY)** ORS 166.165 - Intimidation in the first degree if the crime involves violence
- (AZ)** ORS 166.220 - Unlawful use of a weapon if the crime involves violence
- (BA)** ORS 167.017 - Compelling prostitution, if the victim is a child or the subject individual's spouse

- (BB)** ORS 167.057 - Luring a minor
- (c)** DHS will not issue or renew a certificate of approval to operate a relative caregiver or foster home, or approve an adoption application, and no exception will be granted if a subject individual has been convicted in Oregon or any other jurisdiction of a felony crime within the five years preceding application to be a relative caregiver or a foster or adoptive parent and the felony crime involves:
- (A)** Physical assault, battery; or
- (B)** A drug related offense
- (d)** Crimes described under subsection (c) 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, if and when the conviction occurred within the five years preceding application to be a relative caregiver or a foster or adoptive parent:
- (A)** ORS 163.160 - Assault in the fourth degree, if classified as a felony, unless the conviction meets the criteria set forth in subsection (3)(b) of this rule
- (B)** ORS 163.165 - Assault in the third degree, unless the conviction meets the criteria set forth in subsection (3)(b) of this rule
- (C)** ORS 163.175 - Assault in the second degree, unless the conviction meets the criteria set forth in subsection (3)(b) of this rule
- (D)** ORS 163.185 - Assault in the first degree, unless the conviction meets the criteria set forth in subsection (3)(b) of this rule and only if the crime involved violence
- (E)** ORS 163.208 - Assaulting a public safety officer
- (F)** ORS 167.212 - Tampering with drug records
- (G)** ORS 167.262 - Adult using minor in commission of controlled substance offense, unless there was delivery for no consideration of less than five grams of marijuana
- (H)** ORS 475.846 - Unlawful manufacture of heroin
- (I)** ORS 475.848 - Unlawful manufacture of heroin within 1,000 feet of school
- (J)** ORS 475.850 - Unlawful delivery of heroin
- (K)** ORS 475.852 - Unlawful delivery of heroin within 1,000 feet of school
- (L)** ORS 475.854 - Unlawful possession of heroin

- (M)** ORS 475.856 - Unlawful manufacture of marijuana
- (N)** ORS 475.858 - Unlawful manufacture of marijuana within 1,000 feet of school
- (O)** ORS 475.860 - Unlawful delivery of marijuana, if the delivery is for consideration or if the delivery is to a person under 18 years of age and the subject individual is at least 18 years of age and is at least three years older than the person to whom the marijuana is delivered
- (P)** ORS 475.862 - Unlawful delivery of marijuana within 1,000 feet of school
- (Q)** ORS 475.864 - Unlawful possession of marijuana, unless the amount possessed is less than one avoirdupois ounce of the dried leaves, stems, and flowers of the plant Cannabis family Moraceae
- (R)** ORS 475.866 - Unlawful manufacture of 3,4-methylenedioxymethamphetamine
- (S)** ORS 475.868 - Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school
- (T)** ORS 475.870 - Unlawful delivery of 3,4-methylenedioxy-methamphetamine
- (U)** ORS 475.872 - Unlawful delivery of 3,4-methylenedioxy-methamphetamine within 1,000 feet of school
- (V)** ORS 475.874 - Unlawful possession of 3,4-methylenedioxy-methamphetamine
- (W)** ORS 475.876 - Unlawful manufacture of cocaine
- (X)** ORS 475.878 - Unlawful manufacture of cocaine within 1,000 feet of school
- (Y)** ORS 475.880 - Unlawful delivery of cocaine
- (Z)** ORS 475.882 - Unlawful delivery of cocaine within 1,000 feet of school;
- (AA)** ORS 475.884 - Unlawful possession of cocaine
- (AB)** ORS 475.886 - Unlawful manufacture of methamphetamine
- (AC)** ORS 475.888 - Unlawful manufacture of methamphetamine within 1,000 feet of school
- (AD)** ORS 475.890 - Unlawful delivery of methamphetamine

- (AE)** ORS 475.892 - Unlawful delivery of methamphetamine within 1,000 feet of school
- (AF)** ORS 475.894 - Unlawful possession of methamphetamine
- (AG)** ORS 475.904 - Unlawful manufacture or delivery of controlled substance within 1,000 feet of school
- (AH)** ORS 475.908 - Causing another person to ingest a controlled substance
- (AI)** ORS 475.910 - Application of controlled substance to the body of another person, if the controlled substance is in Schedule I, II, III, or IV
- (AJ)** ORS 475.914 - Prohibited acts for registrants related to Schedule I controlled substances
- (AK)** ORS 475.962 - Distribution of equipment, solvent, reagent or precursor substance with intent to facilitate manufacture of controlled substance
- (AL)** ORS 475.967 - Possession of precursor substance with intent to manufacture controlled substance
- (AM)** ORS 475.977 - Possessing or disposing of methamphetamine manufacturing waste

**(4)** Crimes for which an exception is possible.

- (a)** Unless an exception is granted as provided in subsection (c) of this section and section (6) of this rule, DHS may not issue or renew a certificate of approval to operate a relative caregiver or foster home for children or approve an adoption application if a subject individual has been convicted of one of the following crimes (which exclude those described in section (3) of this rule).
  - (A)** Any misdemeanor crime of violence against a child.
  - (B)** Any felony involving violence, unless the offense meets the criteria under section (3) of this rule.
  - (C)** A felony drug related offense, unless the offense meets the criteria under section (3) of this rule.
- (b)** Examples of Crimes described under subsection (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:
  - (A)** ORS 162.155 - Escape in the second degree, if the crime involves the threatened use of violence

- (B) ORS 162.165 - Escape in the first degree, if the crime involves the threatened use of violence or a dangerous or deadly weapon
- (C) ORS 163.160 - Assault in the fourth degree, if:
  - (i) The person previously has been convicted of assaulting the same victim, and each conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*; or
  - (ii) The assault was committed in the immediate presence of, or was witnessed by, the subject individual's or the victim's minor child or stepchild or a minor child residing within the household of the subject individual or victim, and each conviction occurred more than five years from the date of the determination regarding the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*.
- (D) ORS 163.160 - Assault in the fourth degree if the victim is a child (misdemeanor conviction only)
- (E) ORS 163.165 - Assault in the third degree unless the crime meets the criteria of subsection (3)(b) of this rule and only if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (F) ORS 163.175 - Assault in the second degree unless the crime meets the criteria of subsection (3)(b) of this rule and only if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (G) ORS 163.185 - Assault in the first degree unless the crime meets the criteria of subsection (3)(b) of this rule and only if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (H) ORS 164.125 - Theft of services, if the theft does not involve violence and is for services valued at \$750 or more
- (I) ORS 164.395 - Robbery in the third degree, unless the crime meets the criteria of subsection (3)(b) of this rule
- (J) ORS 164.405 - Robbery in the second degree, unless the crime meets the criteria of subsection (3)(b) of this rule

- (K) ORS 164.415 - Robbery in the first degree, unless the crime meets the criteria of subsection (3)(b) of this rule
- (L) ORS 166.015 - Riot, unless the crime meets the criteria of subsection (3)(b) of this rule
- (M) ORS 166.165 - Intimidation in the first degree, unless the crime meets the criteria of subsection (3)(b) of this rule
- (N) ORS 166.220 - Unlawful use of weapon, unless the crime meets the criteria of subsection (3)(b) of this rule
- (O) ORS 167.017 - Compelling prostitution, unless the crime meets the criteria of subsection (3)(b) of this rule
- (P) ORS 167.212 - Tampering with drug records, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (Q) ORS 475.846 - Unlawful manufacture of heroin, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (R) ORS 475.848 - Unlawful manufacture of heroin within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (S) ORS 475.850 - Unlawful delivery of heroin, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (T) ORS 475.852 - Unlawful delivery of heroin within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (U) ORS 475.854 - Unlawful possession of heroin, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (V) ORS 475.856 - Unlawful manufacture of marijuana, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*

- (W)** ORS 475.858 - Unlawful manufacture of marijuana within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (X)** ORS 475.860 - Unlawful delivery of marijuana (felony convictions only), if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (Y)** ORS 475.862 - Unlawful delivery of marijuana within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (Z)** ORS 475.864 - Unlawful possession of marijuana (felony convictions only), if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (AA)** ORS 475.866 - Unlawful manufacture of 3,4-methylenedioxymethamphetamine, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (AB)** ORS 475.868 - Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (AC)** ORS 475.870 - Unlawful delivery of 3,4-methylenedioxymethamphetamine, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (AD)** ORS 475.872 - Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (AE)** ORS 475.874 - Unlawful possession of 3,4-methylenedioxymethamphetamine, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other*

*person in household*

- (AF)** ORS 475.876 - Unlawful manufacture of cocaine, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (AG)** ORS 475.878 - Unlawful manufacture of cocaine within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (AH)** ORS 475.880 - Unlawful delivery of cocaine, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (AI)** ORS 475.882 - Unlawful delivery of cocaine within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (AJ)** ORS 475.884 - Unlawful possession of cocaine, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (AK)** ORS 475.886 - Unlawful manufacture of methamphetamine, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (AL)** ORS 475.888 - Unlawful manufacture of methamphetamine within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (AM)** ORS 475.890 - Unlawful delivery of methamphetamine, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (AN)** ORS 475.892 - Unlawful delivery of methamphetamine within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (AO)** ORS 475.894 - Unlawful possession of methamphetamine, if the conviction occurred more than five years from the date of the

determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*

- (AP) ORS 475.904 - Unlawful manufacture or delivery of controlled substance within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
  - (AQ) ORS 475.908 - Causing another person to ingest a controlled substance, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
  - (AR) ORS 475.910 - Application of controlled substance to the body of another person, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
  - (AS) ORS 475.962 - Distribution of equipment, solvent, reagent or precursor substance with intent to facilitate manufacture of controlled substance, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
  - (AT) ORS 475.967 - Possession of precursor substance with intent to manufacture controlled substance, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
  - (AU) ORS 475.977 - Possessing or disposing of methamphetamine manufacturing waste, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an *other person in household*
- (c) Written approval of the DHS Assistant Director for CAF 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 this section. The DHS Assistant Director for CAF may designate administrative staff not assigned to or located in a District to grant an approval authorized under this section.
- (5) If a subject individual has been convicted of any felony or misdemeanor, other than those described in sections (3) or (4) of this rule, DHS may 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 section and section (6) of this rule. The following persons are authorized

to grant an exception as provided in this section and section (6) of this rule:

- (a) If a subject individual has been convicted of a misdemeanor, other than one resulting from domestic violence or one described in sections (3) or (4) of this rule, written approval of the District Manager is required for an exception to approve the home. The District Manager may designate the District Assistant Manager, the Child Welfare Program 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 sections (3) or (4) of this rule, written approval of the District Manager is required for an exception to approve the home. The District Manager may designate the District Assistant Manager or the Child Welfare Program Manager to grant an exception under this subsection.
- (6) A person authorized to grant an exception under sections (4) or (5) of this rule must determine whether the subject individual possesses the qualifications to be a relative caregiver, foster parent, adoptive parent, or is fit to be an *other person in household*, regardless of the criminal conviction or convictions. The person authorized to grant an exception must document the approval on form DHS 1011D, "Criminal History Exception Request". In determining whether to grant an exception under sections (4) or (5) of this rule, the person authorized to grant the exception must 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 or reports 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 subject individual 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 subject individual would be a safe placement that is in the best interests of the child.
- (7) If allowed by current or previously effective rules, an exception 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 to 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 fitness to be a relative caregiver, foster or adoptive parent, or *other person in household*. If a subject individual has a history of one or more arrests for any of the following offenses, 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 household*:
- (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; or
  - (h) Weapons-related offenses.
- (2) If a subject individual has been arrested for any of the offenses listed in section (1) of this rule, the supervisor and caseworker or certifier, in consultation with the management staff as designated by the District Manager, must assess the fitness of the subject individual to be a relative caregiver, foster or adoptive parent, or *other person in household* and document their findings. The persons conducting the assessment must 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 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 household*. In conducting this assessment, the supervisor and caseworker or certifier must consider the following:
- (a) The subject individual's explanation of the circumstances surrounding and the behavior that led to the arrest or arrests.

- (b) The severity and nature of the behavior that led to the arrest or arrests:
  - (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 fitness to be an *other person in household*;
  - (d) The time elapsed since the arrest or arrests;
  - (e) The circumstances surrounding the arrest or arrests;
  - (f) Whether the subject individual was charged or indicted for a crime related to the arrest or arrests;
  - (g) The disposition of any charge or indictment related to the arrest or arrests;
  - (h) If applicable, whether the subject individual has participated in counseling, therapy, educational, or employment opportunities since the arrest or arrests;
  - (i) When the subject individual 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 subject individual would be a safe placement that is in the best interests of the child.
  - (j) Any other information related to the circumstances of the arrest or arrests or the behavior that led to the arrest or arrests that may relate to the subject individual's qualifications to be a relative caregiver, foster parent, adoptive parent, or *other person in 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 to 181.560

#### **413-120-0460**

##### **Procedures**

- (1) Any subject individual applying to be a relative caregiver, foster or adoptive parent, or an *other person in household* must consent to a criminal offender information records check at the time of application. After an initial certification, relative caregivers, foster parents, and other persons in the households of foster parents and relative caregivers must consent to a criminal offender information records check prior to re-certification

every two years. Adoption applicants and other persons in their households must consent to a criminal offender information records check once a year after the initial criminal records check is completed. All applicants must be notified of this requirement at the time they apply for a certificate of approval or adoption approval. Criminal record check consent forms must 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 records check of national crime information databases that will be conducted as required by ORS 181.537, 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 may 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 or crimes.
- (4) Subject individuals must 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; and
  - (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 must obtain and forward fingerprint cards to request criminal offender information on subject individuals from OSP and FBI as follows:
  - (a) At the time of initial application DHS must obtain fingerprint cards from any subject individual applying to be a relative caregiver, foster or adoptive parent, or an *other person in household*, and DHS must initiate a fingerprint-based criminal offender records check of national crime information databases;
  - (b) If a subject individual is arrested or convicted for a crime within the certification

period of a currently certified home, and the home remains certified after the arrest or conviction, DHS must obtain fingerprint cards and initiate a fingerprint-based criminal offender records check of national crime information databases prior to re-certification;

- (c) If a subject individual lives outside of Oregon for more than 60 consecutive days within the certification period of a currently certified home, DHS must obtain fingerprint cards and initiate a fingerprint-based criminal offender records check of national crime information databases.
  - (d) An *other person in household*, as defined in OAR 413-120-0420, who was not in the home at the time of certification, is subject to a fingerprint-based criminal offender records check at the time he or she is identified as an other person in the household. DHS must obtain fingerprint cards and initiate a fingerprint-based criminal offender records check of national crime information databases.
- (7) DHS may grant an exception to the fingerprint requirement of this rule 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 District Manager or designee.
- (8) No applicant will be issued or will 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 fingerprint-based criminal offender check of national crime information databases when required for subject individuals;
  - (c) Granting of exceptional approval as required and authorized by OAR 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 fitness, based on the criminal history, that reflects the decision-making criteria, must be documented and filed in the relative caregiver, foster home, or adoption home record. The LEDS, OSP, and FBI reports may 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 subject individual 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. Except as provided in OAR 413-120-0450(3), a

finding of fitness 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 District Manager or designee. Criminal offender information received from the OSP or the FBI is confidential and may not be released to unauthorized persons or agencies.

- (10)** Subject individuals who have been determined not fit to be approved as an adoptive resource pursuant to these rules (OAR 413-120-0400 to 413-120-0470) must be denied approval for adoption of a child in the custody of DHS.
- (11)** Unless an exception for approval is granted under these rules, DHS must 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 fit 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 Child Welfare field office will notify the subject individual, via certified mail, that the subject individual:
  - (a)** Has a right to inspect and challenge his or her Oregon criminal offender information through the Oregon State Police procedures as adopted per ORS 181.555(3) and OAR 257-010-0035;
  - (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, D.C., 20537-9700; and
  - (c)** May appeal DHS's determination of unfitness 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 District will inform the certifier or adoption worker or private agency adoption worker that either:
    - (A)** The subject individual has been notified that he or she is not fit 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 or her right to a contested case hearing regarding his or her fitness; or

- (B) The subject individual has requested a contested case hearing and that the field office will be notified of the subject individual's fitness as a relative caregiver, foster care, or adoptive home provider upon issuance of the hearing decision.
- (13) Upon the determination of DHS that an applicant for relative care, foster care, or adoption of a child in the custody of DHS under Child Welfare administrative rules is not fit based on the criminal history of an *other person in household* or false statement of criminal history of an *other person in household*, the certifier, adoption worker, or private agency adoption worker must:
- (a) Inform the *other person in household* whose record was reviewed of the right to inspect and challenge the person's Oregon criminal offender information through OSP procedures as adopted per ORS 181.555(3) and OAR 257-010-0035 and the person's rights under ORS 181.557(2)(b);
  - (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, D.C., 20537-9700; and
  - (c) 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 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 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 the DHS determination of unfitness 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 must, 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 or she is not fit for approval for placement of a child in the custody of DHS under Child Welfare administrative rules based on criminal history of an *other person in 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 or her right to a contested case hearing regarding his or her fitness; 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 fitness for certification upon issuance of the final order.

Stat Auth.: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010 to 181.560, 418.016

#### **413-120-0470**

#### **Rights for Review and Contested Case Hearings**

- (1) Contested case hearings are conducted by the Office of Administrative Hearings (OAH) under ORS Chapter 183 and OAR 137-003-0501 to 137-003-0700. Relative care, foster care, or adoption applicants have the right to appeal a decision made by DHS under its rules that the applicant is not fit 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 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 and OAH have 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 and 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 refer the matter to OAH for a hearing after the subject individual has been afforded a reasonable time to correct or complete the record, or has declined to do so.
- (4) Prior to a contested case hearing being referred to OAH, DHS will convene an informal conference between DHS, the subject individual and his or her legal representative, if any, to review all available information and determine the need for a contested case hearing. At this informal conference, the subject individual must verify whether he or she has exercised his or her right to inspect or challenge the criminal offender information record or records or has declined to do so.
- (5) 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.
- (6) The issues at a contested case hearing under this rule must be limited to the following matters:
  - (a) Whether the subject individual 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.
  - (b) Whether the subject individual has been convicted of a crime described in OAR

413-120-0450(3).

- (c) If the subject individual has been convicted of any crime, other than those described in OAR 413-120-0450(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 fitness to be an *other person in 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 fitness to be an other person in the household.
- (d) The relationship between the behavior that led to an arrest or arrests as affecting the qualification to provide care as a relative caregiver, foster or adoption parent, or fitness to be an other person in the household.
- (7) Fingerprint cards required for evidence in a contested case hearing must be destroyed by DHS when the contested case hearing procedure and any judicial review are concluded and final.

Stat. Auth.: ORS 418.005

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

### **Contact(s):**

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### **Policy History**

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