

<b>Policy Title:</b>	Criminal Background Check Requirements for Relative Caregivers, Foster Parents, Adoptive Parents, and Other Persons in Household – <b>Temporary</b> OAR		
<b>Policy Number:</b>	I-G.1.4 413-120-0400 thru 0460		<b>Effective Date:</b> 12/28/11 thru 6/25/12

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, Certification Standards for Foster Parents, Relative Caregivers and Pre-Adoptive Parents
- II-B.1.1, 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) These rules (OAR 413-120-0400 to 413-120-0470) outline the process by which DHS obtains criminal offender information on a subject individual who is seeking to provide relative, foster, or adoptive care to a child in the care or custody of DHS and how DHS uses criminal offender information to determine the fitness of the subject individual to provide relative, foster, or adoptive care.
- (2) These rules provide guidelines on the procedures DHS uses when DHS receives a request to conduct a criminal offender information records check from a licensed private agency that is studying an adoptive family for placement of a child in the care or custody of DHS.
- (3) These rules set forth the criminal convictions for which DHS does not grant any exception for approving a subject individual as a relative caregiver, foster or adoptive parent, or other person in household.
- (4) These rules provide the standards DHS uses in granting allowable exceptions for a subject individual convicted of or arrested for certain felony and misdemeanor crimes to be approved as a relative caregiver, foster or adoptive parent, or other person in household.
- (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 a child in the care or custody of DHS.

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 (OAR 413-120-0400 to 413-120-0470):

- (1) "Adoption applicant" is an individual 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" means an individual 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 OSP for purposes of identifying criminal offenders and alleged offenders, as to such individuals' 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 for the following purposes: 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 individuals 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 OSP Bureau of Criminal Identification regarding individuals who have been arrested for crimes where law enforcement agencies have submitted fingerprints and other identifying data as required by ORS 181.515 or federal statutes, or as deemed appropriate by the submitting law enforcement agency for the purpose of identification.
- (13) "Foster parent" means an individual who operates a home that has been approved by DHS to provide care for an unrelated child or young adult placed in the home by DHS.
- (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 FBI.
- (16) "OSP" means the Oregon State Police.
- (17) "Other person in household" means:

- (a) An individual 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) An individual 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 an individual who operates a home that has been approved by DHS to provide care for a related child or young adult who is placed in the home by DHS.
- (20) "Respite care" means a formal planned arrangement to relieve a certified family's responsibilities by an individual temporarily assuming responsibility for the care and supervision of the child or young adult in the home of the respite provider or certified family. Respite care must be less than 14 consecutive days.
- (21) "Subject individual" means an individual 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 this rule.
- (22) "Violence" means the use of physical force to injure, damage, or abuse.
- (23) "Young adult" means an individual 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, 181.010-181.560, 418.016

## **413-120-0440**

### **Limitations of Inquiries**

- (1) Only DHS employees who have been fingerprinted and cleared by OSP may 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 OSP relating to the criminal offender information (OAR 257-010-0010 to 257-010-0050). DHS is responsible for assuring 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 an unauthorized individual or agency 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 this chapter of rules to ascertain whether a subject individual (see OAR 413-120-0420) has been convicted of a crime that is substantially related to fitness for being a relative caregiver, foster or adoptive parent, or fitness as 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 OSP Law Enforcement Data System (LEDS) in 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 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 a properly completed FBI fingerprint card (FD 258) must be provided to the DHS Background Check Unit (BCU) for purposes of obtaining fingerprint-based criminal offender information.

Stat Auth.: ORS 418.005

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

## **413-120-0450**

### **Consideration of Criminal History**

- (1) Consistent with these rules (OAR 413-120-0400 to 413-120-0470), DHS issues a decision regarding the fitness of a subject individual to be approved as a relative caregiver, foster or adoptive parent, or other person in household. Unless an exception is allowed under these rules, a conviction for any crime 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 an other person in household.

- (2) Notwithstanding the prohibitions contained in section (3) and (4) of this rule, if a subject individual was approved to be a relative caregiver, foster or 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 family as an adoptive placement if the DHS Assistant Director for CAF or designee determines that 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 conviction occurring on or after October 1, 2008, and any criminal conviction not known or evaluated prior to October 1, 2008, must be evaluated under these rules (OAR 413-120-0400 to 413-120-0470).
- (3) If a subject individual has been convicted of a crime described in section (4) 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 (4) of this rule may be approved or certified as a relative caregiver, foster or adoptive parent, or other person in household only if an exception is granted as provided in sections (5) to (7) of this rule.
- (4) Crimes with no exceptions.
  - (a) DHS may 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) 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;
    - (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 classified as a felony, 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; or
  - (BB) ORS 167.057 - Luring a minor.
- (c) DHS may 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 the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or other person in household 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 the conviction occurred within the five years preceding the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or other person in household:

- (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, if classified as a felony.
- (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 classified as a felony.
- (P) ORS 475.862 - Unlawful delivery of marijuana within 1,000 feet of school.
- (Q) ORS 475.864 - Unlawful possession of marijuana, if classified as a felony.
- (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-methylenedioxymethamphetamine.
- (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.

(5) Crimes for which DHS may grant an exception.

- (a) Unless an exception is granted as provided in subsection (c) of this section and section (7) 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 (4) 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 (4) of this rule.
  - (C) A felony drug-related offense, unless the offense meets the criteria under section (4) 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 the conviction is classified as a felony and does not meet the criteria of subsection (4)(b) of this rule and 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.
  - (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 (4)(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 (4)(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 (4)(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 (4)(b) of this rule.
- (J) ORS 164.405 - Robbery in the second degree, unless the crime meets the criteria of subsection (4)(b) of this rule.
- (K) ORS 164.415 - Robbery in the first degree, unless the crime meets the criteria of subsection (4)(b) of this rule.
- (L) ORS 166.015 - Riot, unless the crime meets the criteria of subsection (4)(b) of this rule.
- (M) ORS 166.165 - Intimidation in the first degree, unless the crime meets the criteria of subsection (4)(b) of this rule.
- (N) ORS 166.220 - Unlawful use of weapon, unless the crime meets the criteria of subsection (4)(b) of this rule.
- (O) ORS 167.017 - Compelling prostitution, unless the crime meets the criteria of subsection (4)(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-methylenedioxy-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.
- (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) For purposes of making a determination about the fitness of a subject individual to be approved as a relative caregiver, foster or adoptive parent or other person in household under this section or section (6) of this rule, DHS must consider any conviction listed in this section or section (6) of this rule and the following:
- (A) The severity and nature of the crime.
  - (B) The number of criminal offenses.
  - (C) The circumstances surrounding the crime.
  - (D) The subject individual's explanation of the crime.
  - (E) The facts that support the conviction or pending indictment or that indicate the making of a false statement.
  - (F) The relevancy, if any, of the crime or false statement to the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or other person in household.
  - (G) 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 interest of the child.

- (H) Intervening circumstances relevant to the responsibilities and circumstances of the relative caregiver, foster or adoptive parent, or other person in household. Intervening circumstances include, but are not limited to:
- (i) The passage of time since the commission of the crime;
  - (ii) The age of the subject individual at the time of the crime;
  - (iii) The subject individual's participation in counseling, therapy, education, or employment evidencing rehabilitation or a change in behavior;
  - (iv) The likelihood of a repetition of the crime or of the commission of another crime;
  - (v) The subsequent commission of another relevant crime;
  - (vi) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
  - (vii) A recommendation of an employer of the subject individual.
- (d) If a subject individual has been convicted of one or more crimes listed in this section or section (6) of this rule and the caseworker, in consultation with his or her immediate supervisor, determines in accordance with this rule that the subject individual is not fit, DHS may not certify or approve the subject individual as a relative caregiver, foster or adoptive parent, or other person in household.
- (e) If a subject individual has been convicted of one or more crimes listed in this section or section (6) of this rule and the caseworker, in consultation with his or her immediate supervisor, determines in accordance with this rule that the subject individual may be fit, the caseworker or the supervisor may request that an exception be granted to certify or approve the subject individual as a relative caregiver, foster or adoptive parent, or other person in household.
- (f) If a subject individual has been convicted of one or more of the crimes listed in this section of the rule and the caseworker or supervisor requests that an exception for certification or approval be granted, the DHS Assistant Director for CAF may grant an exception, in writing, for the subject individual to be certified or approved as a relative caregiver, foster or adoptive parent, or other person in household. The DHS Assistant Director for CAF may designate administrative staff not assigned to or located in a District to grant an exception for approval under this subsection.

- (6) If a subject individual has been convicted of any felony or misdemeanor, other than those described in sections (4) or (5) 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 subject individual is granted as provided in this section and section (7) of this rule. The following persons are authorized to grant an exception as provided in this section and section (7) 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 (4) or (5) of this rule, and the caseworker or supervisor requests that an exception for certification or approval be granted in accordance with section (5) of this rule, the District Manager may grant an exception, in writing, for the subject individual to be certified or approved as a relative caregiver, foster or adoptive parent, or other person in household. The District Manager may designate the District Assistant Manager, the Child Welfare Program Manager, or a child welfare supervisor to grant an exception for approval 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 (4) or (5) of this rule, and the caseworker or supervisor requests that an exception for certification or approval be granted in accordance with section (5) of this rule, the District Manager may grant an exception, in writing, for the subject individual to be certified or approved as a relative caregiver, foster or adoptive parent, or other person in household. The District Manager may designate the District Assistant Manager or the Child Welfare Program Manager to grant an exception for approval under this subsection.
- (7) An individual authorized to grant an exception under sections (5) or (6) of this rule must determine whether the subject individual is fit to be a relative caregiver, foster or adoptive parent, or is fit to be an other person in household, regardless of the criminal conviction or convictions. The individual 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 (5) or (6) of this rule, the individual authorized to grant the exception must consider:
- (a) The severity and nature of the crime;
  - (b) The number of criminal offenses;
  - (c) The circumstances surrounding the crime;
  - (d) The subject individual's explanation of the crime;
  - (e) The facts that support the conviction or pending indictment or that indicate the making of the false statement;

- (f) The relevancy, if any, of the crime or the false statement to the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or other person in household;
- (g) 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; and
- (h) Intervening circumstances relevant to the responsibilities and circumstances of the relative caregiver, foster or adoptive parent, or other person in household. Intervening circumstances include, but are not limited to:
  - (A) The passage of time since the commission of the crime;
  - (B) The age of the subject individual at the time of the crime;
  - (C) The subject individual's participation in counseling, therapy, education, or employment evidencing rehabilitation or a change in behavior;
  - (D) The likelihood of a repetition of offenses or of the commission of another crime;
  - (E) The subsequent commission of another relevant crime;
  - (F) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
  - (G) A recommendation of an employer of the subject individual.
- (8) 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.
- (9) Granting an exception for a specific misdemeanor or felony conviction 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 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, DHS determines whether, considering the behavior that resulted in the arrest, the subject individual is fit to be a relative caregiver, foster or adoptive parent, or other person in household:
  - (a) Child abuse or neglect;
  - (b) Domestic violence;
  - (c) A crime against a child, including pornography;
  - (d) A crime involving violence, including rape, sexual abuse, manslaughter, or homicide;
  - (e) Physical assault;
  - (f) Battery;
  - (g) Drug-related or alcohol-related offense; or
  - (h) Weapons-related offense.
  
- (2) If a subject individual has been arrested for any of the offenses listed in section (1) of this rule, written approval from the District Manager is required for an exception to certify or approve the subject individual as a relative caregiver, foster or adoptive parent, or other person in household. The District Manager may designate the District Assistant Manager, Child Welfare Program Manager, or a child welfare supervisor to grant an exception under this subsection. In considering whether to grant an approval, the District Manager or designee must consider the following:
  - (a) The severity and nature of the behavior that led to the arrest;
  - (b) The number of arrests in the subject individual's history for behavior that relates to and raises concerns about the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or other person in household;
  - (c) The circumstances surrounding each arrest;
  - (d) The subject individual's explanation of the circumstances surrounding the behavior that led to each arrest;
  - (e) Whether the subject individual was charged with or indicted for a crime related to each arrest;
  - (f) The disposition of any charge or indictment related to each arrest;

- (g) The relevancy, if any, of the behavior that led to the arrest to the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or other person in household;
  - (h) 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 interest of the child;
  - (i) Intervening circumstances, since the time of the behavior that led to each arrest, that are relevant to the responsibilities and circumstances of the relative caregiver, foster or adoptive parent, or other person in household. Intervening circumstances include but are not limited to:
    - (A) The passage of time since the behavior that led to the arrest;
    - (B) The age of the subject individual at the time of the behavior that led to the arrest;
    - (C) The subject individual's participation in counseling, therapy, education, or employment evidencing rehabilitation or a change in behavior;
    - (D) The likelihood of a repetition of the behavior that led to the arrest; and
    - (E) A recommendation of an employer of the subject individual.
- (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) If allowed by current or previously effective rules, an exception for a specific arrest need only be granted one time for a specific subject individual.
- (5) Granting an exception for a specific arrest does not establish a precedent for any other case in which an arrest for the same crime is being considered.
- (6) The individual authorized to grant an exception under section (2) must document the approval on form DHS 1011D, "Criminal History Exception Request".
- (7) 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

## **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, a relative caregiver, foster parent, or other person in household of a foster parent or relative caregiver must consent to a criminal offender information records check prior to re-certification every two years. An adoption applicant and other person in household must consent to a criminal offender information records check once a year after the initial criminal records check is completed. Each applicant must be notified of this requirement at the time they apply for a certificate of approval or adoption approval. Criminal offender information records check consent forms must contain a notice that an applicant for a certificate of approval, or adoption approval and an other person in household are subject to a fingerprint-based criminal offender records check of national crime information databases that is conducted as required by ORS 181.537, ORS 181.557, and sections (5) and (6) of this rule.
- (2) An adoptive applicant approved as a relative caregiver or foster or adoptive parent and who has submitted to a criminal offender information records check within the 12 months preceding the date on which he or she applied to adopt may be exempt from a new criminal offender information 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 for a relative caregiver or foster parent, or approval as an adoptive parent if a subject individual makes a false statement about having been arrested for or convicted of any crime or crimes.
- (4) A subject individual 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 DHS Form CF 1011F from the subject individual;
  - (b) If the subject individual acknowledges a prior arrest or conviction for a crime listed in these rules (OAR 413-120-0400 to 413-120-0470), 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) A completed FBI fingerprint card (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 offender information records check, DHS may request a subject individual to consent to the use of his or her social security number in conducting the criminal offender information records check. A subject individual indicates consent by signature.
- (6) DHS must obtain and forward a fingerprint card to request criminal offender information on a subject individual from OSP and the FBI as follows:
- (a) At the time of initial application DHS must obtain a fingerprint card 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 a fingerprint card 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 a fingerprint card and initiate a fingerprint-based criminal offender records check of national crime information databases prior to re-certification.
  - (d) An other person in household, as defined in OAR 413-120-0420, 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 household. DHS must obtain a fingerprint card and initiate a fingerprint-based criminal offender records check of national crime information databases prior to re-certification.
  - (e) Notwithstanding subsections (a) - (c) of this section, when the subject individual is a prospective respite care provider, the required criminal offender information records check on the subject individual must include a fingerprint-based check of national crime information databases only if one or more of the following circumstances exist:
    - (A) The prospective respite provider has resided outside of Oregon for 60 or more consecutive days within the last five years preceding the date on which he or she provides written consent for DHS to conduct a criminal offender information records check.
    - (B) As a result of the DHS review of other criminal records, the prospective respite provider's own disclosure, or by any other means, it is known that the prospective respite provider has a history of criminal convictions or arrests.

- (C) DHS has determined that a fingerprint-based check of national crime information databases is warranted due to uncertainty about the true identity of the prospective respite provider or any other concern on the part of DHS.
  - (f) In the absence of any of the circumstances described in paragraphs (e)(A) - (e)(C) of this section, a fingerprint-based check of national crime information databases is not required; however DHS must complete a statewide check of the Oregon Law Enforcement Data System (LEDS) before the prospective respite provider can provide respite care. If a fingerprint-based check of national crime information databases is required due to the existence of any of the circumstances described in paragraphs (e)(A) - (e)(C) of this section, the prospective respite provider may provide respite care prior to completion of the required fingerprint-based check, at the discretion of DHS and only after DHS has completed the required LEDS check.
- (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. To grant an exception, the Criminal History Exception Request Form (DHS 1011D) must be signed by the District 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 the following criminal offender information 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 offender information records check process, including a fingerprint-based criminal offender check of national crime information databases when required for a subject individual;
  - (c) Granting of an exception for 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 reviews the criminal offender information, including fingerprint-based criminal offender information when obtained, of a subject individual. The assessment of fitness, based on the criminal offender information, 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.

- (10) A subject individual determined not fit to be approved as an adoptive resource pursuant to these rules 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 to be certified or approved as a relative caregiver or foster or adoptive parent based on criminal offender information or a false statement related to criminal offender information in the application, unless the subject individual voluntarily withdraws from the process, the Child Welfare field office must notify the subject individual in writing that the subject individual:
  - (a) Has a right to inspect and challenge his or her Oregon criminal offender information through OSP 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 chapter 183 and OAR Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535 provided that DHS receives the request for a contested case hearing in writing within 30 days from the date of mailing the notice.
- (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 rules is not fit based on the criminal offender information or false statement of criminal offender information of an other person in household, the certifier, adoption worker, or private agency adoption worker must inform --
  - (a) The other person in household whose record was reviewed of the right to inspect and challenge the subject individual'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) The other person in household whose record was reviewed of the right to 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) The relative caregiver, foster parent, or adoption applicant whose approval is affected by the other person in household's criminal offender information or false statement about criminal offender information, via certified mail, that:
- (A) Based on the other person in household's criminal offender information or false statement about criminal offender information, DHS may not certify or approve the relative caregiver, foster parent, or adoption applicant as long as the other person in household remains in the home or provides care to a child in the home; and
  - (B) The relative caregiver, foster parent, or adoption applicant may appeal in a contested case hearing the DHS determination of unfitness based on the criminal offender information or false statement of criminal offender information concerning an other person in household, 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) Child Welfare Policy I-A.5.2, "Contested Case Hearings", OAR 413-010-0500 to 413-010-0535 describes the requirements and process for requesting a contested case hearing due to a denial or revocation of a Certificate of Approval or a denial of approval to adopt, based on the criminal history, or false statement with regard to criminal history, of an applicant or other person in the household.

Stat Auth.: ORS 418.005

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

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

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

### **Policy History**

- 12/29/95 *(not available electronically)*
- 03/22/99 *(not available electronically)*
- [01/14/00](#)
- [07/13/00](#)
- [07/01/01](#)
- [09/13/02 thru 03/12/03](#)
- [03/13/03](#)
- [01/28/05 thru 07/27/05](#)
- [07/28/05](#)
- [01/01/08 thru 05/14/08](#)
- [05/15/08](#)
- [10/01/08 thru 03/30/09](#)
- [02/02/09](#)