	STATE OFFICE for SERVICES to CHILDREN and FAMILIES **CLIENT SERVICES MANUAL I** **ISSUED BY:** Program Operations **EFFECTIVE DATE:** January 2, 1996	**NUMBER:** I-G.1.7 **SECTION:** G. Adoption Services **SUBSECTION:** 1. SOSCF's Adoption Program
SUBJECT: 7. Oregon Computerized Criminal History Checks and Nationwide Criminal History Checks through the FBI for Adoptive Parents of SOSCF Children		

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Interpretation: Executive Assistant and Adoption Manager, Program Operations

Approval: Elizabeth Hatfield
Assistant Administrator, Program Operations

REFERENCES: ORS 181.537
ORS 409.015
ORS 181.010 to 181.560
OAR 413-120-200 through 413-120-230
OAR 413-120-300 through 413-120-310
FD 258, Fingerprint Card
CF 101F, Consent for Criminal History Check for Adoption Program

PURPOSE

413-120-400 (1) It is the desire of the State Office for Services to Children and Families (SOSCF) to reduce the risk of exploitation and/or abuse of children entrusted in the care of or receiving services from the agency. Therefore, SOSCF will conduct criminal offender information background checks as described in these rules.

(2) These rules provide guidelines on the procedures by which SOSCF obtains criminal offender information on subject individuals residing within the State of Oregon who are seeking to be adoptive parents of children in SOSCF custody, and how SOSCF applies such information to its determination about the suitability of the subject individual.

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

Statutory Authority: HB2004
Stats. Implemented: ORS 181.537, 181.010-181.560, 409.015

SCOPE OF RULES

413-120-410 (1) Consistent with the purpose of these rules, SOSCF will issue decisions regarding the suitability for approval of subject individuals applying to be adoptive parents, or other persons, paid or unpaid, in the household.

(2) The criminal record check rules in OAR 413-120-400 through 413-120-470 shall be construed and implemented consistent with the existing requirements in OAR 413-120-200 through 413-120-230. If there is an inconsistency between these

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criminal record check rules and existing adoption requirements, the rules in OAR 413-120-300 to 413-120-310 will supersede existing adoption requirements.

Statutory Authority: HB2004
Stats. Implemented: ORS 181.537, 181.010-181.560, 409.015

DEFINITIONS

413-120-420 (1) "Adoptive Applicant" means an individual who has completed an application to receive placement of a child with the intent to legally adopt said child.

(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) "Child or Children" means a person 18 years of age or under.

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

(5) "Contested Case Hearing" means a quasi-judicial hearing before an impartial hearing officer in which the complainant and/or his or her representative may present all pertinent facts and evidence in order to show why the action or inaction of SOSCF should be reconsidered. As a result of the hearing, the hearings officer reports findings and recommendations to the SOSCF director, who makes a final order on the matter.

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

(7) Director" means the director of SOSCF, who is the assistant director of the Department of Human Resources.

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

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

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

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

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

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

(14) "SOSCF" means the State Office for Services to Children and Families.
Statutory Authority: HB2004
Stats. Implemented: ORS 181.537, 181.010-181.560, 409.015

SUBJECT INDIVIDUALS

413-120-430 (1) For purposes of this rule, "Subject Individual" means a person who, as of official date of these rules, applies to adopt a child in the custody of SOSCF as described in OAR 413-120-200 through 413-120-230 and 413-120-300 through 413-120-310.

(2) Adoptive applicants who have been certified as foster parents and who have submitted to a fingerprint-based criminal history check within the last 12 months will be exempt from a criminal records check at the time of applying to adopt.
Statutory Authority: HB2004
Stats. Implemented: ORS 181.537, 181.010-181.560, 409.015

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LIMITATIONS OF INQUIRIES

413-120-440 (1) Only SOSCF employees who have been fingerprinted and cleared by the Oregon State Police shall access or have access to criminal offender information pursuant to a valid agency agreement. All such information shall be handled in compliance with the agency agreement and rules and procedures of the Oregon State Police relating to the criminal offender information (OAR 257-10-010 to 257-10-050). It is the responsibility of SOSCF to assure strict compliance with federal and state laws, rules and procedures regarding criminal offender information access and dissemination.

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

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

Statutory Authority: HB2004
Stats. Implemented: ORS 181.537, 181.010-181.560, 409.015

CRIMES TO BE CONSIDERED

413-120-450 (1) SOSCF has determined that serious felonies and misdemeanors involving violence or unauthorized sexual conduct, especially with children or otherwise vulnerable persons, is fundamentally inconsistent with any responsibility for care, treatment or supervision of children or other vulnerable persons. Subject to subsection (5) of this section, conviction of crimes listed in subsection (2)(a) and (b) of this section or a false statement about a conviction, shall disqualify a subject individual from being approved as an adoptive parent. Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

(2) Felony and Misdemeanor Crimes

(a) Oregon Revised Statutes:

162.165	Escape I	164.395	Robbery III
162.185	Supplying Contraband	164.405	Robbery II
163.095	Aggravated Murder	164.415	Robbery I
163.115	Murder	166.085	Abuse of Corpse II
163.115	Felony Murder	166.087	Abuse of Corpse I

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163.118	Manslaughter I
163.125	Manslaughter II
163.145	Criminally Negligent Homicide
163.165	Assault III
163.175	Assault II
163.185	Assault I
163.200	Criminal Mistreatment II
163.205	Criminal Mistreatment I
163.225	Kidnapping II
163.235	Kidnapping I
163.275	Coercion
163.355	Rape III
163.365	Rape II
163.375	Rape I
163.385	Sodomy III
163.395	Sodomy II
163.405	Sodomy I
163.408	Sexual Penetration II
163.411	Sexual Penetration I
163.415	Sexual Abuse III
163.425	Sexual Abuse II
163.427	Sexual Abuse I
163.435	Contribution to the Sexual Delinquency of a Minor
163.445	Sexual Misconduct
163.515	Bigamy
163.525	Incest
163.535	Abandonment of a Child
163.545	Child Neglect II
163.547	Child Neglect I
163.555	Criminal Non-Support
163.575	Endangering the Welfare of a Minor
163.670	Using Child in Display of Sexually Explicit Conduct
163.680	Paying for Viewing Sexual Conduct Involving a Child
163.732	Stalking
164.075	Theft by Extortion
166.155	Intimidation II
166.165	Intimidation I
166.220	Unlawful Use of a Weapon
166.270	Certain Felons Forbidden to Possess Firearms
166.272	Unlawful Possession of Machine Guns, Certain Short-Barreled Firearms and Firearms Silencers
166.275	Possession of Weapons by Inmates of Institutions
166.382	Possession of Destructive Device
166.384	Unlawful Manufacture of a Destructive Device
166.429	Firearm Used in Felony
166.660	Unlawful Paramilitary Activity
166.720	Racketeering
167.012	Promoting Prostitution
167.017	Compelling Prostitution
167.062	Sadomasochistic Abuse or Sexual Conduct in Live Show
167.065	Furnishing Obscene Materials to Minors
167.070	Sending Obscene Materials to Minors
167.075	Exhibiting an Obscene Performance to Minors
167.080	Displaying Obscene Materials to Minors
167.087	Disseminating Obscene Material
167.090	Publicly Displaying Nudity or Sex for Advertising Purposes
167.212	Tampering with Drug Records
167.262	Adult Using Minor in Commission of

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164.225 Burglary I	Controlled Substance Offense
164.325 Arson I	

(b) And any attempts or solicitations to commit any Felony or Misdemeanor crime listed in subsection (a) of this section.

(3) SOSCF has further determined that felonies and misdemeanors involving theft, fraud or deception, crimes against state and public justice, and major traffic violations listed in (4)(a) or (b) of this section (or the substantial equivalent of any of the crimes, if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number) substantially jeopardize the safety of children or other vulnerable persons. If any subject individual was convicted of a crime listed in subsection (4)(a) or (b) of this section, all intervening circumstances and other background information related to criminal activity shall be reviewed by the SOSCF subject to subsection (5) of this section. Based on this information, the agency shall make a decision whether to approve or deny the request to be approved as an adoptive parent for children placed by SOSCF.

(4) Felony and Misdemeanor Crimes

(a) Oregon Revised Statutes:

162.025 Bribe Receiving	167.262 Adult Using Minor in Commission of Controlled Substance Offense (less than 5 grams Marijuana)
162.065 Perjury	
162.155 Escape II	
162.205 Failure to Appear I	
162.235 Obstructing Governmental or Judicial Administration	471.410 Providing Liquor to a Person Under 21 or to Intoxicated Person; Mandatory Minimum Penalties
162.265 Bribing a Witness	
162.275 Bribe Receiving by a Witness	475.992 Prohibited Acts Generally; Penalties; Affirmative Defense for Certain Peyote Uses
162.285 Tampering with a Witness	
162.305 Tampering with Public Records	475.993 Prohibited Acts for Registrants; Penalties
162.325 Hindering Prosecution	
163.160 Assault IV	475.994 Prohibited Acts Involving Records and Fraud; Penalties
163.190 Menacing	
163.195 Recklessly Endangering Another	475.995 Penalties for Distribution
163.465 Public Indecency	

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164.043	Theft III
164.045	Theft II
164.055	Theft I
164.057	Aggravated Theft I
165.013	Forgery in the First Degree
165.022	Criminal Possession of a Forged Instrument in the First Degree
165.032	Criminal Possession of a Forgery Device
165.055	Fraudulent Use of a Credit Card (over $750)
165.065	Negotiating a Bad Check (Class Felony clause)
165.070	Possessing a Fraudulent Communication Device
165.074	Unlawful Factoring of a Credit Card Transaction
165.085	Sports Bribery
165.090	Sports Bribe Receiving
166.015	Riot
167.007	Prostitution
	to Minors
475.996	Crime Category Classification for Violation of ORS 475.992; Proof of Commercial Drug Offense
475.999	Penalty for Manufacture or Delivery of Controlled Substance within 1,000 feet of School
	in Violation of a Permit
811.140	Reckless Driving
811.182	Criminal Driving While Suspended or Revoked or in Violation of a Permit
811.540	Fleeing or Attempting to Elude Police
811.700	Failure to Perform Duties of Driver When Property is Damaged
811.705	Hit and Run Vehicle (Injury)
813.010	Driving Under the Influence of Intoxicants

(b) And, any attempts or solicitations to commit any Felony or Misdemeanor crime listed in subsection (a) of this section.

(5) Factors to be considered by the SOSCF administrative office in determining suitability to be an adoptive parent based on information available to SOSCF and information provided by the subject individual include:

(a) Types and number of offenses;

(b) Passage of time since the crime was committed;

(c) Circumstances surrounding the commission of the crime;

(d) Intervening circumstances since the commission of the crime;

(e) Relationship of the facts under subsections (a) through (d) of this section to the specific requirements set forth for adoptive parents.

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

Statutory Authority: HB2004
Stats. Implemented: ORS 181.537, 181.010-181.560, 409.015

PROCEDURES

413-120-460 (1) Any subject individual applying for adoptive approval as defined in OAR 413-120-430, and all other persons, paid or unpaid, in the household of the subject individual, shall consent to a criminal offender information records check, including fingerprints. All applicants will be notified of this requirement at the time they apply, and criminal record consent forms shall contain a notice that adoption approval is subject to fingerprints, and that a criminal offender information records check will be conducted as required by ORS 181.537, 181.557 and 409.015. If the subject individual, or a person in the household of the subject individual, refuses to be fingerprinted, or makes a false statement about the non-conviction of a crime listed in OAR 413-120-450, SOSCF shall not approve the subject individual.

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

(a) Two properly completed FBI fingerprint cards (FD 258) with red overprinting in the reason fingerprinted block which reads "ORS 181.537/ORS 409.015 Child Welfare Programs Regulation/Licensing/DHR Employees UF" from the subject individual and other persons in the household;

(b) A properly completed and signed CF form 101F from the subject individual and other persons in the household;

(c) If the subject individual or other person in the household acknowledges a prior conviction as listed in OAR 413-120-450, an explanation of the relationship of the facts which support the conviction and all intervening circumstances and authorization for SOSCF to verify the information;

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

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

(a) If the subject individual has lived outside the State of Oregon anytime during the five years prior to application, SOSCF shall instruct OSP to conduct a fingerprint criminal offender records check through the FBI; or

(b) If the subject individual has lived in Oregon more than five consecutive years, but the subject individual's Oregon record indicates that the subject individual has criminal offender information outside the State of Oregon, SOSCF shall instruct OSP to conduct a fingerprint-based criminal offender records check through the FBI.

(c) If the subject individual's or other person in the household's Oregon record indicates a conviction for a crime listed in this rule, SOSCF shall forward the fingerprint cards to OSP for a positive identification verification prior to issuing a denial notice; or

(d) If an applicant for adoption of an SOSCF child resides outside the State of Oregon, SOSCF shall instruct OSP to conduct a fingerprint-based criminal offender records check through the FBI.

(4) This rule provides that no applicant for approval as an adoptive parent will be provisionally approved prior to initiation of the criminal record check process, including fingerprint-based criminal offender checks for the applicant and under ORS 181.557, for any other persons in the household of the applicant.

(5) SOSCF will review the criminal offender information, including fingerprint-based criminal offender information, of subject individuals under ORS 409.015(9)(A) for persons seeking to adopt, and under ORS 181.557 for other persons in the household. The SOSCF director or designee shall issue a statement of criminal history status and related impact on approval for adoption to the SOSCF branch adoption worker or the private agency adoption worker. A statement of criminal history status resulting in a determination that an applicant is not suitable, shall be considered preliminary by the adoption worker until the applicant has been given notice of an opportunity to challenge the criminal record report, or to request a contested case hearing pursuant to OAR 413-120-460 (8) or (9). A finding of suitability based on criminal history is only one factor SOSCF will use in deciding whether to approve an adoptive parent. The final determination to grant or deny certification based solely on criminal history, will be made by the SOSCF director or designee. Criminal offender information received from the OSP or the FBI is confidential and shall not be released to unauthorized persons or agencies.

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(6) Subject individuals who have been determined not suitable pursuant to OAR 413-120-460 (6) shall be denied approval for adoption of a child in the custody of SOSCF.

(7) If SOSCF determines that the subject individual is not suitable for adoption approval based on criminal history or false statement on the application related to criminal history, the SOSCF administrative office will notify the subject individual, via certified mail, that the subject individual:

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

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

(c) May appeal SOSCF's determination of unsuitability, and/or indicate an intent to challenge information in the OSP or FBI report, by requesting a contested case hearing pursuant to ORS 183.413 to 183.470 and OAR 413-120-470 provided that SOSCF receives their request for a contested case hearing in writing within 10 calendar days of mailing the notice. After said 10 days have elapsed, SOSCF will inform the SOSCF branch adoption worker or private agency adoption worker that either:

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

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

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(8) Upon SOSCF's determination that an applicant for adoption of a child in the custody of SOSCF is not suitable based on the criminal history of a person in the household or false statement of criminal history of a person in the household, SOSCF shall:

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

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

(i) SOSCF may not approve the adoption applicant permitting the other person to remain in the household or to have contact with children in the home based on the information contained in the criminal record check about the other person or the person's false statement about criminal history; and

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

(c) Inform the SOSCF branch adoption worker or private adoption agency worker, after said 10 days have elapsed, that either:

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

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

Statutory Authority: HB2004
Stats. Implemented: ORS 181.537, 181.010-181.560, 409.015

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RIGHTS FOR REVIEW AND CONTESTED CASE HEARINGS

413-120-470 (1) SOSCF shall conduct contested case hearings per ORS 183.413 to 183.470, and afford adoption applicants the right to appeal a decision made by SOSCF that the applicant is not suitable for approval for placement of a child in the custody of SOSCF based on an authorized criminal offender information records check, or a false statement concerning such criminal records check of the applicant or other person in the household. Applicants must notify SOSCF of their request for a contested case hearing within 10 calendar days after the notice is mailed by SOSCF to the applicant.

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

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

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

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

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

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

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

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

(7) Fingerprint cards required for evidence in a contested case shall be destroyed at the direction of adjudication, or within 90 days following case resolution, whichever is appropriate.

Statutory Authority: HB2004
Stats. Implemented: ORS 181.537, 181.010-181.560, 409.015

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