

	STATE OFFICE for SERVICES to CHILDREN and FAMILIES	NUMBER: III-D.1.1.2
	ADMINISTRATIVE MANAGEMENT MANUAL III	SECTION: D. Contract Management
	ISSUED BY: Program Operations EFFECTIVE DATE: July 1, 2001	SUBSECTION: 1. General Requirements 1. Criteria for Personal and Professional Services Contracting
SUBJECT: 2. Criminal History Checks for Nontraditional Contractors - Oregon Administrative Rule		

Responsible Manager: Manager,
Technical Assistance Unit

Approval: _____
Assistant Administrator,
Program Operations

Interpreter: Manager,
Technical Assistance Unit

REFERENCES: ORS 181.537
ORS 180.010 to 181.560
OAR 413-120-0450
FD 258 "Fingerprint Card"
CF 1011C "Consent for Criminal Records and Fingerprint Check"

PURPOSE

413-330-0085 It is the goal of the State Office for Services to Children and Families (SOSCF) to reduce the risk of exploitation and/or abuse of children entrusted in the care of or receiving services from SOSCF. To that end, SOSCF will conduct criminal offender information background checks on individuals seeking to serve as nontraditional personal service contractors. These rules establish procedures by which SOSCF obtains criminal offender information on subject individuals residing within the State of Oregon who are seeking to work with SOSCF client families as nontraditional contractors.

Statutory Authority: ORS 418.005
Statutes Implemented: ORS 181.537

DEFINITIONS

413-330-0087 (1) "Child or Children" means a person 18 years of age or under. A youth who is between 18 and 21 years of age and in the custody of SOSCF is also considered a child for the purposes of these rules.

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(2) **“Client”** means a child or adult receiving services from SOSCF.

(3) **“Criminal History Records Check”** means a search of the Oregon Law Enforcement Data System (LEDS) of an individual for any criminal history records.

(4) **“Computerized Criminal History (CCH) System”** means the administration and maintenance of online computer files of significant criminal offender information by OSP.

(5) **“Contested Case Hearing”** means a quasi-judicial hearing before an impartial hearings 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) **“FBI”** means the Federal Bureau of Investigation.

(8) **“Independent Contractor”** means a person or business that provides service to a state agency in which the state agency neither controls nor has the right to control the means or manner by which work is performed. The state agency may control the results of service, but not control the means or manner of the contractor’s performance of the work. A contractor may be either a traditional contractor or a nontraditional contractor.

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(9) “Non Traditional Contractor” means a person or business not routinely engaged in providing the services that are being contracted for. A nontraditional contractor may include but is not limited to:

(a) A non-caregiving family member; or

(b) A neighbor or other interested party who has an interest in helping a specific child reach agreed-upon outcomes.

(10) “OSP” means the Oregon State Police.

(11) “Short Form Personal Services Contract” means a type of contract developed by SOSCF that provides expedited service delivery to children according to SOSCF policy.

(12) “SOSCF” means the State Office for Services to Children and Families.

(13) “Subject Individual” means, in the context of this rule, an applicant to be a nontraditional contractor with SOSCF.

(14) “Traditional Contractor” means a person or business that is actively engaged (as a profession) in providing the services being contracted. A traditional contractor may include but is not limited to a licensed psychologist, a professional social worker, etc.

Statutory Authority: ORS 418.005

Statutes Implemented: ORS 181.537

NONTRADITIONAL CONTRACTOR CRIMINAL HISTORY POLICY

413-330-0090 (1) As a result of changes in practice initiated by the strengths/needs-based system of care, SOSCF will enter into personal service contracts with nontraditional service providers. These contractors are not licensed or certified through

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professional organizations, but can provide important services to clients such as mentoring. By policy, these individuals will require criminal background checks prior to contracting.

(2) The criminal record checks will be conducted primarily through the central office criminal records section. However, the option will be left open for SOSCF branch managers to allow individuals to obtain their own criminal record checks, through law enforcement, when this will expedite matters.

(3) Individuals obtaining their own criminal record checks must submit a copy of their fingerprints to OSP and will be required to pay the OSP records fee. However, the applicant may obtain a copy of their fingerprints through the local SOSCF branch office's normal procedure for foster or adoptive applicants (i.e., either from the SOSCF branch, from a local law enforcement agency contracting with SOSCF, or from a contracted vendor). SOSCF will cover the cost of having the applicant fingerprinted, but not the OSP records fee.

(4) Criminal record checks processed through SOSCF central office will be handled as follows:

- (a)** The applicant will sign the CF1011C authorization form and check if:
 - (1) they have had any convictions, and
 - (2) they have lived out-of-state anytime during the past five years.

(A) A "yes" answer to either of the questions in (4)(a) will require fingerprinting. Fingerprints will be provided through the local branch office's normal procedure for foster or adoptive applicants (i.e., either from the SOSCF branch, from a local law enforcement agency contracting with SOSCF or from a contracted vendor). SOSCF will cover the cost of having the applicant fingerprinted. Fingerprint cards will be forwarded to OSP and the FBI at SOSCF's cost;

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(B) A “no” answer to both questions in (4)(a) will result in a LEDS-only criminal background check. No fingerprints will be required unless a criminal conviction is found on LEDS. The case will then be referred back to the SOSCF branch manager for denial (based on false swearing) or for fingerprinting.

(b) Central office criminal records staff will consider requests for criminal histories on nontraditional providers as “urgent”, will complete the LEDS check as quickly as possible, and will return the results to the branch via fax.

Statutory Authority: ORS 418.005

Statutes Implemented: ORS 181.537

CRIMES TO BE CONSIDERED

413-330-0095 (1) The criminal record standards used for adoptive and foster care applicants will be applied to nontraditional contractors receiving criminal record checks through SOSCF (OAR 413-120-0450). SOSCF has determined that persons who engage in certain criminal conduct may not be qualified to provide care, treatment or supervision to children or other vulnerable persons. Unless an exception is allowed under these rules, convictions for crimes listed in this section or a false statement about a conviction for any of the listed crimes, shall disqualify an individual from being approved as a nontraditional contractor.

(2) SOSCF will not approve an individual applying to be a nontraditional contractor who has been convicted in Oregon or any other jurisdiction of a felony crime involving child abuse or neglect, against children, involving spousal abuse, or involving violence, except assault or battery. These felonies include, but are not limited to, the crimes listed in SOSCF’s Administrative Rules, “Oregon Computerized Criminal History Checks and Nationwide Criminal History Checks Through the FBI for Foster Parents and Adoptive Parents for SOSCF Children” Policy # I-G.1.4, (OAR 413-120-0450(2)(e)).

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(3) SOSCF will not approve an individual applying to be a nontraditional contractor if that individual has been convicted, within the five years preceding application to be a contractor, of a felony involving a crime of physical assault or battery or a drug related offense. These felonies include the crimes listed in SOSCF's Criminal History Policy I-G.1.4 (OAR 413-120-0450(3)).

(4) No exceptions may be granted to the prohibitions contained in subsections (2) and (3) of this rule.

(5) Unless an exception is granted, as provided in 413-330-0095(6), SOSCF will not approve an individual applying to be a nontraditional contractor if that individual:

(a) Has been convicted of three or more alcohol and/or drug related misdemeanors within the five years preceding application to be a nontraditional contractor;

(b) Has three felony convictions for crimes not listed in subsection (2) and (3) above within the five years preceding application to be a contractor; or

(c) Has been convicted of any felony or misdemeanor on the crimes listed in SOSCF's Administrative Rules, "Oregon Computerized Criminal History Checks and Nationwide Criminal History Checks Through the FBI for Foster Parents and Adoptive Parents for SOSCF Children" Policy # I-G.1.4 (OAR 413-120-0450(5)), which occurred during the indicated disqualification period.

(6) SOSCF may grant exceptions to subsection (5) of this rule and approve a nontraditional contractor. Approval authority for criminal record exceptions (where exceptions are allowed) shall be as follows:

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

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(b) For all felony convictions, branch manager and Assistant Administrator for Field Operations or designee approval is required.

(7) SOSCF may grant an exception to 413-120-0450(5) if, based upon the following, SOSCF determines that the subject individual possesses the qualifications to be a nontraditional contractor despite a criminal record:

- (a)** The severity and nature of the crime;
- (b)** The number of criminal offenses;
- (c)** The time elapsed since commission of the crime;
- (d)** The circumstances surrounding the crime;
- (e)** The likelihood that the subject individual will commit another crime;
- (f)** The subject individual's participation in counseling, therapy, education or employment evidencing rehabilitation or a change in behavior; and
- (g)** A review of the police or arrest report confirms the subject individual's explanation of the crime.

(8) Where allowed, exceptions 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 crime does not establish a precedent for other cases in which the same crime is being considered.

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(10) A statement of the assessment of suitability, based on the criminal history and reflecting the decision-making criteria, shall be filed in the contractor's record. The LEDS report must not be filed in these records and must be destroyed within 90 days. A denial of the application will be considered preliminary until the applicant has been given notice of an opportunity to challenge the criminal record report, or to request a contested case hearing pursuant to applicable DHR contested case hearing rules. The final determination to grant or deny application will be made by the SOSCF director or designee upon the recommendation of the hearings officer. Criminal information received from the OSP or the FBI is confidential and shall not be released to unauthorized persons or agencies.

(11) If SOSCF determines that the subject individual is not suitable to be a nontraditional contractor based on criminal history or false statement on the application form (unless the subject individual voluntarily withdraws from the process), the SOSCF branch or regional office will notify the subject individual, via certified mail, that the subject individual:

(a) Has the right to inspect and challenge their Oregon criminal offender information through the OSP procedures (ORS 181.555(3));

(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 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 provided that SOSCF receives their request for a contested case hearing in writing within 10 calendar days of mailing the notice.

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(12) SOSCF shall conduct contested case hearings per ORS 183.413 to 183.470, and in accordance with DHR rules OAR 410-007-0100 through 410-007-0185 (for criminal records).

Statutory Authority: ORS 418.005

Statutes Implemented: ORS 181.537