

	Department of Human Services CHILDREN, ADULTS & FAMILIES	NUMBER: III-D.1.1.2 OAR: 413-330-0085 / 0095
	ADMINISTRATIVE MANAGEMENT MANUAL III	SECTION: D. Contract Management
	ISSUED BY: Program Performance & Reporting EFFECTIVE DATE: 12/17/03 - 6/11/04	SUBSECTION: 1. General Requirements 1. Criteria for Personal and Professional Services Contracting
SUBJECT: 2. Criminal History Checks for System of Care Contractors - Temporary Oregon Administrative Rules		

Responsible Manager: Manager, Technical Assistance Unit

Approval: _____
Assistant Administrator,
Program Performance & Reporting

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"

413-330-0085

Purpose

It is the goal of the Department of Human Services (Department or DHS) to reduce the risk of exploitation and abuse of children in the care of or receiving services from DHS. To that end, DHS will conduct criminal offender information background checks on individuals **before they** provide services to DHS clients under contracts paid for **with the flexible funds** allocated by DHS under the Department's system-of-care settlement agreement with the Juvenile Rights Project, Inc. These rules (OAR 413-330-0085 to 413-330-0098) establish procedures by which DHS obtains criminal offender information on these individuals and considers the information when determining the individual's suitability for working with children.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 181.537

413-330-0087**Definitions**

- (1) "Child" means an unmarried person who is under 18 years of age. A person between 18 and 21 years of age and in the custody of DHS is also considered a child for the purposes of these rules.
- (2) "Client" means a child or adult receiving services from DHS.
- (3) "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.
- (4) "FBI" means the Federal Bureau of Investigation.
- (5) "OSP" means the Oregon State Police.
- (6) "Subject individual" means, in the context of these rules, a contractor seeking to enter into a system-of-care contract with DHS. If the contractor is a business with more than one employee, the executive director, president, CEO, or equivalent is the subject individual. A contractor certified by DHS as provided for in OAR 413-200-0301 to 413-200-0401, "Safety Standards for Foster Care, Relative Care and Adoptive Families," and a contractor licensed by DHS as provided for in OAR 413-220-0000 to 413-220-0160, "Private Child-Caring Agency Licensing Standards," are not subject individuals.
- (7) "System-of-care contractor" means an individual or business that has contracted with DHS and is paid with flexible funds allocated by DHS as part the Department's system-of-care settlement agreement with the Juvenile Right's Project, Inc.
- (8) "System-of-care settlement agreement" means the agreement between the Department of Human Services and the Juvenile Rights Project, Inc. that includes provisions for the use of flexible funds to meet the individual needs of children and their families in order to promote safety, permanency, and well being.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537

413-330-0090**System of Care Contractor Criminal History Policy**

- (1) As a result of the Department's system-of-care settlement agreement with the Juvenile Rights Project, Inc., DHS enters into personal service contracts with community service providers. Many of these providers are not licensed or certified by DHS, but they can provide important services to clients such as mentoring, tutoring, and therapeutic support. Before the Department contracts with one of these providers, the Department will complete a criminal background check as described below.
- (2) DHS will not enter into a contract with a subject individual unless the subject individual consents to a criminal offender information records check and consents to be fingerprinted when required by these rules. DHS may decide not to contract with the subject individual if the individual makes a false statement about having been arrested for or convicted of a crime.
- (3) A subject individual must provide all information required for a criminal offender information records check, including fingerprints, if required, on forms provided by DHS and according to procedures established by DHS, including:
 - (a) The subject individual must complete and sign form CF 1011F.
 - (b) If the subject individual acknowledges a prior arrest or a conviction of a crime, the subject individual must provide an explanation of the facts that supported the arrest or conviction and of the intervening circumstances and must provide written authorization required by DHS to verify the information.
 - (c) When required by these rules, two properly completed FBI fingerprint cards (form FD 258) with red overprinting in the "reason fingerprinted" block from the subject individual.
- (4) In the process of obtaining a subject individual's consent to a criminal records check, DHS may ask the subject individual to consent to the Department's use of his or her social security number in conducting the criminal records check. Subject individuals will indicate their consent by their signatures.

- (5) DHS will obtain and forward fingerprint cards to request criminal offender information on subject individuals from OSP and FBI as follows:
 - (a) If the subject individual lives or has lived outside the State of Oregon during any part of the five years prior to application, DHS will instruct OSP to conduct a fingerprint criminal offender records check through the FBI.
 - (b) If the subject individual has disclosed an arrest or conviction for a crime, DHS will instruct OSP to conduct a fingerprint-based criminal offender records check through the FBI.
 - (c) If the subject individual's Oregon record indicates an arrest or conviction for a crime, DHS will forward the fingerprint cards to OSP for a positive identification verification and instruct OSP to conduct a fingerprint criminal offender records check through the FBI.
- (6) DHS may grant an exception to the fingerprint requirement as described in 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 the applicant or staff. For the exception to be effective, a form DHS 1011D, "Criminal History Exception Request," must be signed by the SDA manager or designee.
- (7) DHS will not enter into a system-of-care contract with a subject individual unless:
 - (a) A check of Oregon LEDS has been completed and documented;
 - (b) All processes required by these rules to complete the criminal history check process, including a fingerprint-based criminal offender check for a subject individual, have been authorized and have commenced; and
 - (c) An exception authorized by OAR 413-330-0095 regarding a criminal conviction, if necessary for approval, has been granted and documented.
- (8) If after the Department enters into a contract with a contractor it learns the contractor has a potentially disqualifying record, the Department will rescind the contract unless an exception is granted.

- (9) DHS will review the criminal offender information of subject individuals. The assessment of the subject individual's suitability will be documented and filed in the contractor's file. Criminal offender information received from the OSP or the FBI is confidential and will not be released.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537

413-330-0095

Crimes to be Considered

- (1) DHS has determined that persons who engage in certain criminal conduct may not be qualified to be a system-of-care contractor because the criminal conduct is fundamentally inconsistent with having responsibility for the care, treatment, or supervision of children. It may also be inappropriate for them to have contact with a child likely to occur while providing services to the child's family. Unless an exception is granted under these rules, a conviction for a crime listed in these rules or a false statement about a conviction may disqualify a subject individual from being approved as a system-of-care contractor.
- (2) If a subject individual has been convicted of a crime described in section (3) of this rule, DHS will not enter into a system-of-care contract with the subject individual, and no exception will be granted.
- (3) (a) DHS will not enter into a system-of-care contract with a subject individual, and no exception will be granted, if a subject individual has been convicted in Oregon or in another jurisdiction of any of the following crimes:
- (A) A felony or misdemeanor crime of violence against a child.
 - (B) A felony involving:
 - (i) Rape, sodomy, or sexual abuse;
 - (ii) Intentional starvation or torture;
 - (iii) Murder or voluntary manslaughter;
 - (iv) Child abuse or neglect;

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- (v) Aiding, abetting, attempting, soliciting, or conspiring to cause the death of a child;
 - (vi) Violence, including domestic violence; or
 - (vii) A felony drug-related offense.
- (b) Crimes described in section (3)(a) of this rule include the following crimes under Oregon law and substantially similar crimes in Oregon and other jurisdictions:
- (A) ORS 163.095 Aggravated murder
 - (B) ORS 163.115 Murder
 - (C) ORS 163.118 Manslaughter in the first degree
 - (D) ORS 163.125 Manslaughter in the second degree
 - (E) ORS 163.355 Rape in the third degree
 - (F) ORS 163.365 Rape in the second degree
 - (G) ORS 163.375 Rape in the first degree
 - (H) ORS 163.385 Sodomy in the third degree
 - (I) ORS 163.395 Sodomy in the second degree
 - (J) ORS 163.405 Sodomy in the first degree
 - (K) ORS 163.408 Unlawful sexual penetration in the second degree
 - (L) ORS 163.411 Unlawful sexual penetration in the first degree
 - (M) ORS 163.425 Sexual abuse in the second degree
 - (N) ORS 163.427 Sexual abuse in the first degree
 - (O) ORS 163.525 Incest, if the victim of the offense is a child
 - (P) ORS 163.537 Buying or selling a person under 18 years of age
 - (Q) ORS 163.670 Using a child in display of sexually explicit conduct
 - (R) ORS 162.155 Escape in the second degree, if the offense involves the use or threatened use of violence
 - (S) ORS 162.165 Escape in the first degree, if the offense involves the use or threatened use of violence or a dangerous or deadly weapon
 - (T) ORS 162.325 Hindering prosecution, if the crime involves the use of violence
 - (U) ORS 163.145 Criminally negligent homicide
 - (V) ORS 163.160 Assault in the fourth degree, if the victim is a spouse or a child and the person has previously been convicted of assaulting the same victim

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(W)	ORS 163.160	Assault in the fourth degree, if person previously convicted of assaulting same victim or assault witnessed by child/step child of defendant or victim or other child living in household of defendant or victim
(X)	ORS 163.160	Assault in the fourth degree if the victim is a child (misdemeanor)
(Y)	ORS 163.165	Assault in the third degree
(Z)	ORS 163.175	Assault in the second degree
(AA)	ORS 163.185	Assault in the first degree
(BB)	ORS 163.205	Criminal mistreatment in the first degree, if the victim is a child or if the crime involves violence
(CC)	ORS 163.213	Unlawful use of an electrical stun gun, tear gas or mace in the first degree
(DD)	ORS 163.225	Kidnapping in the second degree, if the victim is a child or spouse or if the crime involves violence
(EE)	ORS 163.235	Kidnapping in the first degree, if the victim is a child or spouse or if the crime involves violence
(FF)	ORS 163.535	Abandonment of a child
(GG)	ORS 163.547	Child neglect in the first degree
(HH)	ORS 163.555	Criminal nonsupport
(II)	ORS 163.684	Encouraging child sexual abuse in the first degree
(JJ)	ORS 163.686	Encouraging child sexual abuse in the second degree
(KK)	ORS 163.688	Possession of materials depicting sexually explicit conduct of a child in the first degree
(LL)	ORS 163.689	Possession of materials depicting sexually explicit conduct of a child in the second degree
(MM)	ORS 164.125	Theft of services, if the theft is by force for services valued at \$750 or more
(NN)	ORS 164.225	Burglary in the first degree, if the offense involves violence
(OO)	ORS 164.395	Robbery in the third degree
(PP)	ORS 164.405	Robbery in the second degree
(QQ)	ORS 164.415	Robbery in the first degree
(RR)	ORS 166.015	Riot
(SS)	ORS 166.165	Intimidation in the first degree
(TT)	ORS 166.220	Unlawful use of weapon
(UU)	ORS 167.017	Compelling prostitution
(VV)	ORS 167.212	Tampering with drug records

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- (WW) ORS 167.262 Adult using minor in commission of controlled substance offense (for controlled substance other than less than 5 grams of marijuana)
 - (XX) ORS 475.992(1) Manufacture or delivery of Schedule I, II or III counterfeit substance
 - (YY) ORS 475.992(2) Delivery of marijuana for consideration
 - (ZZ) ORS 475.992(3) Creation or delivery of Schedule I, II or III counterfeit substance
 - (AAA) ORS 475.992(4) Possession of Schedule I or II controlled substance
 - (BBB) ORS 475.993 Prohibited acts for registrants related to Schedule I controlled substance
 - (CCC) ORS 475.995 Distribution of Schedule I, II or III controlled substances to minors
 - (DDD) ORS 475.999 Manufacture or delivery of Schedule I, II or III controlled substance within 1000 feet of school
- (4) The Department will not enter into a system-of-care contract with a contractor who has been convicted of a crime not described in section (3) of this rule unless an exception is granted in accordance with this rule. The following persons are authorized to grant an exception:
- (a) If a subject individual has been convicted of a misdemeanor, other than one resulting from domestic violence or one described in section (3) of this rule, a written exception issued by the SDA Manager is required to approve the subject individual. The SDA Manager may authorize the SDA Assistant Manager, the SDA Child Welfare Manager, or a child welfare supervisor to grant an exception authorized by this subsection.
 - (b) If a subject individual has been convicted of a felony or of a crime involving domestic violence, other than one described in section (3) of this rule, a written exception issued by the SDA Manager is required to approve the subject individual. The SDA manager may authorize the SDA Assistant Manager or the SDA Child Welfare Manager to grant an exception under this subsection.

- (5) A person authorized by section (4) of this rule to grant an exception must determine whether the subject individual is suitable to be a system-of-care contractor notwithstanding the criminal convictions. The person authorized to grant an exception must consider the following factors and must document the bases for the approval or denial on form DHS 1011D, "Criminal History Exception Request:
- (a) The severity and nature of the crime.
 - (b) The number of criminal offenses.
 - (c) The time elapsed since commission of the crime.
 - (d) The circumstances surrounding the crime.
 - (e) Content of police reports concerning the crime.
 - (f) The subject individual's explanation of the crime.
 - (g) The relationship of the criminal activity to the subject individual's capacity to safely provide the proposed services.
 - (h) Whether the subject individual's participation in counseling, therapy, education, or employment constitutes evidence of rehabilitation or a change in behavior.
- (6) An exception granted with respect to a specific conviction need only be granted one time.
- (7) An exception granted under this rule does not establish a precedent.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010-181.560

413-330-0097

Consideration of Arrests

- (1) Behavior that results in an arrest or a history of arrests may raise concerns about a subject individual's suitability to be a system-of-care contractor. If a subject individual has a history of arrests for crimes involving any of the following

conduct, the Department's field staff must consider the behavior that resulted in the arrests and assess whether or not the subject individual is suitable to be a system-of-care contractor:

- (a) Child abuse or neglect.
 - (b) Spousal abuse.
 - (c) A crime against children, including pornography.
 - (d) A crime involving violence, including rape, sexual abuse, manslaughter or homicide.
 - (e) Physical assault.
 - (f) Battery.
 - (g) Drug or alcohol offenses.
 - (h) Weapons-related offenses.
- (2) If a subject individual has been arrested for any of the crimes listed in section (1) of this rule, the supervisor and caseworker, in consultation with the management staff as designated by the SDA Manager, must assess the suitability of the subject individual to be a system-of-care contractor and document their findings. The persons conducting the assessment must consider and document their findings regarding the behavior or conduct that led to each arrest, how that behavior relates to the subject individual's qualifications to be a system-of-care contractor, and whether, given the behavior that led to the arrests, the subject individual is qualified to be a system-of-care contractor.
- (3) In conducting the assessment, the supervisor and caseworker must consider the following with regard to the arrests:
- (a) The subject individual's explanation of the circumstances surrounding and the behavior that led to each arrest.
 - (b) The severity and nature of the behavior that led to the arrests.

- (c) Whether the subject individual's behavior that led to the arrests relates to or raises concerns about the individual's qualifications to be a system-of-care contractor.
 - (d) The time elapsed since the arrests.
 - (e) The circumstances surrounding each arrest.
 - (f) Whether the subject individual was charged with or indicted for a crime related to the arrests.
 - (g) The disposition of any charge or indictment related to the arrests.
 - (h) Whether the subject individual's participation in counseling, therapy, education, or employment constitutes evidence of rehabilitation or a change in behavior.
 - (i) Any other information related to the circumstances of the arrests or the behavior that led to the arrests that may relate to the subject individual's qualifications to be a system-of-care contractor.
 - (j) The number of arrests.
- (4) 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.
- (5) 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

413-330-0098

Rights for Review and Contested Case Hearings

- (1) If DHS determines that the subject individual is not suitable to be a System of Care Contractor based on criminal history or false statement on the application form (unless the subject individual voluntarily withdraws from the process), DHS will notify the subject individual, by certified mail, that the subject individual:

- (a) Has the right to inspect and challenge 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.
 - (c) May appeal DHS's determination of unsuitability and may 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 DHS receives a request for a contested case hearing in writing within 10 calendar days after the notice is mailed.
- (2) A contested case hearing is conducted in accordance with ORS 183.413 to 183.470, OAR 137-003-0501 to 137-003-0700, and OAR 413-120-0470.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537