

A-Engrossed House Bill 4122

Ordered by the House February 19
Including House Amendments dated February 19

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Representative Jason Kropf)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act tells OSP to join the FBI's Rap Back system for fingerprint criminal records checks. The Act says how agencies can use the Rap Back program. (Flesch Readability Score: 80.3).

[Digest: The Act says that a person who gets a background check can let OSP send their fingerprints to the FBI's rap back system. (Flesch Readability Score: 80.4).]

[Provides that a person's participation in the Department of State Police's fingerprint retention program authorizes the department to submit the person's fingerprints to the Federal Bureau of Investigation's rap back system.]

Directs the Department of State Police to establish a fingerprint retention system for participation in the Federal Bureau of Investigation's Rap Back system.

**Provides requirements for authorized agencies to participate in the Rap Back program.
Takes effect on the 91st day following adjournment sine die.**

A BILL FOR AN ACT

1
2 Relating to fingerprint retention; creating new provisions; amending ORS 181A.205; and prescribing
3 an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 181A.205 is amended to read:

6 **181A.205. (1) As used in this section:**

7 (a) **"Authorized agency" means a state or local government agency authorized by state**
8 **and federal law to submit fingerprint-based background check requests for employment and**
9 **licensing purposes to the Federal Bureau of Investigation and who may receive criminal**
10 **history record information in response to such requests.**

11 (b) **"Criminal history record information" means information collected by and maintained**
12 **in the files of criminal justice agencies concerning individuals, consisting of identifiable de-**
13 **scriptions, notations of arrest, detentions, indictments or other formal criminal charges.**
14 **This includes any disposition, sentencing, correctional supervision, and release information.**

15 (c) **"Rap Back program" means a system that enables authorized entities to receive on-**
16 **going status notifications of any criminal history reported on individuals whose fingerprints**
17 **are registered in the system.**

18 (d) **"Rap Back system" means the Rap Back system maintained by the Federal Bureau**
19 **of Investigation.**

20 [(1)(a)] (2)(a) **The Department of State Police shall establish a [voluntary] fingerprint retention**
21 **program for participation in the Rap Back system through which the department retains fin-**
22 **gerprint cards and facsimiles of fingerprints provided to or received from the Federal Bureau**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **of investigation that are obtained during a state criminal records check requested by an**
2 **authorized agency for the purpose of employment or licensing.[.]**

3 *[(A) Retains fingerprint cards, facsimiles of fingerprints received from the Federal Bureau of In-*
4 *vestigation or facsimiles of fingerprints created during a state criminal records check under ORS*
5 *181A.190, 181A.195, 181A.200 or 267.237, for the purpose of providing information as described in*
6 *subsection (4) of this section; and]*

7 *[(B) Provides facsimiles of fingerprints created during a state criminal records check under ORS*
8 *181A.190, 181A.195, 181A.200 or 267.237 to the Federal Bureau of Investigation.]*

9 (b) The department may not use fingerprint cards or facsimiles of fingerprints retained pursuant
10 to paragraph (a) of this subsection for any purpose other than the purpose of providing information
11 as described in subsection [(4)] (5) of this section.

12 *[(2) An authorized agency as defined in ORS 181A.190 or 181A.195, an agency listed in ORS*
13 *181A.200 (2), or a district as defined in ORS 267.237 may subscribe to the fingerprint retention pro-*
14 *gram.]*

15 *[(3)(a) If an authorized agency, agency or district subscribes to the fingerprint retention program,*
16 *the authorized agency, agency or district must inform an individual subject to a criminal records check*
17 *under ORS 181A.190, 181A.195, 181A.200 or 267.237 about the program in a form and manner pre-*
18 *scribed by the authorized agency, agency or district, provided that the authorized agency, agency or*
19 *district includes as part of that information notice of the following:]*

20 *[(A) That the individual is not required to participate in the program;]*

21 *[(B) That if the individual chooses to participate in the program, the individual may, at any time,*
22 *stop participating in the program;]*

23 **(3) An authorized agency may participate in the state fingerprint retention program by**
24 **subscribing to the Rap Back program with the Department of State Police and submitting**
25 **an implementation plan to an appropriate committee or interim committee of the Legislative**
26 **Assembly related to the judiciary. In preparing the implementation plan, an authorized**
27 **agency must consult with the department and with stakeholders, including but not limited**
28 **to impacted providers and impacted employees. The implementation plan must describe:**

29 **(a) How the authorized agency will ensure that fingerprinting is accessible for all indi-**
30 **viduals across geographic regions of the state and provider settings;**

31 **(b) How the authorized agency will ensure that fingerprinting accessibility will not be a**
32 **barrier to enrollment in the Rap Back program for individuals;**

33 **(c) The estimated timeline for enrolling individuals in the Rap Back program;**

34 **(d) How the authorized agency will educate and inform individuals about the Rap Back**
35 **program; and**

36 **(e) Projected costs associated with reducing barriers to fingerprinting, including out-of-**
37 **pocket cost to the individual and costs to the authorized agency for additional fingerprinting**
38 **services.**

39 **(4)(a) If an authorized agency subscribes to the Rap Back program, the authorized agency**
40 **must inform an individual subject to a criminal records check about the Rap Back program**
41 **in a form and manner prescribed by the authorized agency. The authorized agency must in-**
42 **clude the following information:**

43 **(A) That employment or licensing by the authorized agency requires that the individual**
44 **be enrolled in the Rap Back program;**

45 *[(C)] (B) That [choosing to participate in the program will allow] the Rap Back program allows*

1 the department to provide information as described in subsection [(4)] (5) of this section; **and**

2 [(D) *The potential consequences of information being provided as described in subsection (4) of this*
3 *section; and*]

4 [(E)] (C) [*The process by which the individual may contest*] **That ORS 181A.230 allows the in-**
5 **dividual to challenge** the accuracy of information **that is** provided as described in subsection [(4)]
6 (5) of this section.

7 (b) Notice provided pursuant to paragraph (a) of this subsection must be provided in a clear and
8 easy to understand manner.

9 [(4)(a) *An individual subject to a criminal records check under ORS 181A.190, 181A.195, 181A.200*
10 *or 267.237 may, but is not required to, participate in the fingerprint retention program.*]

11 [(b) *If an individual participates in the program, then the department, upon receiving forms con-*
12 *taining the person's fingerprints and other identifying information under ORS 181A.160, or as part of*
13 *any other proceeding related to the arrest of the individual, shall provide that information to the au-*
14 *thorized agency, agency or district for which a criminal records check under ORS 181A.190, 181A.195,*
15 *181A.200 or 267.237 for the individual was performed.*]

16 [(5) *At any time, an individual participating in the fingerprint retention program may inform the*
17 *department, in a form and manner prescribed by the department, that the individual is no longer par-*
18 *ticipating in the program. If an individual informs the department that the individual is no longer*
19 *participating in the program, the department shall:*]

20 (5)(a) **If an individual is subject to a criminal records check for employment or licensing**
21 **and the authorized agency subscribes to the Rap Back program, the individual shall be en-**
22 **rolled in the Rap Back program.**

23 (b) **Under the Rap Back program the Department of State Police may receive fingerprints**
24 **of individuals from an authorized agency and submit those fingerprints to the Rap Back**
25 **system to be retained in the Rap Back system for the purposes of being searched by future**
26 **submissions to the Rap Back system, including latent fingerprint searches.**

27 (c) **The Rap Back system provides continuous evaluation of the criminal history status**
28 **of each individual enrolled in the Rap Back system as long as the individual remains in a**
29 **position of trust. If the Rap Back system identifies a new criminal history event for an in-**
30 **dividual enrolled in the Rap Back program, the Federal Bureau of Investigation will send**
31 **notice to the department. Upon receiving notification from the Federal Bureau of Investi-**
32 **gation of a new criminal history event, within or outside of Oregon, for an individual enrolled**
33 **in the Rap Back program, the department shall notify the authorized agency that enrolled**
34 **the individual of the new criminal history event.**

35 (6) **An authorized agency that subscribes to the Rap Back program shall notify the De-**
36 **partment of State Police, in a form and manner prescribed by the department, when an in-**
37 **dividual employed or licensed by the authorized agency and enrolled in the Rap Back program**
38 **is no longer employed or licensed by the authorized agency.**

39 (7) **When the department receives notice that an individual is no longer employed or li-**
40 **censed by an authorized agency, the department shall:**

41 (a) Destroy any **printed and electronic** fingerprint cards and facsimiles of fingerprints that the
42 department has retained for the individual as part of the **Rap Back** program; **and**

43 (b) **Notify the Federal Bureau of Investigation that the individual is no longer employed**
44 **or licensed by the authorized agency and request that the Federal Bureau of Investigation**
45 **destroy any printed and electronic fingerprint cards or facsimiles of fingerprints that the**

1 **Federal Bureau of Investigation has retained for the individual in the Rap Back system.**

2 *[(b) Inform the Federal Bureau of Investigation that the individual is no longer participating in*
3 *the program and direct the Federal Bureau of Investigation to destroy any fingerprint cards or fac-*
4 *similes of fingerprints that the Federal Bureau of Investigation has retained for the individual; and]*

5 *[(c) Notify the authorized agency, agency or district who employs the individual that the individual*
6 *is no longer participating in the program.]*

7 *[(6) An authorized agency, agency or district that subscribes to the fingerprint retention program*
8 *may not require a person to participate in the program as a condition of employment.]*

9 [(7)] **(8)** Information retained by the department under this section is exempt from public dis-
10 closure under ORS 192.311 to 192.478, and the department may not disclose the information for any
11 purpose not authorized by this section **or otherwise required by law.**

12 [(8)] **(9)** The Department of State Police:

13 (a) Shall, in consultation with the Oregon Department of Administrative Services, adopt rules
14 for the administration of this section; and

15 (b) May adopt a fee that an authorized agency, agency or district must pay to subscribe to the
16 **Rap Back** program.

17 **SECTION 2. (1) The amendments to ORS 181A.205 by section 1 of this 2024 Act become**
18 **operative on January 1, 2025.**

19 **(2) To participate in the Rap Back program described in ORS 181A.205, as amended by**
20 **section 1 of this 2024 Act, beginning on January 1, 2025, an authorized agency must subscribe**
21 **to the Rap Back program with the Department of State Police and submit an implementation**
22 **plan meeting the requirements of ORS 181A.205 (3), as amended by section 1 of this 2024 Act,**
23 **to a committee or interim committee of the Legislative Assembly related to the judiciary no**
24 **later than December 31, 2024.**

25 **SECTION 3. This 2024 Act takes effect on the 91st day after the date on which the 2024**
26 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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