

Q & A on OBPE's Proposal to Amend the Background Check Rules

Q: Why is the Board changing the criminal background check rules?

A: The Legislature recently passed two bills related to criminal records checks, HB 3168 (2013) and HB 2250 (2015). This legislation requires all state agencies who conduct fingerprint-based background checks- including OBPE- to implement new statewide uniform fitness determination process and criminal records administrative rules. The Board's proposed rules have been reviewed by legal counsel and the State Chief Human Resources Office for consistency with the State's direction.

Q: Why did the State make this change?

A: The purpose of these and other related changes are to streamline background checks while maintaining safety, and to create uniformity in the fitness determination process. HB 3168 authorized the Department of Administrative Services (DAS) to develop statewide criminal records administrative rules. DAS formed several workgroups in November of 2014 to gather feedback, and held 25 meetings. A public hearing was held on December 15, 2015. The "Statewide Criminal Records Rules" went into effect on January 4, 2016, and can be found in OAR Ch. 125, Div. 007.

Q: Why is so much of the current language of OAR 858-010-0034 deleted?

A: The statutes (ORS 181A.170 and 181A.195) and the statewide rules (OAR Ch. 125, Div. 007) cover the fingerprinting and fitness determination procedures in great detail. There is no need to repeat the statewide information again in the Board's rules. For example, the criteria being stricken from section (5) can be found in ORS 181A.195(10)(d). Also, there is some obsolete language that needs to be removed. For example, section (3) refers to ink card fingerprints being submitted and forwarded to the State Police, when the procedure now per ORS 181A.170 is electronic fingerprint capture and submission.

Q: Is the Board changing WHO will be background checked?

A: No. In 2007-2008 when the Board was reviewing proposed language with stakeholders, there was significant concern expressed by licensees about fingerprinting the entire licensee base. The Board decided at that time to only require background checks for incoming applicants and those under investigation when there is rational reason to believe that the licensee has a history of criminal behavior. This is not changing. Please refer to proposed OAR 858-010-0034(2).

Q: Do the new law and statewide rules change what the Board considers in making a fitness determination for licensure?

A: No. The criteria are nearly identical to the Board's current language, and the Board will still be the entity making the fitness determination. The DAS workgroup determined not to include any automatically disqualifying crimes, but instead to list some crimes which are "likely to result in denial unless there are significant mitigating circumstances," including murder, rape, sodomy, and sexual abuse I (see OAR 125-007-0270). The statewide rules did add greater procedural detail, including how a person may appeal a fitness determination.

Q: Why is the Board saying that a person's license will be denied or revoked if they refuse to be fingerprinted?

A: The Board did not decide this; it is *required* by ORS 181A.195(10).

Resources

- [The Board's Proposed Rules](#) – Filed 9/27/16.
- [Oregon Revised Statute \(ORS\) Chapter 181A](#) - State Police; Crime Reporting and Records; Public Safety Standards and Training; Private Security Services. *See* 181A.170- Electronic fingerprint capture technology required; 181A.195- Criminal records check; authorized agencies; retention of fingerprint cards by FBI and Department of State Police; rules.
- [Oregon Administrative Rule \(OAR\) Chapter 125, Division 007](#) – Criminal Records Checks Rules
- [The Department of Administrative Services – Statewide Criminal Records Checks Webpage](#) – contains updates, contacts, links to related legislative bills.