

The Oregon Administrative Rules contain OARs filed through August 13, 2010

EMPLOYMENT DEPARTMENT, CHILD CARE DIVISION

DIVISION 61

CHILD CARE DIVISION

Central Background Registry

414-061-0000

Purpose

(1) The Child Care Division will conduct criminal records checks and child protective services records checks on subject individuals, as defined in OAR 414-061-0030, for enrollment of subject individuals in the Central Background Registry.

(2) These rules provide guidelines on how CCD obtains criminal records and child protective services records on subject individuals, applies such information to its determination about the suitability of the subject individual, and enrolls approved subject individuals in the Central Background Registry.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0010

Scope of Rules

(1) Consistent with the purposes of these rules, CCD will issue decisions about persons defined as subject individuals as to their suitability to be enrolled in the Central Background Registry and employed in programs defined as "Requesting Agencies" in OAR 414-061-0020(16).

(2) These rules (OAR 414-061-0000 through 414-061-0120) shall be construed and implemented consistent with the regulations governing:

(a) Child care licensing in OAR 414-205-0000 through 414-205-0170, 414-300-0000 through 414-300-0410, and 414-350-0000 through 414-350-0400;

- (b) Pre-kindergarten programs in OAR 581-019-0005 through 581-019-0035;
- (c) Parent-as-teacher programs in OAR 581-019-0050 through 581-019-0080; and
- (d) Early childhood special education and early intervention programs in OAR 581-015-0900 through 581-015-1060.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0020

Definitions

- (1) "Agency Agreement" means the written agreement between the Oregon State Police and the Oregon Child Care Division.
- (2) "CCD" means the Child Care Division of the Employment Department.
- (3) "Child Protective Services Records" means information on child abuse and neglect cases from the Department of Human Services.
- (4) "Computerized Criminal History (CCH) System" means the on-line computer files of significant criminal offender information maintained by the Oregon State Police (OSP).
- (5) "Conditional Enrollment" means temporary approval to be enrolled in the Central Background Registry following an OSP criminal records check and child protective services records check but prior to receipt by the Division of the results of a required FBI criminal records check.
- (6) "Criminal Records" means information, 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) "Early Childhood Care and Education Program" means a regulated child care facility, federally-funded Head Start program, Oregon Department of Education funded pre-kindergarten program, parent-as-teacher program, or early childhood special education/early intervention program.
- (8) "Employee" means any individual caring for, overseeing, or who has or may have access to children, who holds a paid position in a requesting agency.

(9) "Employee of the Child Care Division" means any individual employed by the Child Care Division who works in the child care licensing unit.

(10) "Enrollment" means approval for a two-year period to be enrolled in the Central Background Registry following an OSP criminal records check, child protective services records check and, if required, an FBI records check.

(11) "Fee" means the charges assessed the subject individual for processing each criminal records check and/or fingerprint-based criminal records check.

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

(13) "Fingerprint-Based Criminal Records" means criminal offender information compiled and maintained by the Federal Bureau of Investigation.

(14) "Incident" means the commission of a Category I or Category II crime or a founded child protective services case.

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

(16) "Reciprocal Agreement Program" includes:

(a) A metropolitan service district organized under ORS chapter 268; and

(b) A private agency or organization facilitating the provision of respite services, as defined in OS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.

(16) "Requesting Agency" means a childhood care and education program or individual providing care to children that is:

(a) Regulated by CCD under ORS 657A.280 or 657A.330; or

(b) An early childhood care and education program.

(17) "Unsupervised Contact with Children" means contact with children that provides the person opportunity for personal communication or touch when not under the direct supervision of a child care provider or employee.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0030

Subject Individuals

(1) For purposes of criminal records checks, including fingerprint-based criminal records checks, and child protective services records checks, "Subject Individual" means a person who wishes to seek employment as:

(a) The owner, operator or an employee or volunteer of a certified, registered or otherwise regulated facility caring for children that is subject to the jurisdiction of the Child Care Division of the Employment Department;

(b) The operator or an employee of an Oregon pre-kindergarten program or parent-as-teacher program under ORS 329.170 to 329.200;

(c) The operator or an employee of a federal Head Start Program regulated by the United States Department of Health and Human Services;

(d) An employee of the Child Care Division of the Employment Department;

(e) A contractor or an employee of the contractor who provides early childhood special education or early intervention services pursuant to ORS 343.455 to 343.534; or

(f) A child care provider who is required to be enrolled in the Central Background Registry by any state agency.

(g) A designated contractor, employee or volunteer of a Metro Service District.

(h) A provider of respite services as defined in ORS 418.205 for parents pursuant to a properly executed power of attorney under ORS 109.056.

(2) An individual in any of the above facilities or programs who may have unsupervised contact with children is also a subject individual.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0040

Limitations of Inquiries

(1) Only CCD employees who have been fingerprinted and cleared by the Oregon State Police shall access or have access to criminal records information pursuant to a valid agency agreement,

as defined in OAR 414-061-0020(1). 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 records information (OAR 257-015-0000 to 257-015-0100). It is the responsibility of CCD to assure strict compliance with federal and state laws, rules, and procedures regarding, access, dissemination, maintenance, and destruction of criminal records information.

(2) Criminal records 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 records information, including fingerprint-based criminal records information, and child protective services information shall be obtained by CCD to determine whether a subject individual has been convicted of a crime or has a founded child protective services record which is related to enrollment in the Central Background Registry.

(4) If a subject individual has been convicted of a crime which is related to enrollment in the Central Background Registry, the subject individual will be notified by CCD that he or she:

(a) Has a right to inspect and challenge the accuracy of his/her Oregon criminal records by contacting the Oregon State Police;

(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 inspect his/her own OSP record, but not his/her FBI record, by requesting the opportunity from CCD in writing.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0050

History to be Considered

(1) CCD 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 of children. Conviction of crimes listed in Category I of this rule shall disqualify a subject individual from being enrolled in the Central Background Registry, unless the subject individual provides sufficient evidence of suitability as described in section (6) of this rule.

(a) The crimes in Category I include:

- (A) 162.165 Escape I;
- (B) 162.185 Supplying Contraband;
- (C) 163.095 Aggravated Murder;
- (D) 163.115 Murder;
- (E) 163.118 Manslaughter I;
- (F) 163.125 Manslaughter II;
- (G) 163.145 Criminally Negligent Homicide;
- (H) 163.165 Assault III;
- (I) 163.175 Assault II;
- (J) 163.185 Assault I;
- (K) 163.200 Criminal Mistreatment II;
- (L) 163.205 Criminal Mistreatment I;
- (M) 163.225 Kidnapping II;
- (N) 163.235 Kidnapping I;
- (P) 163.275 Coercion;
- (Q) 163.355 Rape III;
- (R) 163.365 Rape II;
- (S) 163.375 Rape I;
- (T) 163.385 Sodomy III;
- (U) 163.395 Sodomy II;
- (V) 163.405 Sodomy I;
- (W) 163.408 Unlawful Sexual Penetration II;
- (X) 163.411 Unlawful Sexual Penetration I;

(Y) 163.415 Sexual Abuse III;

(Z) 163.425 Sexual Abuse II;

(AA) 163.427 Sexual Abuse I;

(BB) 163.435 Contributing to Sexual Delinquency of Minor;

(CC) 163.445 Sexual Misconduct;

(DD) 163.515 Bigamy;

(EE) 163.525 Incest;

(FF) 163.535 Abandonment of a Child;

(GG) 163.545 Child Neglect II;

(HH) 163.547 Child Neglect I;

(II) 163.555 Criminal Nonsupport;

(JJ) 163.575 Endangering the Welfare of a Minor;

(KK) 163.670 Using Child in Display of Sexually Explicit Conduct;

(LL) 163.684 Encouraging Child Sexual Abuse I;

(MM) 163.685 Encouraging Child Sexual Abuse II;

(NN) 163.686 Encouraging Child Sexual Abuse III;

(OO) 163.688 Possession of Materials Depicting Sexually Explicit Conduct of a Child I;

(PP) 163.689 Possession of Materials Depicting Sexually Explicit Conduct of a Child II;

(QQ) 163.693 Failure to Report Child Pornography;

(RR) 163.732 Stalking;

(SS) 164.075 Theft by Extortion;

(TT) 164.225 Burglary I;

(UU) 164.325 Arson I;

(VV) 164.395 Robbery III;

(WW) 164.405 Robbery II;

(XX) 164.415 Robbery I;

(YY) 166.085 Abuse of Corpse II;

(ZZ) 166.087 Abuse of Corpse I;

(AAA) 166.155 Intimidation II;

(BBB) 166.165 Intimidation I;

(CCC) 166.220 Unlawful Use of a Weapon;

(DDD) 166.270 Possession of Weapons by Certain Felons;

(EEE) 166.272 Unlawful Possession of Machine Guns, Certain Short Barreled Firearms and Firearms Silencers;

(FFF) 166.275 Possession of Weapons by Inmates of institutions;

(GGG) 166.382 Possession of Destructive Device;

(HHH) 166.384 Unlawful Manufacture of Destructive Device;

(III) 166.429 Firearms Used in Felony;

(JJJ) 166.660 Unlawful Paramilitary Activity;

(KKK) 166.720 Racketeering Activity;

(LLL) 167.012 Promoting Prostitution;

(MMM) 167.017 Compelling Prostitution;

(NNN) 167.062 Sadomasochistic Abuse or Sexual Conduct in Live Show;

(OOO) 167.065 Furnishing Obscene Materials to Minors;

(PPP) 167.070 Sending Obscene Materials to Minors;

(QQQ) 167.075 Exhibiting an Obscene Performance to a Minor;

(RRR) 167.080 Displaying Obscene Materials to Minors;

(SSS) 167.087 Disseminating Obscene Material;

(TTT) 167.090 Publicly Displaying Nudity or Sex for Advertising Purposes;

(UUU) 167.212 Tampering with Drug Records;

(VVV) 167.262 Adult Using Minor in Commission of Controlled Substance Offense; or

(WWW) 181.599 Failure to Report as Sex Offender.

(b) CCD will consider the following crimes if they were committed 15 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Assault III; Bigamy; Burglary I; Coercion; Contributing to Sexual Delinquency of Minor; Criminal Mistreatment II; Criminal Nonsupport; Kidnapping II; Possession of Weapons by Certain Felons; Racketeering Activity; Rape III; Robbery II; Robbery III; Sexual Misconduct; Stalking; Supplying Contraband; and Unlawful Use of a Weapon.

(c) CCD will consider the following crimes if they were committed 20 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Abuse of a Corpse I; Abuse of a Corpse II; Adult Using Minor in Commission of Controlled Substance Offense; Arson I; Assault I; Assault II; Compelling Prostitution; Criminal Mistreatment I; Criminally Negligent Homicide; Disseminating Obscene Material; Escape I; Failure to Report Child Pornography; Failure to Report as Sex Offender; Firearms Used in Felony; Incest; Intimidation I; Intimidation II; Kidnapping I; Manslaughter I; Manslaughter II; Possession of Destructive Device; Possession of Weapons by Inmates of Institutions; Promoting Prostitution; Publicly Displaying Nudity or Sex for Advertising Purposes; Robbery I; Sadomasochistic Abuse or Sexual Conduct in Live Show; Tampering with Drug Records; Theft by Extortion; Unlawful Manufacture of Destructive Device; Unlawful Paramilitary Activity; and Unlawful Possession of Machine Guns, Certain Short Barreled Firearms and Firearms Silencers.

(d) CCD will consider the following crimes regardless of the length of time since they were committed: Abandonment of a Child; Aggravated Murder; Child Neglect I; Child Neglect II; Displaying Obscene Materials to Minors; Encouraging Child Sexual Abuse I; Encouraging Child Sexual Abuse II; Encouraging Child Sexual Abuse III; Endangering the Welfare of a Minor; Exhibiting an Obscene Performance to a Minor; Furnishing Obscene Materials to Minors; Murder; Possession of Materials Depicting Sexually Explicit Conduct of a Child I; Possession of Materials Depicting Sexually Explicit Conduct of a Child II; Rape I; Rape II; Sending Obscene Materials to Minors; Sexual Abuse I; Sexual Abuse II; Sexual Abuse III; Unlawful Sexual Penetration I; Unlawful Sexual Penetration II; Sodomy I; Sodomy II; Sodomy III; and Using Child in Display of Sexually Explicit Conduct.

(e) These rules also apply to:

(A) A conviction of a crime in another jurisdiction which is the substantial equivalent of a crime listed in Category I;

(B) An adjudication by a juvenile court that a youth has committed an act that is the substantial equivalent of a crime listed in Category I; and

(C) Any attempts or solicitations to commit any Felony or Misdemeanor crime listed in Category I.

(f) 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) CCD has further determined that felonies and misdemeanors involving theft, fraud, or deception, crimes against the state and public justice, and major traffic violations may substantially jeopardize the safety of children and are inconsistent with any position of unsupervised contact with children or otherwise vulnerable persons. If any subject individual was convicted of a crime listed in Category II of this rule, CCD will seek to obtain and review information on all intervening circumstances and other background information related to criminal activity, subject to section (6) of this rule. Based on this information, the Division will make a decision whether or not to enroll the subject individual in the Central Background Registry.

(a) The crimes in Category II include:

(A) 162.025 Bribe Receiving;

(B) 162.065 Perjury;

(C) 162.155 Escape II;

(D) 162.205 Failure to Appear I;

(E) 162.235 Obstructing Governmental or Judicial Administration;

(F) 162.265 Bribing a Witness;

(G) 162.275 Bribe Receiving by a Witness;

(H) 162.285 Tampering with a Witness;

(I) 162.305 Tampering with Public Records;

(J) 162.325 Hindering Prosecution;

(K) 162.405 Official Misconduct II;

(L) 162.415 Official Misconduct I;

(M) 163.160 Assault IV;

(N) 163.190 Menacing;

(O) 163.195 Recklessly Endangering Another Person;

(P) 163.208 Assault on a Public Safety Officer;

(Q) 163.465 Public Indecency;

(R) 163.700 Invasion of Personal Privacy;

(S) 164.055 Theft I;

(T) 164.057 Aggravated Theft I;

(U) 164.215 Burglary II;

(V) 164.315 Arson II;

(W) 164.365 Criminal Mischief I;

(X) 165.013 Forgery I;

(Y) 165.022 Criminal Possession of a Forged Instrument I;

(Z) 165.032 Criminal Possession of a Forgery Device;

(AA) 165.055 Fraudulent Use of a Credit Card (over \$750);

(BB) 165.070 Possessing Fraudulent Communications Device;

(CC) 165.074 Unlawful Factoring of Credit Card Transaction;

(DD) 165.085 Sports Bribery;

(EE) 165.090 Sports Bribe Receiving;

(FF) 166.015 Riot;

(GG) 166.065 Harassment;

(HH) 166.090 Telephone Harassment;

(II) 166.190 Pointing Firearm at Another;

(JJ) 166.240 Carrying of Concealed Weapons;

(KK) 166.250 Unlawful Possession of Firearms;

(LL) 167.007 Prostitution;

(MM) 167.222 Frequenting a Place Where Controlled Substances are Used;

(NN) 167.320 Animal Abuse I;

(OO) 167.322 Aggravated Animal Abuse I;

(PP) 167.330 Animal Neglect I;

(QQ) 411.630 Unlawfully Obtaining Public Assistance;

(RR) 411.675 Submitting Wrongful Claim or Payment Prohibited;

(SS) 411.840 Unlawfully Obtaining or Disposing of Food Stamp Benefits;

(TT) 471.410 Providing Liquor to Person under 21 or to Intoxicated Person;

(UU) 475.992 Prohibited Acts Generally; Penalties; Affirmative Defense for Certain Peyote Uses (controlled substance offenses);

(VV) 475.993 Prohibited Acts for Registrants; Penalties;

(WW) 475.994 Prohibited Acts Involving Records and Fraud; Penalties;

(XX) 475.995 Penalties for Distribution to Minors;

(YY) 475.996 Crime Category Classification for Violation of ORS 475.992; Proof of Commercial Drug Offense;

(ZZ) 475.999 Penalty for Manufacture or Delivery of Controlled Substance within 1,000 feet of School;

(AAA) 811.140 Reckless Driving;

(BBB) 811.182 Criminal Driving while Suspended or Revoked;

(CCC) 811.540 Fleeing or Attempting to Elude Police Officer;

(DDD) 811.700 Failure to Perform Duties of Driver When Property Damaged (hit and run, property);

(EEE) 811.705 Failure to Perform Duties of Driver to Injured Persons (hit and run, injury); or

(FFF) 813.010 Driving Under the Influence of Intoxicants.

(b) CCD will consider the following crimes if they were committed 5 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Bribe Receiving; Bribe Receiving by a Witness; Bribing a Witness; Criminal Driving while Suspended or Revoked; Criminal Possession of a Forged Instrument I; Criminal Possession of Forgery Device; Failure to Appear I; Forgery I; Fraudulent use of a Credit Card (over \$750); Hindering Prosecution; Failure to Perform Duties of Driver to Injured Persons (hit and run, injury); Failure to Perform Duties of Driver When Property Damaged (hit and run, property); Obstructing Governmental or Judicial Administration; Criminal Driving while Suspended or Revoked; Official Misconduct I; Official Misconduct II; Perjury; Possessing Fraudulent Communications Device; Reckless Driving; Sports Bribe Receiving; Sports Bribery; Submitting Wrongful Claim or Payment Prohibited; Tampering with a Witness; Tampering with Public Records; Unlawful Factoring of Credit Card Transaction; Unlawfully Obtaining or Disposing of Food Stamp Benefits; Unlawfully Obtaining Public Assistance.

(c) CCD will consider the following crimes if they were committed 7 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Aggravated Animal Abuse I; Animal Abuse I; Animal Neglect I; Assault IV; Carrying of Concealed Weapons; Criminal Mischief I; Driving under the Influence of Intoxicants; Fleeing or Attempting to Elude Police Officer; Harassment; Menacing; Recklessly Endangering Another Person; Telephone Harassment; Theft I; and Unlawful Possession of Firearms.

(d) CCD will consider the following crimes if they were committed 10 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Aggravated Theft I; Arson II; Assault on a Public Safety Officer; Burglary II; Escape II; Invasion of Personal Privacy; Pointing Firearm at Another; Providing Liquor to Person Under 21 or to Intoxicated Person; Public Indecency; and Riot.

(e) CCD will consider the following crimes if they were committed 15 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Crime Category Classification for Violation of ORS 475.992/Proof of Commercial Drug Offense; Frequenting a Place Where Controlled Substances are Used; Prohibited Acts for Registrants; penalties; [(C)] Prohibited Acts Generally; Penalties; Affirmative Defense for Certain Peyote Uses (controlled substance offenses); [(D)] Prohibited Acts involving Records and Frauds; Penalties; and [(E)] Prostitution.

(f) CCD will consider the following crimes if they were committed 20 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Penalties for Distribution to Minors; and Penalty for Manufacture or Delivery of Controlled Substance within 1,000 feet of School.

(g) These rules also apply to:

(A) A conviction of a crime in another jurisdiction which is the substantial equivalent of a crime listed in Category II;

(B) An adjudication by a juvenile court that a youth has committed an act that is the substantial equivalent of a crime listed in Category II; and

(C) Any attempts or solicitations to commit any Felony or Misdemeanor crime listed in Category II.

(h) 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.

(3) CCD has determined that founded child protective services cases and firearm prohibition orders may substantially jeopardize the safety of children and are inconsistent with any position of unsupervised contact with children or otherwise vulnerable persons. If any subject individual has a founded child protective services case or active firearm prohibition order, CCD will seek to obtain and review information related to the case, subject to section (6) of this rule. Based on this information, the Division will make a decision whether or not to enroll the subject individual in the Central Background Registry.

(4) If CCD determines that additional information is needed to assess a person's suitability to be enrolled in the Central Background Registry, the subject individual shall provide the requested information within the required timeframes. The additional information may include, but is not limited to, an evaluation or assessment by a physician, counselor or other qualified person, documents to determine positive identification of the subject individual, and court documents.

(5) If a subject individual is in a diversion program or similar agreement for any Category I or Category II crime, the subject individual must provide written documentation of compliance with the terms of diversion or similar agreement. Based on this information, the Division will make a decision whether or not to enroll the subject individual in the Central Background Registry.

(6) Factors to be considered in determining suitability, based on information available to CCD and information provided by the subject individual, include:

(a) Types and number of incidences;

(b) Passage of time since the incident occurred;

(c) Circumstances surrounding the incident;

(d) Intervening circumstances since the occurrence of the incident; and

(e) Relationship of the facts under subsections (a) through (d) of this section to the individual's suitability to work with children.

(7) CCD will not bar from enrollment in the Central Background Registry any subject individual because of the existence or contents of a juvenile record that has been expunged by the court.

[ED. NOTE: Table referenced are available from the agency.]

Stat. Auth.: ORS 657A.030

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 3-2004, f. 7-30-04 cert. ef. 8-1-04; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0060

Requirements of Requesting Agencies

Requesting agencies, as defined in OAR 414-061-0020(16), must comply with the following requirements:

(1) A requesting agency's application forms must contain a notice that employees and other persons who are subject individuals must be enrolled in the Central Background Registry and that employment is subject to fingerprinting and criminal records checks.

(2) A requesting agency may hire a subject individual on a probationary basis if the subject individual is conditionally enrolled in the Central Background Registry. A requesting agency may hire a subject individual on a permanent basis if the subject individual is enrolled in the Central Background Registry.

(3) A requesting agency shall not hire or continue to employ on a probationary or permanent basis an individual if the individual is not enrolled in the Central Background Registry or has been removed from the Central Background Registry and has not been re-enrolled.

(4) A requesting agency may allow a subject individual who is not yet enrolled or conditionally enrolled in the Central Background Registry to participate in training, orientation and work activities if the training, orientation and work activities are at a location other than the child care facility or are conducted at the facility when children are not present and the subject individual is not in contact with any children.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD

1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0065

Requirements for Reciprocal Agreement Programs

A reciprocal agreement program must enter into a reciprocal agreement with the Child Care Division that provides for sharing information on enrollment status of the individuals described in OAR 414-061-0020 (1)(g) and (h) respectively, and for the recovery of administrative, including direct and indirect costs incurred by the division from the participation in the agreement.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist. : CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0070

Procedures for Conducting Oregon State Police Criminal Records Checks and Department of Human Services Child Protective Services Record Checks

(1) Subject individuals shall consent to a criminal records check of the Oregon State Police Computerized Criminal History (CCH) System and a child protective services check at the time they request enrollment in the Central Background Registry.

(2) Central Background Registry enrollment forms shall contain notice that criminal records checks will be conducted as required by ORS 181.537 and 657A.030. The form shall also contain notice that child protective services checks will be conducted.

(3) Subject individuals shall provide all information required for a criminal records check and a child protective services check. Information includes:

(a) A properly completed and signed form CCD 199, Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry;

(b) For a subject individual who acknowledges a prior conviction of a criminal offense, as listed in OAR 414-061-0050, an explanation of the relationship of the facts which support the conviction and all intervening circumstances. On request of CCD, the subject individual must authorize CCD to verify information provided by the individual; and

(c) On the application for enrollment in the Central Background Registry, CCD may request subject individuals to consent to the use of their social security numbers for criminal and child protective services records checks, for identifying enrollees in the Central Background Registry, for sharing information with other agencies to verify child care licensing status for child care payments, and for compiling statistical information for program planning and evaluation.

(4) CCD will review the criminal records information, child protective services information, and any additional information and will determine whether or not a subject individual may be enrolled in the Central Background Registry.

(5) Fees for each name checked through OSP CCH and child protective services systems are as follows:

(a) No charge for CCD employees; and

(b) All other requests for criminal record checks and child protective services checks and enrollment in the Central Background Registry will cost \$3 per person.

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2006(Temp), f. & cert. ef. 3-16-06 thru 9-12-06; CCD 4-2006, f. 7-13-06, cert. ef. 7-14-06; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0080

Procedures for Conducting FBI Criminal History Checks

(1) An FBI criminal records check will be done on a subject individual whose OSP CCH record shows multi-state offender status, who has lived in Oregon less than 18 months or when CCD has information that the individual has committed a crime in another state.

(2) The subject individual shall supply to CCD the following information:

(a) One properly completed FBI fingerprint card, with printing in the "reason fingerprinted" block which reads "ORS 181.537/NCPA/VCA Child Care";

(b) Properly completed form CCD 199, Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry; and

(c) For a subject individual who acknowledges a prior conviction, as listed in OAR 414-061-0050, an explanation of the relationship of the facts which support the conviction and all intervening circumstances. On request of CCD, the subject individual must authorize CCD to verify information provided under this rule.

(3) As part of the consent to a criminal records check, CCD may request the subject individual to consent to the use of his/her social security number in conducting the check.

(4) CCD will review the criminal records information and any additional information and will determine whether or not a subject individual may be enrolled in the Central Background Registry.

(5) CCD will charge the subject individual \$62 for an FBI records check, to be paid at the time of the request.

[ED. NOTE: Forms referenced are available from the agency.]

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414-061-0090

CCD Enrollment Procedures

(1) A subject individual shall be enrolled in the Central Background Registry if CCD has determined that the individual:

(a) Has provided all information and/or documents requested by CCD;

(b) Has no criminal or child protective services history or has dealt with the issues and provided adequate evidence of suitability;

(c) Has paid the applicable fee; and

(d) Has complied with the rules of CCD adopted pursuant to the Central Background Registry (OAR 414-061-0000 through 414-061-0120).

(2) Enrollment in the Central Background Registry shall expire two years from the date of enrollment, unless rescinded sooner, and may be renewed upon application to CCD, payment of the required fee and compliance with the rules adopted by CCD pursuant to the Central Background Registry (OAR 414-061-0000 through 414-061-0120).

(3) A subject individual who has been enrolled in the Central Background Registry will be notified by CCD of his or her enrollment and the enrollment dates. Such notification will not be sufficient evidence of enrollment for employment by a requesting agency.

(4) A subject individual may be conditionally enrolled in the Central Background Registry pending the results of an FBI criminal records check if the individual has been determined to be suitable based on OSP criminal records information and child protective services information.

(a) A conditionally enrolled subject individual who has been determined to be suitable based on FBI criminal records information shall be enrolled in the Central Background Registry.

(b) The two-year enrollment period will include the time the subject individual was conditionally enrolled.

(c) A conditionally enrolled subject individual who has been determined not to be suitable based on FBI criminal records information shall be removed from the Central Background Registry, according to the provisions of OAR 414-061-0110.

(d) A conditional enrollment will expire if the subject individual has not been enrolled in the Registry within one year of the conditional enrollment.

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Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0100

CCD Denial Procedures

(1) A subject individual shall be denied enrollment in the Central Background Registry if the individual:

(a) Has been determined not suitable;

(b) Has failed to submit requested information or documentation;

(c) Has been charged with, arrested for, or a warrant is out for a Category I or Category II crime with final disposition not yet reached;

(d) Has an open child protective services or law enforcement case with final disposition not yet reached; or

(e) Is in a diversion program or similar agreement and has failed to provide written documentation of compliance with the terms of diversion or the agreement.

(2) A subject individual may appeal CCD's determination not to enroll the subject individual in the Central Background Registry, pursuant to OAR 414-061-0120.

(3) A subject individual who has been denied enrollment in the Central Background Registry due to a determination of unsuitability shall not be eligible for enrollment in the Registry for 3 years from the date of denial.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 5-2004, f. & cert. ef. 11-16-04; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0110

Removal and Suspension Procedures

(1) An individual enrolled in the Central Background Registry shall be removed or suspended from the Registry by CCD if, during the period of enrollment, the individual;

(a) Has been determined not suitable for enrollment in the Registry;

(b) Has failed to submit requested information or documentation;

(c) Has been charged with, arrested for, or a warrant is out for a Category I or Category II crime with final disposition not yet reached;

(d) Has a founded child protective services case or an open child protective services or law enforcement case with final disposition not yet reached; or

(e) Is in a diversion program or similar agreement and has failed to provide written documentation of compliance with the terms of diversion or the agreement.

(2) CCD may immediately, and without prior hearing, remove or suspend a subject individual from the Central Background Registry when, in the opinion of CCD, such action is necessary to protect children from physical or mental abuse or a substantial threat to health and safety. Such action may be taken before an investigation is completed.

(3) CCD may reinstate a subject individual in the Central Background Registry if the condition(s) that resulted in the suspension is corrected.

(4) When a subject individual is removed or suspended from the Central Background Registry, CCD will notify the subject individual and the requesting agencies which have inquired about the subject individual's enrollment of the removal or suspension.

(5) A subject individual who has been removed from the Central Background Registry and has not subsequently been re-enrolled shall not be eligible for enrollment in the Registry for 3 years from the date of removal.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD

5-2004, f. & cert. ef. 11-16-04; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0120

Rights for Review and Contested Case Hearings

(1) CCD shall conduct contested case hearings per ORS 183.413 to 183.470 and afford subject individuals the right to appeal a decision made by CCD that the subject individual may not be enrolled in or has been removed from the Central Background Registry. Subject individuals must notify CCD of their request for a contested case hearing not later than 14 calendar days from the date of service of the denial or removal notice.

(2) CCD has no jurisdiction in a contested case hearing over allegations that the criminal records information received from OSP or the FBI or child protective services information received from the Department of Human Services is inaccurate, incomplete or maintained in violation of any federal or state law. Therefore, a contested case hearing cannot be held by CCD for that purpose. Challenges to the accuracy or completeness of the information provided by the Department of State Police, the FBI and agencies reporting information to CCD must be made through those departments, bureaus or agencies and not through the contested case process.

(3) CCD is entitled to rely on the criminal records information supplied by OSP or the FBI or child protective services information supplied by the Department of Human Services until OSP, the FBI, or the Department of Human Services notifies CCD that information has been changed or corrected in a manner that would alter the CCD decision. If a subject individual has requested a contested case hearing, CCD 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 will not be open to the public unless requested by the subject individual.

(5) A subject individual who is also an employee of the licensing unit of the Child Care Division and who is determined unsuitable for enrollment in the Central Background Registry may appeal the determination through either the contested case process or applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a determination through personnel rules, policies and collective bargaining provisions shall constitute an election of remedies as to the rights of the subject individual with respect to the disqualification determination and shall constitute waiver of the contested case process.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

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