

Agenda Item Summary

BACKGROUND

The 2005 Oregon Legislative Assembly enacted HB 2157, which authorizes the Oregon Department of Fish and Wildlife (Department) to conduct criminal history checks, including finger-print based criminal history checks through the FBI consistent with requirements under federal law, for screening of persons who are employed by or applying for employment with the agency or those that provide services or seek to provide services to the agency as a contractor or volunteer.

HB 2157, subsequently incorporated into law as **ORS 181.534 and ORS 496.121**, states that ODFW may conduct a criminal history check on an individual using either Law Enforcement Data System (LEDS) or fingerprints because that person:

- (1)(a) Is employed or applying for employment by the department; or*
- (b) Provides services or seeks to provide services to the department as a contractor or volunteer; and*
- (2) Is, or will be, working or providing services in a position;*
 - (a) In which the person has direct access to persons under 18 years of age, elderly persons or persons with disabilities;*
 - (b) That has personnel or human resources functions as one of the position's primary responsibilities;*
 - (c) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems; or*
 - (d) That involves the use, possession, issuance, transport, purchase, sale or forfeiture of firearms or munitions, access to firearms or munitions or the training of others in the use or handling of firearms.*

The Department has historically relied on the Oregon State Police to facilitate fingerprint based criminal history checks of applicants and employees for positions, which require the use, and/or possession of firearms. The rules herein proposed are required to comply with the legislative directive to adopt rules in order for the Department to conduct LEDS-based and fingerprint-based criminal history checks on applicants and employees, contractors, and volunteers who provide services or will be employed in positions in the agency with access to or control of sensitive information. With increasing concerns over identity theft and systems security, agencies must take appropriate steps to protect sensitive information, business functions, and information systems. With the mobility of today's workforce, the ability to obtain criminal history checks would provide additional protection of sensitive information, business functions, and information systems.

The 2005 Legislative Assembly had extensive discussions of the policy and other implications of HB 2157 (2005). The Department followed and participated in that discussion. The Department consulted with the Oregon State Police on the proposed rules. The rules herein proposed were derived in part from sample rules created after the 2005 legislative session

in collaboration with the Oregon Department of Administrative Services, Human Resources Services Division. Additional advisory review in the final drafting of these proposed rules was provided by the Department of Justice, Labor & Employment Section.

The proposed rules permit a person to request a hearing to challenge a fitness determination.

PUBLIC INVOLVEMENT

A series of legislative hearings were held on HB 2157. Additionally, the proposed rules have been sent to all of the publics listed on the Commission packet mail out list within the Director's office. The proposed rules are also posted on the department's website.

ISSUE

Whether to Adopt the Proposed Rules

ANALYSIS

The proposed rules are consistent with the requirements of HB 2157 and will provide the department with flexibility to use the most cost effective methods for conducting criminal history checks when warranted.

OPTIONS

1. Adopt the rules as proposed
2. Adopt the rules in some amended form

STAFF RECOMMENDATION

Option 1.

DRAFT MOTION

I move to adopt OAR Chapter 635 Division 600 as proposed in attachment 3.

EFFECTIVE DATE

Upon Filing.