



# Secretary of State Oregon Audits Division



Oregon Department of Education, Oregon Department of Human  
Services, and Oregon State Police

## **Oregon Should Improve Child Safety by Strengthening Child Care Background Checks and the State's Sex Offender Registry**

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Secretary of State **Bev Clarno**  
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# Executive Summary

## Why This Audit is Important

» Oregon has incidents of child abuse and neglect by child care providers. Comprehensive background checks and high standards for child care providers can help ensure the safety of children in child care.

» The Oregon Department of Education's Office of Child Care (OCC) licenses and regulates over 3,600 child care facilities and providers and maintains a central background registry.

» The Oregon Department of Human Services' Background Check Unit (BCU) screens the backgrounds of about 4,500 providers caring for children in the Employment-Related Day Care subsidy program.

» OCC and BCU are subject to the federal Child Care and Development Block Grant Act that, when reauthorized in 2014, set many new background check and fingerprint requirements for child care providers and staff.

## Oregon Departments of Education, Human Services, and State Police Oregon Should Improve Child Safety by Strengthening Child Care Background Checks and the State's Sex Offender Registry

### What We Found

1. Background checks for state-approved child care providers include an in-depth fitness determination that considers both child safety and employment rights. Audit work found the vast majority of child care providers have no criminal convictions. However, OCC and BCU have approved some who committed concerning crimes, child abuse or neglect, or have patterns of criminal convictions or abuse allegations after concluding these did not create risk to children. ([pg. 12](#))
2. Oregon rules provide little guidance on which criminal backgrounds are permissible for providers. OCC and BCU have varying interpretations and inconsistencies in screening child care providers and do not consider some convictions automatically disqualifying, even when the state has deemed it so for other professions involving children. ([pg. 16](#))
3. OCC and BCU have information and data system limitations preventing them from having complete information, including information on abuse and neglect and background checks for preschool and school-age programs. Also, regulatory agencies could better coordinate and proactively share pertinent information they collect to help ensure the ongoing safety of children in child care settings. ([pg. 22](#))
4. Registered sex offenders are federally disqualified from being a regulated child care provider or staff. Inaccurate and incomplete information, delays with notification, and limitations to the state's public sex offender registry site diminish the accuracy and thoroughness of background checks. ([pg. 24](#))

### What We Recommend

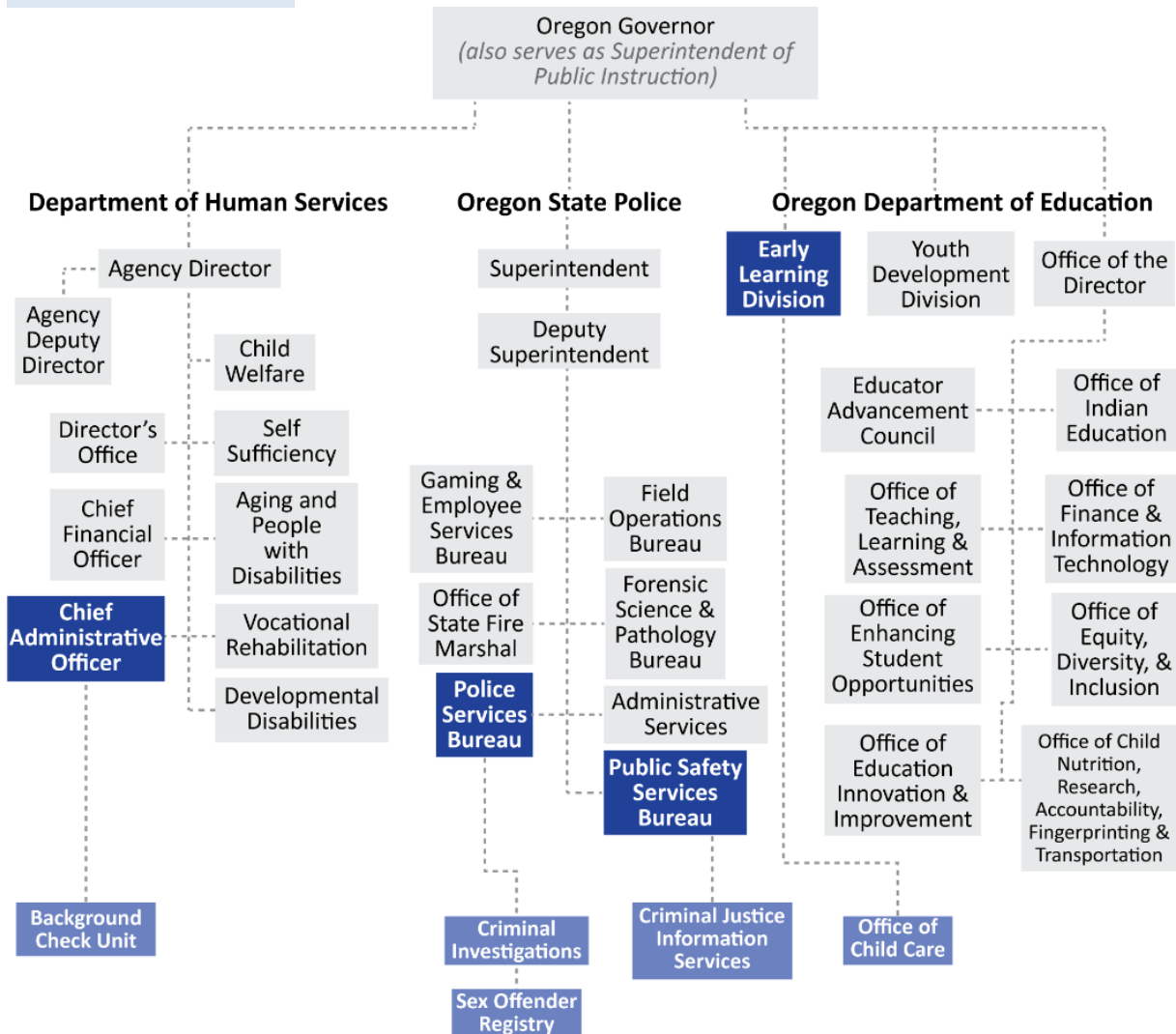
We made eight recommendations in total to OCC, BCU, and the Oregon State Police (OSP) to improve child care provider background checks and the safety of children in child care settings. OCC and OSP agreed with all their applicable recommendations. DHS, with the exception of partially agreeing to one recommendation, agreed with their applicable recommendations. Their responses can be found at the end of the report.

# Introduction

**“Three out of four children** will be in paid day care before entering kindergarten.”

- ODE 2017-19 Agency Request Budget

Child care plays a critical role in child development and allows parents to maintain employment. Parents rely on child care providers to care for and protect their children. Yet Oregon has seen disturbing instances of child abuse, neglect, and death in child care settings. Cases of child abuse and neglect, and even deaths associated with child care providers, have raised concerns with how the state regulates and oversees child care providers.



This audit resulted from a request from the Governor’s Office for us to examine statewide child care investigation coordination risks and challenges. Newly expanded federal background check requirements for child care providers and all other persons with unsupervised access to children in child care, along with a 2018 state statute and governor directive, dramatically expanded Oregon’s child care background check requirements. Conducting these background checks involves three state agencies: the Oregon Department of Human Services (DHS), Oregon Department of Education (ODE), and Oregon State Police (OSP). The purpose of this audit was to assess how well Oregon is meeting these requirements.



## Oregon families have challenges finding and affording child care and have to be mindful about provider safety

In Oregon, the vast majority of parents work and have a need for high-quality child care that is accessible, affordable, and most importantly, safe. Although various child care options are available to parents, the cost and limited availability of child care throughout the state limits the viability of some of these options for many families. Some providers are not licensed or regulated by the state, meaning it is up to parents to exercise due diligence when selecting a provider. In contrast, for providers under the purview of regulatory agencies, such as DHS and ODE, parents should be able to trust background checks and the licensing process to help ensure the safety of their children.

### ***Oregon families face challenges with access and affordability***

#### **Oregon has child care deserts**

On average, Oregon has at least eight infants and toddlers for a single child care slot, and there are at least three preschool-age children for a single child care slot in 25 counties.

- 2019 Oregon State University study

Oregon families, especially those with young children, struggle to find child care due to an inadequate supply. Providers, depending on the type of child care they provide, have a finite number of openings, or slots, they can offer. A recent Oregon State University study concluded that most Oregon families with children age five and under, and all families with an infant or toddler, live in a child care desert.<sup>1</sup> A child care desert is a community with more than three children for every single licensed child care slot. The study found, on average, all 36 Oregon counties had at least

eight infants and toddlers for each child care slot available to those age groups, and 25 counties on average had three preschool-age children for every child care slot available to that age group.

Child care is also expensive. In recent years, Oregon has ranked in the top 10 of least affordable states for infant, toddler, and 4-year-old care. The average annual price for care was over \$13,500 for an infant and over \$12,600 for a toddler in an Oregon-licensed care center.<sup>2</sup> This is more than a year's tuition for a resident undergraduate attending any Oregon public university in 2018-19.<sup>3</sup>

Although the Employment-Related Day Care program helps low income families offset the cost of child care so they can maintain employment, Oregon still has among the highest parent co-pays in the nation, which can leave low-income families spending as much as 30% of their income on child care. Additionally, the program only serves 16% of eligible families.

Oregon passed legislation in 2019 that created the Access to Quality Affordable Child Care task force and charged it with developing recommendations to improve access and affordability of child care by September 15, 2020.

#### **The average cost of child care is not affordable**

Affordable child care, according to the U.S. Department of Health and Human Services should be no more than **7%** of a family's income.

The national average price of child care for one child is around \$9,000 to \$9,600 per year, which is **11%** of a married couple's income and **36%** of a single parent's income.

<sup>1</sup> Oregon's Child Care Deserts: Mapping Supply by Age Group, Metropolitan Status, and Percentage of Publicly Funded Slot, 2019 Oregon Child Care Research Partnership, Oregon State University.

<sup>2</sup> The US and the High Cost of Child Care: A Review of Prices and Proposed Solutions for a Broken System, 2018, Child Aware of America.

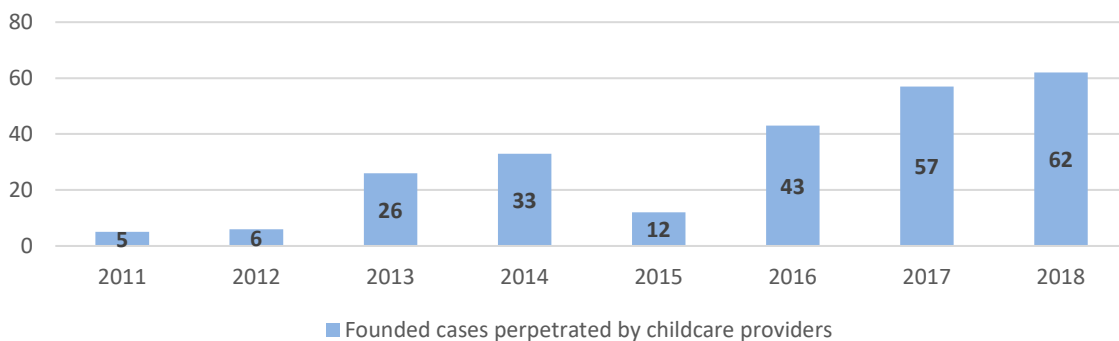
<sup>3</sup> The highest Oregon public university tuition was under \$12,000 and this included fall, winter, spring, and summer terms.

## ***Oregon continues to see maltreatment of children in child care settings***

In addition to the challenge of finding and paying for child care, parents have to be careful about the safety of their children. Unfortunately, children are vulnerable to abuse and neglect by adults, including by caregivers.<sup>4</sup> According to the Centers for Disease Control and Prevention, child maltreatment is common, with at least 1 in 7 children in the nation experiencing child abuse or neglect in the past year. Further, the rates of child abuse and neglect are five times higher for children living in poverty.

In Oregon, for the past six years, at least 1 in 5 incidents of child abuse and neglect investigated by DHS was confirmed (or founded) as child abuse or neglect. These involved over 10,000 victims each year; almost half were children younger than six years of age. While family members most often committed the abuse and neglect, a small subset of perpetrators were child care providers.<sup>5</sup>

**Figure 1: Founded cases of child abuse and neglect involving Oregon child care providers have generally increased over the past eight years**



Source: Oregon Child Welfare Data Books for founded cases of child abuse and neglect

ODE has confirmed receiving hundreds of complaints annually against licensed child care providers on issues such as physical harm to a child, safety risks for children, and unsanitary conditions. While it is uncommon, OCC has also reported 10 children have died in Oregon licensed child care settings from 2011 to 2018, with at least one due to child neglect.

Unfortunately, more incidents of child abuse and neglect likely have gone unreported to authorities. The trauma from child maltreatment is harmful and lasting; it has been linked to risky health behaviors, chronic health conditions, reduced life potential, and early death. Given these negative consequences and associated costs, reasonable measures to prevent child abuse and neglect, such as comprehensive background checks, are warranted.

## **Parents have diverse options for child care providers, including providers licensed or regulated by the state**

Parents use many different arrangements, including some child care providers who are not licensed or regulated by the state. For example, providers who care for three or fewer children,

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<sup>4</sup> The Child Abuse Prevention and Treatment Act (PL 100-294), as amended by the CAPTA Reauthorization Act of 2010 (PL 111-320), defines child abuse and neglect as, at a minimum: Any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical and emotional harm, sexual abuse or exploitation; or an act or failure to act, which present an imminent risk of serious harm.

<sup>5</sup> According to the National Child Abuse and Neglect Data System, established in response to the Child Abuse Prevention and Treatment Act of 1988, perpetrator is defined as “a person who is determined to have caused or knowingly allowed the maltreatment of a child.” Maltreatment includes instances of child abuse (e.g., physical, sexual, or psychological) and neglect.

or only care for children on an occasional basis, are exempt from state licensing requirements. In these cases, parents have the full responsibility to evaluate the provider.

Other child care providers are licensed or regulated by the state, which regularly conducts background checks and ensures providers meet certain requirements, such as training to ensure they keep children in their care safe. Licensed providers include registered family child care, certified family child care, and certified child care centers. The state also regulates subsidy-eligible providers, who care for non-related children where the family is eligible for child care assistance, and maintains a record of part-time preschool and school-age programs.

**Figure 2: Child care arrangements offer diverse care options and have different state requirements**

	-----Licensed-----			-----License Exempt-----	
	Registered Family Child Care	Certified Family Child Care	Certified Child Care Center	Regulated Subsidy Provider	Recorded Programs
<b>Care Options</b>	Home-based child care with 4-10 children	Home-based child care with 4-16 children	Center-based child care with number of children dependent on floor space and staff (generally more than 13 children)	Family, friend, and some programs with limited hours that are eligible for state subsidy reimbursement	Preschool programs for four hours or less per day and school-age programs that are not required to be licensed
<b>Oversight Agency</b>	Department of Education's Office of Child Care	Department of Education's Office of Child Care	Department of Education's Office of Child Care	Department of Human Services	Department of Education's Office of Child Care
<b>Extent of Oversight</b>	Comprehensive background checks, on-site inspections, monitored regularly, and ongoing training*				Self-attest use of criminal background checks on all staff and volunteers age 18 and older
<b>Eligible for Subsidy Dollars</b>	Eligible	Eligible	Eligible	Eligible	Only eligible if programs meet requirements for regulated subsidy
<b>Total providers as of May 2019</b>	1,636	789	1,207	4,497	450

\* Licensed providers must meet higher health, safety, and program standards than regulated subsidy providers for on-site inspections.  
Source: ODE Early Learning Division

## Multiple agencies conduct background checks to help ensure child safety in Oregon

Oregon is one of a few states that assigns oversight responsibility for child care background checks to two different state agencies, ODE and DHS. Additionally, several DHS programs maintain abuse and neglect allegation information and OSP maintains the criminal and sex offender registry information used in conducting the background checks.

### ***ODE's Office of Child Care oversees Oregon licensed child care providers***

The Office of Child Care (OCC), housed in the Early Learning Division of ODE, licenses child care providers, monitors those providers, and maintains the state's Central Background Registry

(CBR).<sup>6</sup> Background checks are required for licensing and OCC coordinates the background check process for new or renewing licensed child care providers. OCC runs approximately 28,000 background checks annually and performs quarterly criminal checks on all individuals in the CBR.

OCC also maintains a record of preschool and school-age programs, administers the federal Child Care and Development Block Grant for Oregon, and maintains the Child Care Safety Portal. This portal is an online, public resource for health and safety information about Oregon licensed and recorded child care facilities. Portal information includes valid complaints against child care providers and corrective actions taken by OCC.

***Multiple DHS programs are involved in conducting background checks and maintaining abuse and neglect investigation information***

The Background Check Unit (BCU) at DHS performs the required background checks on license-exempt child care providers and is Oregon's point of contact for processing child protective service background check requests within and outside of the state.

Before BCU conducts these background checks, the application for a license-exempt provider is screened by the DHS Direct Pay Unit for completeness and meeting other program requirements. Only after the background checks and required trainings are completed is the applicant approved for listing and payment with the state as an approved Employment-Related Day Care (ERDC) provider. In this program, families choose their DHS-approved child care provider, and DHS passes through federal funding to pay the subsidy portion to the provider while the family pays the remaining cost. The agency receives federal funding for this program and subsidizes child care for about 7,800 families. According to DHS, most ERDC providers are not caring for relatives.

As part of the background check process, BCU uses three sources within DHS to look for abuse and neglect information.

- **The Child Welfare program**, which reviews and investigates child abuse and neglect allegations, maintains child welfare investigation information in OR-Kids, which is the database containing the state's child abuse and neglect registry.
- **The Aging and People with Disabilities program**, which provides services to any adult over the age of 65 and adults with developmental or physical disabilities, maintains information on its investigations of reported adult abuse occurring within in-home services, community-based facilities, and nursing facilities.
- **The Office of Training, Investigations, and Safety** in DHS's Shared Services program maintains information on its investigations of reported abuse and neglect of seniors and people with disabilities, adults with developmental disabilities or mental illness, and children receiving residential treatment services.

***Oregon State Police maintains criminal justice information and the state's sex offender registry***

Among its many responsibilities, OSP maintains the Law Enforcement Data System (LEDS) and the state sex offender registry.<sup>7</sup> OSP conducts the fingerprint-based criminal background checks

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<sup>6</sup> Oregon laws require certain child care staff and individuals who may have unsupervised access to children to apply for enrollment in the Central Background Registry.

<sup>7</sup> LEDS is a database containing law enforcement records such as warrants, criminal histories, and other vital investigative files.

on child care providers for OCC and BCU. OSP also sends the fingerprints to the FBI, which then conducts a fingerprint-based check of the National Crime Information Center.

On average, over the past 10 years, **1,200 new offenders were added** to Oregon's sex offender registry database **annually**.

Oregon's sex offender registry includes information on more than 30,000 adult offenders with approximately 900 meeting the criteria for being listed on the public website.

## Efforts have been taken to enhance child care provider background checks

Child care providers are expected to be of good character and to offer safe, nurturing environments for children. Background checks for providers help reduce the likelihood that someone who might hurt children has access to them. These checks also reassure parents that people who have access to their children do not have records of endangering behavior. This safety expectation is recognized by new federal regulations, which sets a standard of no stone left unturned in requiring that multiple sources of information must be examined to evaluate the backgrounds of child care providers.<sup>8</sup>

### ***Federal law now requires eight background checks for providers and prohibits individuals with certain criminal backgrounds from being around children in child care***

The Child Care and Development Block Grant (CCDBG) Act, created in 1991, is the primary federal grant providing child care assistance for families in need. Its reauthorization in 2014 aimed to protect children's health and safety, help parents make informed choices, improve the quality of care, and provide equal access to high-quality care. To enhance the health and safety of children, many new requirements were added to the CCDBG, including mandatory, comprehensive criminal background checks for all child care staff members.<sup>9</sup> The background checks were put in place as a "basic safeguard essential to protect the safety of children in child care and reduce children's risk of harm."

#### **New federal requirements for background checks**

Prior to the new federal requirements, about **14.5%** of individuals applying for enrollment in the OCC Central Background Registry to be a child care provider were required to complete the FBI fingerprint checks.

With the new requirements, the FBI background check applied to **all 63,000** individuals enrolled in the OCC Central Background Registry.

*-Oregon Department of Education 2017-19 Agency Request Budget*

As of September 30, 2017, states are required to conduct eight distinct background checks for all licensed, regulated, registered, and subsidy-eligible providers and staff.<sup>10</sup> This includes not only caregivers, teachers, or directors, but also janitors, cooks, and other employees of a provider who, even though they may not regularly engage with children, have the opportunity for unsupervised access. It also requires checks for all adults living in a family child care home. The eight background checks include a mix of national, in-state, and interstate checks:

- **FBI fingerprint:** A FBI fingerprint check using biometrics;
- **National sex offenders:** A search of NCIC's National Sex Offender Registry;
- **State criminal records:** A search of the state criminal registry or repository in the state where the individual resides (fingerprints required);

<sup>8</sup> 45 CFR Part 98

<sup>9</sup> The CCDBG Act of 2014 is the primary source of federal funding to states through the Child Care and Development Fund. These funds help low-income families, who are working or participating in education or training to offset the high cost of child care.

<sup>10</sup> Comprehensive background checks are not required of child care providers if they are familial.



- **Other state criminal records:** A search of other state criminal registries or repositories in each state the individual resided during the preceding five years (use of fingerprints optional);
- **State sex offenders:** A search of the state sex offender registry or repository;
- **Other state sex offenders:** A search of other state sex offender registries or repositories where the individual resided during the preceding five years;
- **State child abuse and neglect history:** A search of the state child abuse and neglect registry and database; and
- **Other state child abuse and neglect history:** A search of other state child abuse and neglect registries where the individual resided during the preceding five years.

Besides mandatory background checks, federal requirements also, for the first time, expressly disqualify individuals with certain criminal backgrounds (regardless of how long ago the conviction occurred) from caring for children. These criminal backgrounds include:

- registered sex offender;
- convicted of a violent misdemeanor committed as an adult against a child; and
- convicted of a felony consisting of murder, child abuse or neglect, crimes against children, spousal abuse, crimes involving rape or sexual assault, kidnapping, arson, physical assault or battery, or certain drug-related offenses.<sup>11</sup>

### ***Oregon, already performing some background checks, received waivers to postpone implementation of the remaining federal requirements***

Before the new federal requirements went into effect, Oregon's agencies overseeing child care providers were conducting some background checks on prospective and existing providers. These included checking Oregon's criminal history repository, Oregon's sex offender registry, and Oregon's child abuse and neglect registry, as well as an FBI fingerprint check if there were concerns about the person's criminal history.

Oregon, like other states, was granted additional time to comply with the new background check requirements. Since then, only two states have met all the requirements. In August 2019, Oregon requested a waiver for an additional year to implement the remaining requirements:

- conducting remaining checks of the state criminal registry using fingerprints for about 216 current providers; and
- establishing requirements and procedures and conducting checks on all new and existing staff using the National Sex Offender Registry, and the three interstate checks (i.e., criminal history, sex offender, and child abuse and neglect checks).<sup>12</sup>

#### **Statewide Oregon criminal records check rules**

Oregon rules provide examples of crime convictions and offenses that are “**potentially** disqualifying” and those “**likely** to result in denial” unless there are significant mitigating circumstances, **but require each state agency to do a fitness determination** to assess the circumstances around those convictions. These rules apply for all of Oregon, and include individuals who have direct access or provide services to children.

### ***Oregon requires three additional background checks on child care providers***

Beyond the federal requirements, Oregon recently added three additional background check requirements of its own for providers. In July 2018, the Governor directed OCC to check the

<sup>11</sup> With the exception of a felony conviction of a drug-related offense committed during the preceding five years, all of the felony and violent misdemeanor convictions listed by the act are lifetime bans against employment by a child care provider.

<sup>12</sup> According to OCC, the number of providers remaining for fingerprint checks as of March 3, 2020, was 86.

license status of providers who provided care in other states. This check determines if licensees in other states were in good standing. Also in 2018, Oregon added both foster care certification and adult protective service checks to the list of background checks to be conducted by OCC. These checks look at whether individuals have histories of negative actions taken on their foster home certifications or substantiated allegations of adult abuse and neglect. They can also help prevent individuals who may have negative histories in other areas of caregiving from working in child care.

## **A fitness determination is required if background checks reveal concerning behavior**

Most states, including Oregon, appear to use the same basic model for processing provider background checks. The process begins with a provider submitting a new or renewal application to a regulating agency. The agency reviews the application for accuracy and completeness and works with a law enforcement agency to conduct the criminal and sex offender registry checks, and with a human services department to conduct abuse and neglect checks.

A key step in the process in Oregon is a requirement for OCC and DHS to conduct a fitness determination if a provider or staff have a history of criminal behavior. For convictions other than those that are federally disqualifying, such as sexual misconduct and luring a minor, agencies collect further information to understand the conviction circumstances and to help assess the character of the individual. Such information includes court documents and abuse and neglect investigation reports. Then agencies weigh and evaluate the information using different factors to determine whether the person poses a considerable risk to a child's safety. These factors include, but are not limited to:

- nature, details, and relevancy of the criminal or abuse incident;
- intervening circumstances, such as time since incident, age at the time of the incident, and likelihood of repetition;
- subsequent incidents and criminal history; and
- changes or treatment since the incident.

In evaluating each criminal or abuse incident, OCC and BCU base their decisions, in part, on assumptions. Some of these assumptions are that:

Oregon is one of 20 states participating in the FBI National Fingerprint File program. For the other 30 states that do not participate, OCC and BCU have to contact those states directly for state criminal histories. Unlike criminal records, there is no national registry established for child abuse and neglect. States have to be contacted directly for abuse and neglect information, but they vary in the extent they share that information.

- the age at which a person committed the offense impacts the likelihood of reoffending;
- more years since an allegation indicates less risk of committing new offenses;
- one founded incident does not indicate a pattern of abuse or neglect;
- the presence or absence of a self-report on the application form is indicative of personal responsibility; and
- unfounded allegations are not a strong basis for suspending or denying a provider.

If a criminal conviction was in another state, OCC or BCU has to collect and interpret the criminal records to determine how the crime relates to Oregon laws, as criminal offenses vary in name and severity across states. Also, while federal

requirements have states check criminal histories across the United States, criminal convictions in other countries are not checked.<sup>13</sup>

As fitness determinations are somewhat subjective and require judgement, both OCC and DHS have multiple levels of review prior to final approval or denial. Individuals who are denied have appeal rights, and go through a contested case hearing process.

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<sup>13</sup> According to the FBI and OSP staff, a fingerprint check does not include looking at international crimes unless Interpol is contacted, which occurs in very rare situations and is a very lengthy process.

## Audit Results

Parents who rely on child care providers trust the regulatory agencies overseeing those providers have measures in place to ensure the safety of their children. One of those measures includes the expectation that a comprehensive background check will be conducted for those who may come into contact with children.

However, background checks are not as stringent as parents might expect.

**“Parents have the right to be confident** that their children’s caregivers, and others who come into contact with their children, do not have a record of violent offenses, sex offenses, child abuse or neglect, or other behaviors that would disqualify them from caring for children.”

45 CFR Part 98 § 98.43

Oregon has not implemented background requirements beyond federally disqualifying crimes as some other states have. Oregon statutes and rules allow for additional considerations through a fitness determination in an effort to balance child safety with the employment opportunity rights of child care providers. These allowances have resulted in the approval of some providers who have histories of concerning criminal convictions or involvement in founded cases of abuse and neglect. Additionally, inconsistencies, gaps, and delays in the existing process can limit the value and effectiveness of background checks.

Better coordination is needed among the responsible agencies to improve the sharing of information and the thoroughness and quality of background checks. This includes OSP, which maintains the state Sex Offender Registry. This registry falls short of federal and public expectations regarding what information should be available on the public-facing website. The limitations on public disclosure are particularly important when providers are not regulated, leaving oversight to parents alone.

See [Appendix A](#) for public information that parents could use to check on a child care provider.

### Some approved child care providers and staff have concerning convictions or founded cases of abuse and neglect in their histories

We found Oregon’s regulatory agencies for child care providers were generally successful at disqualifying those who had committed egregious crimes from being around children in child care settings, as federally required. However, Oregon’s rules regarding what behavior is permissible are more lax than some other states. As a result, passing a background check does not necessarily mean the person has not committed alarming crimes or has not perpetrated child abuse or neglect.

#### ***Oregon agencies previously approved child care providers convicted of crimes recently designated as federally disqualifying and have taken actions to disqualify these individuals***

With the federal CCDBG reauthorization, current and potential child care workers became subject to a multi-level criminal background check and disqualification if they had been convicted of certain crimes. With that change, and the reevaluation of approved providers, BCU and OCC removed, or are in the process of removing, 70 providers.<sup>14</sup> These providers were

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<sup>14</sup> States set crime laws differently. If a person was convicted in another state but wants to provide child care in Oregon, then that crime has to be interpreted and classified to an Oregon crime. Some providers appealed Oregon’s classification of their out-of-state crime as a federal disqualifying crime. Further, there were some providers who had disqualifying criminal convictions who chose not to renew their license.



previously allowed under Oregon rules to care for children although they had concerning convictions on their records.

**Figure 3: State child care agencies identified 70 previously approved providers whose convictions are disqualifying under new rules and have removed, or in the process of removing, those providers from the programs**

	Background Check Unit at DHS	Office of Child Care at ODE
<b>Providers with disqualifying crimes identified and removed from agency program<sup>1</sup></b>	38	32
<b>Disqualifying crimes those providers had in their histories</b>	<p>Assault was the most common, followed by possession or delivery of a controlled substance, child neglect, corporal injury, endangering the welfare of a minor, kidnapping, willful child cruelty, voluntary manslaughter (to a minor), and criminal mistreatment.</p> <p>Some additional providers were also disqualified because household members had been convicted of a disqualifying crime.</p>	<p>Predominately included assault and endangering the welfare of a minor. Other providers' crimes included child neglect, kidnapping, sex abuse, arson, strangulation, and recent felony drug crimes.</p>

<sup>1</sup> BCU evaluated and removed existing providers based on the federal disqualifying crimes from 2017 to 2019, while OCC did so in 2018 and 2019.

In addition to the providers OCC and BCU identified, we found 21 more DHS providers who should have been disqualified from providing care under federal rules. We identified these individuals by reviewing criminal histories of approved providers and providers who had addresses matching those of sex offenders. We reported this information to DHS, which has taken the following actions:

- We identified one DHS-approved provider who had a recent criminal arrest for strangulation since their last background check. DHS is conducting a new fitness determination on this provider.
- We identified 14 DHS-approved ERDC providers who had a registered sex offender reportedly residing in the home where care was provided, which disqualifies the provider from caring for children. After DHS investigated these instances, seven providers were suspended from the program for failing to report all individuals residing in the home, six providers not currently providing care had notes attached to their file to require a new background check if they return as providers, and one provider was sent a notice reminding them about ERDC reporting requirements.
- Similarly, DHS paid six ERDC providers at a residential treatment in-patient facility where a sex offender was also residing. According to the DHS Child Protective Services (CPS) investigation, staff at the facility stated the individual did not disclose being a sex offender, which would have disqualified the individual from participating in the program. DHS has sent a reminder about ERDC reporting requirements to the facility.

***Oregon agencies have cleared child care providers with other concerning arrest or conviction history or who perpetrated abuse and neglect***

The CCDBG requires an FBI and state criminal check, as well as a check of child abuse and neglect registries. However, having an extensive criminal history or being a perpetrator of child

abuse and neglect is not an automatic disqualifier for child care providers and their workers under federal rules.<sup>15</sup> States have flexibility in deciding how to handle those instances. In Oregon, providers with these backgrounds are not automatically disqualified, but are evaluated on a case-by-case basis in a fitness determination.

Most state-approved child care providers had **no criminal convictions**.

We found most OCC- and BCU-approved providers had no criminal convictions in their history. For those we reviewed with convictions — roughly 1,250 providers — OCC and BCU had known and assessed the criminal history in a fitness determination for most providers prior to approval. Some examples of allowed crimes include assault, child neglect, harassment, controlled substance offenses (including manufacturing, possessing, and delivering illegal drugs, some within 1,000 feet of a school), disorderly conduct, unlawfully obtaining public assistance, and hit and run. We also found some approved providers who had a concerning, continual history of felony or misdemeanor convictions. For example:



From 2006 to 2011, this provider had a felony or misdemeanor conviction for trespassing, theft, possession of meth, identity theft, and failure to appear as well as multiple probation violations.



Nearly every year from 2000 to 2010, this provider had a felony or misdemeanor conviction for either criminal driving or controlled substance offenses.



From 2005 to 2009, this provider was convicted of seven felony identity theft charges and two forgery charges.



This provider had convictions in the 1980s, 1990s, and early 2000s that included robbery, theft, endangering the welfare of a minor, drug offenses, falsifying a public report, hit and run, and harassment.



This provider was convicted of about 30 felonies, misdemeanors, or violations from 1994 to 2000 for crimes including forgery, theft, escape, resisting arrest, traffic offenses, and parole violations.



From 2001 to 2006, this provider had an assault conviction, two felony controlled substance offense convictions, and eight probation violations.

Management at the agencies provided the following common reasons histories of such criminal convictions were allowable:

- Many convictions were considered very old — ten or more years — which either could not be considered or were weighed in favor of approving the provider if no new criminal activity or abuse and neglect involvement had occurred since the conviction.
- Many of the convictions that occurred within the past ten years involved misdemeanors and often with mitigating factors (e.g., completion of treatment or a mental health, drug, and alcohol assessment).

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<sup>15</sup> Due to great variation in the information states maintain in child abuse and neglect registries, federal rules did not include child abuse or neglect findings in the list of disqualifying crimes but left that to states to determine. Federal rules did note the value of findings in these registries to identify patterns of negative behavior.

- Some convictions were reduced to lesser offenses (e.g., violations) or were dismissed by completing diversion requirements, and so were not considered by the agency as potentially disqualifying convictions or conditions.
- BCU determined in some cases that certain crimes, such as child neglect, did not involve violence against a child.
- OCC does not look at convictions that occur outside of the timelines it has defined in rule.

We also identified 11 approved providers who had concerning crimes not previously known to BCU. This was due to providers not adhering to reporting requirements or the timing of interim criminal checks. We notified BCU of those providers, who were either recently arrested or had been convicted of crimes such as theft, public order crimes, and driving under the influence, and BCU was requested to reassess those providers in fall 2019.

Further, while child abuse and neglect findings are not in the list of federally disqualifying crimes, they are valuable and to be considered in looking at patterns of negative behavior that may be unsuitable for a child care provider. We identified 125 providers who had at least one founded allegation of perpetrating child or adult abuse and neglect. OCC and BCU had identified most abuse and neglect instances and included them in the agencies' fitness determination for the provider. For example:

- One provider had a significant amount of contact with CPS, from 2007 to 2013, prompted by alcohol and drug abuse. According to the agency, the provider showed evidence of fitness suitability (e.g., having completed treatment and training). Since the conviction for substance abuse was over five years old and no new issues had occurred, OCC approved the provider.
- Another provider was the perpetrator in multiple founded and unfounded cases of child abuse and neglect. The agency, in consultation with the Oregon Department of Justice, reached a settlement with the provider to allow the individual to only work at a child care center because most of the CPS issues concerned the provider's home environment.
- Another provider had a founded allegation of physical abuse in 2017. The provider hit a grandchild in the face, reportedly due to the child being disrespectful, causing the child to bleed. BCU included this information in the fitness determination and approved the provider.
- Lastly, another provider had a founded allegation of neglect and mental injury. The provider took her children in and out of school, claiming to be providing home schooling. The allegation included threatening the children, not keeping mental health appointments for one of the children, and not maintaining stable housing for the children (including food and shower). This information was included in the fitness determination and BCU approved the provider.

Additionally, we found OCC had approved three providers who were perpetrators in founded child abuse and neglect cases before being approved, but that information was not included in the fitness determination. OCC was reassessing those providers in fall 2019.

***Oregon has not expanded its disqualifying crimes list and could do more to readily identify criminal activity among child care providers***

Oregon has not expanded its disqualifying crime list for child care providers. This could be due to concerns about employment opportunity rights of providers and privacy rights around allowing the retention of fingerprints for people who have never been convicted of a crime. The latter omission also prevents Oregon from participating in the FBI's Rap Back program, which provides authorized government agencies ongoing status notifications of any criminal history record information reported to the FBI on individuals who hold positions of trust (e.g., child care

workers and school teachers), and requires fingerprint retention of those individuals. If legislatively authorized, this program would notify OCC or BCU of any new arrests or triggering events on child care providers, such as criminal dispositions, warrants, or sex offender entries. We found at least three states that have a state rap back program and notify their applicable agencies of such events, including the agency responsible for child care.

At least four other states have expanded the federal criminal offenses that disqualify a provider. For example:



**Illinois** has expanded its list of sex offenses that automatically disqualify someone from providing childcare to include prostitution, promoting prostitution, soliciting for a prostitute, and harmful materials. Unlike Oregon, its disallowed bodily harm convictions also include stalking and endangering the life or health of a child.



**Indiana** does not allow child care providers to have any felonies or misdemeanors related to the health and safety of a child, or any misdemeanor related to welfare fraud. Indiana also disqualifies a provider, employee, caregiver, or volunteer named as an alleged perpetrator in its Child Protection Index registry.



In **California**, a conviction for an elder or dependent adult abuse crime disqualifies a person from being a child care provider.



A child care provider, staff member, volunteer, or household member in **Nebraska** cannot be listed as a perpetrator in its Central Registry of Child Abuse and Neglect and the Central Registry of Adult Abuse and Neglect. Further, they cannot have parental rights terminated by a court because of abuse or neglect of a child or inability to care for a child.

## **Oregon agencies have differing and inconsistent interpretations of disqualifying crimes and rules affecting how rigorously background checks are performed**

### ***Due to varying interpretations by agencies, some crimes may or may not be automatically disqualifying for being around children***

Federal requirements are generalized when it comes to the crimes that permanently disqualify a child care provider. For example, one federally disqualifying crime is murder; this may or may not be construed by a state to include manslaughter. With Oregon lacking a unified, strategic approach to ensuring child safety in all state licensed and regulated settings, OCC and DHS must individually interpret what Oregon crimes are disqualifying on a federal level.

OCC has designated specific Oregon crimes in rule that permanently disqualify a person from providing or being around children in a child care setting. DHS only references the federal exclusions and has not referenced those to Oregon crimes in rule and considers all felonies and misdemeanors to warrant a fitness determination review. BCU management provided us a list of the Oregon crimes it has deemed as disqualifying.

OCC and DHS consider many of the same crimes to be disqualifying, such as criminal homicide and first degree child neglect, but we found some crimes that only one agency considers to be disqualifying. Agencies' interpretations of what constitutes a disqualifying crime can have widely different results. For example, OCC and DHS have differing interpretations of how the



state crime of endangering the welfare of a minor applies to the federally disqualifying crime of child endangerment.<sup>16</sup>

**Figure 4: OCC and DHS do not have the same automatic disqualifying crimes for child care providers**

OCC automatically disqualifies child care providers for these crimes but DHS weighs these in a fitness determination	DHS automatically disqualifies child care providers for these crimes but OCC weighs these in a fitness determination
Custodial sexual misconduct II	Criminally negligent homicide
Contributing to sexual delinquency of a minor	Unlawful use of electrical stun gun, tear gas, or mace I
Manslaughter I, if unintentional or against an adult	Unlawfully being in a location where children regularly congregate
If a misdemeanor or against an adult - arson I & II; assault II & III; kidnapping I; strangulation; rape I & II; sodomy I & II; unlawful sexual penetration I & II; and sexual abuse I, II, & III	Unlawful contact with a child
If it does not involve violence against a child - child neglect II; endangering the welfare of a minor; and criminal nonsupport	Adult using minor in commission of controlled substance offense
	If felony conviction or against a child - coercion; menacing; rape III; and sodomy III
	If against a child - assault IV; recklessly endangering another person; criminal mistreatment I; unlawful use of electrical stun gun, tear gas, or mace II; custodial interference I & II; subjecting another person to involuntary servitude I & II; public indecency; and private indecency
	Invasion of personal privacy II, if against child and involves capturing images of the child
	Manslaughter II, if intentional or against a child
	Robbery I, II, & III, if felony conviction involving child or spouse, or misdemeanor against a child
	Criminal mistreatment II, if against a child or felony physical assault against an adult
	Intimidation I, if violence against a child
	Assaulting a public safety officer, if felony conviction
	Until 1/30/20 - purchasing sex with a minor; incest, with a child victim; paying for viewing child's sexually explicit conduct; invasion of personal privacy I; and transporting child pornography into the state

Source: OCC – OAR 414-061-0045 and 414-061-0050; DHS – OAR 407-007-0279(3) and Background Check Unit Management

OCC has interpreted federal language to mean that any misdemeanor for child endangerment is considered a violent crime, and is therefore automatically disqualifying. BCU, however, has interpreted this exclusion to apply only when violence is directed toward the child, using Oregon's statutory definition of violence.<sup>17</sup> According to BCU management, child endangerment in general — such as leaving young children in a car or home unattended by an adult, leaving illegal substances where a child could access the drugs, or the use of drugs around a child — is

<sup>16</sup> By federal rule, a “violent misdemeanor committed as an adult against a child” includes the following crimes: child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography” and is a disqualifying crime for a child care provider.

<sup>17</sup> Within Oregon statute (ORS 419A), a violent felony is “any offense that, if committed by an adult, would constitute a felony and: (a) involves actual or threatened serious physical injury to a victim; or (b) is a sexual offense.”

not viewed as a violent act. Without specific language of a crime matching the federal statutory definitions for convictions that are mandatory disqualifying, BCU management did not feel they had the federal or state statutory authority to deny a person appeal rights.<sup>18</sup> BCU staff review related court documents and police reports to determine the specific nature of the incident and decide on a case-by-case basis whether the conviction is disqualifying. Though we requested federal clarification on this from the U.S. Department of Health and Human Services' Administration for Children and Families, we did not receive a response.

Lastly, OCC and DHS do not consider some convictions automatically disqualifying even when the state has deemed it so for other professions involving children. For example, teachers and school administrators have an integral role in the safety and well-being of children and are mandatory reporters of abuse and neglect. Oregon's Teachers Standards and Practices Commission will deny or revoke teacher and administrator licenses, charter school registrations, and permission to student teach for those convicted of certain crimes, such sexual misconduct, prostitution, and displaying obscene materials to minors. OCC and DHS do not consider these crimes as automatically disqualifying, and depending on the agency, may consider and potentially allow based on a fitness determination.

**Figure 5: Prohibited convictions for Oregon teachers and administrators, charter schools, and student teachers, but both DHS and OCC may allow for child care providers**

Crimes		
<ul style="list-style-type: none"> <li>sexual misconduct</li> <li>treason</li> <li>patronizing a prostitute</li> <li>sadomasochistic abuse or sexual conduct in live show</li> <li>publicly displaying nudity or sex for advertising purposes</li> </ul>	<ul style="list-style-type: none"> <li>public indecency</li> <li>abuse of a corpse I</li> <li>promoting prostitution</li> <li>exhibiting an obscene performance to a minor</li> </ul>	<ul style="list-style-type: none"> <li>bigamy</li> <li>prostitution</li> <li>luring a minor</li> <li>displaying obscene materials to minors</li> </ul>
Additional crimes if the conviction was over five years ago*		
<ul style="list-style-type: none"> <li>unlawful manufacture within 1,000 feet of school of hydrocodone; methadone; oxycodone; heroin, 3, 4-methylenedioxymethamphetamine; cocaine; or methamphetamine</li> </ul>		
<ul style="list-style-type: none"> <li>unlawful delivery of hydrocodone; methadone; oxycodone; cocaine; or methamphetamine</li> </ul>		
<ul style="list-style-type: none"> <li>unlawful delivery within 1,000 feet of school of hydrocodone; methadone; oxycodone; heroin; 3, 4-methylenedioxymethamphetamine; cocaine; methamphetamine; or a controlled substance</li> </ul>		
<ul style="list-style-type: none"> <li>penalties for distribution (of a controlled substance) to minors</li> </ul>		

*\*OCC and DHS disqualify these crimes if the date of the conviction is less than five years from applying to be a child care provider. After five years, these crimes go through a fitness determination.*

Source: ORS 342.143 (3) and Teacher Standards and Practices Commission

Consequently, there are seven approved child care providers who were convicted of crimes considered disqualifying by the Teachers Standards and Practices Commission. These providers, for whom BCU and OCC conducted the fitness determination and approved four and three providers respectively, had convictions of: prostitution, bigamy, sexual misconduct (also convicted of criminally negligent homicide a few years later), distributing a controlled substance to minors, and unlawful delivery of methamphetamine, including within 1,000 feet of a school.

<sup>18</sup> By federal program rules, a person convicted of a mandatory disqualifying crime is not allowed to provide child care and has no due process rights to appeal.

As a result of our audit work highlighting differences in crimes between agencies, OCC management prepared an amendment in December 2019 to its disqualifying conditions for child care providers. The amendment incorporates some additional crimes (e.g., incest with a child victim, sodomy in the third degree, purchasing sex with a minor, and sexual misconduct) for consideration by the Early Learning Council. These changes were adopted and effective as of January 30, 2020.

***Further background check inconsistencies can allow approval by one agency but denial by the other***

All Oregon regulated child care providers go through the same federal background check requirements. However, OCC and BCU have set differing requirements. Likewise, background checks for agency employees follow different processes. This creates inconsistencies in how background checks are performed not only for Oregon's providers, but also for the agency employees overseeing those providers. This not only makes it more difficult to consistently ensure child safety, but it conflicts with the expectation by parents and the public that the same rigorous process is being used when conducting background checks on child care providers.

In reviewing OCC and BCU processes for conducting background checks, we found some variances that could impact a fitness determination and delay identifying individuals with a conviction or abuse and neglect allegation that affects child safety. These differences were related to other potential crimes, timing of background checks, minimum age requirements, provider reporting requirements, and access to abuse and neglect information.

**Figure 6: Within the flexibility of federal rules, there are inconsistencies between OCC and BCU in conducting required background checks on state-regulated child care providers**

Background Check Procedures	Federal Rules	OCC at ODE	BCU at DHS
Length of time a crime is considered, other than those federally disqualifying	Rules allow states to prohibit providers based on other crime convictions	Defined certain criminal convictions to be considered if they occurred 5, 7, 10, 15, or 20 years ago and those that will always be considered (e.g., felonies and misdemeanors of violence or unauthorized sexual conduct, theft, fraud, or deception, crimes against the state and public justice, and major traffic violations)	Considers criminal convictions, all felonies and misdemeanors, to be reviewed regardless of how long ago the conviction occurred
Arrested for disqualifying crime but no final determination (e.g., convicted, acquitted, or dismissed)	Rules reference conviction of crimes	Crime not considered unless it was a conviction  Rule changes adopted in 2020 allow consideration of arrests for any disqualifying crime on or after January 1, 2015	Fitness determination paused if a court date is pending, otherwise can make a decision factoring in the arrest

Background Check Procedures	Federal Rules	OCC at ODE	BCU at DHS
Renewal and interim background checks	At least every five years	Comprehensive background check every five years for all individuals in the central background registry In the interim — quarterly state criminal history checks and CPS checks every 2.5 years	Comprehensive background check every two years for its child care providers In the interim — child protective service checks monthly
Minimum age requirement for background check	Any individual employed by a child care provider Individuals age 18 or older residing in a provider's family child care home	Providers and household members who are 18 years of age or older	Providers and household members who are 16 years of age or older
Access to abuse and neglect information	Required to check intrastate child abuse and neglect registry	Access to OR-Kids child abuse and neglect case information  No direct access to, or regularly receives, adult abuse and neglect information — agency requests such information only when an applicant self-discloses they were involved in an abuse and neglect investigation	Access to OR-Kids child abuse and neglect case information  Obtains and compiles adult protective service on abuse and neglect information from multiple DHS programs into spreadsheets for use at least monthly by BCU staff
Provider reporting requirements	N/A	Requires providers to notify the program in writing of a change of name, address, or phone number within 30 days	Providers must report changes to their information within five days including information such as name, phone, or address changes, any new individuals who may have unsupervised access to the children in care, and any new arrests, indictments, convictions, or involvement with child or adult protective services for those that may have unsupervised access to the children in care (e.g., provider, staff, volunteers, visitors, and household members)



***Although OCC regularly checks employees for criminal convictions and involvement in abuse and neglect, DHS does not and has some employees with concerning criminal backgrounds***

OCC employees undergo the same initial and recurring background checks required of licensed child care providers. DHS employees, however, are not held to these same requirements.

OCC staff, as with all employees in offices within ODE's Early Learning Division, are held to the same criminal background check requirements (e.g., interim and renewal checks) and disqualifying conditions as the providers they oversee. This is because employees may have access to protected private and sensitive information. Our review of ODE division employees' criminal backgrounds found no concerning criminal histories or involvement in child or elder abuse and neglect cases.

DHS takes a different approach. It has defined in rule potentially disqualifying convictions for all agency employees that require a fitness determination to be conducted, which are not as stringent as those for providers. Other than an initial background check done before being hired, DHS does not do another background check unless it becomes aware of new concerning incidents (e.g., arrests, indictments, convictions, or involvement with child or adult protective services) or there is a new work requirement (e.g., access to Criminal Justice Information System information).

In reviewing most of DHS's employees who had criminal activity in their background, BCU reported many of those crimes had been included and considered in a fitness determination. Some of those crimes included assault and endangering the welfare of a minor, which are disqualifying for OCC staff, and some employees had concerning criminal histories. For example, one employee who works in child welfare had 24 total convictions, including 18 felony convictions for theft, forgery, and identity theft.

We identified 10 employees about whose criminal histories DHS's Human Resources was unaware. Arrests or convictions included driving under the influence, criminal mischief, harassment, theft, and assault. Many of these occurred within the last two years. In addition, BCU and Human Resources were unable to locate background check or fitness determination records for 29 employees who had criminal convictions for crimes such as theft, assault, driving under the influence, and criminal trespassing. Examples of positions included data entry operator, office specialist, human resource assistant, mental health therapy technician, human services case manager, and executive manager.

Furthermore, we identified 15 DHS employees named as perpetrators in child welfare allegations. Though all these employees were not directly providing care, they are involved in working with vulnerable populations in positions such as human services case manager, human services specialist, mental health therapy technician, and child welfare case worker. According to agency management, DHS's Human Resources division knew about six of the employees, but not the other nine.

While there may be intentional reasons to allow staff with criminal histories and child welfare allegations as workers, agency staff need be aware of such backgrounds to make an informed employment decision, given child safety and the safety of other vulnerable populations could be impacted.

## Background checks lack important information that can affect the safety of children

Besides outside factors impacting background checks (such as whether and how long it takes other states to provide needed criminal and abuse and neglect information, as well as the timing of criminal justice information), OCC and BCU have information and data system limitations that prevent them from having complete information to ensure the safety of children. This includes access to adult abuse and neglect information and background checks of state recorded programs (preschool and school-age programs).

### ***Lack of unique identifiers in state systems limits the extent of checking for abuse and neglect allegations***

As a part of background checks, OCC and BCU search child abuse and neglect records, foster care records, and adult protective services records. To do so, they must access multiple sources of data, as no statewide centralized database exists that contains all abuse and neglect information needed to complete background checks. This process is complicated because there are no consistent unique identifiers maintained to readily confirm matches between data systems such as Social Security number. For example, OCC and BCU do not require providers to have a Social Security number to apply. We found OCC approved 6,289 providers (13%) and BCU approved 96 providers (2.5%) who did not have a Social Security number. Furthermore, some approved providers supplied their tax identification number instead. For these approvals, the agencies relied on providers accurately and consistently reporting names, dates of birth, and addresses to check against other records.

To obtain child abuse and neglect information, both OCC and BCU access case information in OR-Kids, the state's child abuse and neglect registry. Due to the number of records in OR-Kids, the complexity of that data system, and naming variations, searching and correctly connecting allegations to the right person without common unique identifiers is not likely to yield as many actual matches.<sup>19</sup> This increases the risk a pertinent allegation will not be identified.

We found OR-Kids did not have Social Security numbers for over 8,500 founded perpetrators and no date of birth for about 790 founded perpetrators. For example, a current provider's name matched that of an individual in OR-Kids who had a founded CPS allegation. However, OR-Kids did not have a Social Security number or date of birth to verify if it was the same individual. Without verification, that information may not be factored into the fitness determination.

As detailed below, there are two DHS programs that maintain adult abuse and neglect information. As in OR-Kids, these programs do not have Social Security numbers as a consistent unique identifier to readily confirm whether a provider was involved in a case of adult abuse and neglect.

- Aging and People with Disabilities maintains community- and facility-level adult abuse and neglect information. Of the 18,815 perpetrators within its data system, about 87% do not have a Social Security number listed and just over half do not have a date of birth listed.
- The Office of Training, Investigations, and Safety maintains information on abuse and neglect investigations involving seniors, adults with physical or developmental disabilities or mental illness, and children receiving residential treatment services. The

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<sup>19</sup> The Secretary of State Audits Division released an audit of OR-Kids in February 2020. See [report 2020-01, "Oregon's Child Welfare Information System is Adequate for Case Management, but Enhancements Are Needed to Improve Usability."](#)

office's investigation information, which includes about 6,700 perpetrators, also does not have Social Security numbers.

Limited unique identifiers in data systems makes it likely that not all pertinent abuse and neglect information is identified, shared, and included in a provider's fitness determination — potentially allowing an ill-informed decision of approval that may negatively impact the safety of children in child care.

### ***OCC does not receive background check results for individuals working in recorded preschool and school-age programs***

OCC is responsible for monitoring preschool and school-age recorded programs. Preschool programs are designed to be primarily educational and last no more than four hours a day. School-age programs are designed for enrichment activities during hours school is not in session. About 5% of all regulated child care providers are recorded programs. In total, these programs have been approved to serve over 51,100 children, ranging in age from 3-year-olds to children attending public school.

Providers in these programs are required to have background checks, although OCC is not obligated to be the entity providing the check. Recorded programs only need to self-certify on applications that all staff and volunteers, 18 years of age and older, had a criminal background check done prior to having contact with children. OCC does not receive copies of these criminal checks nor does it independently verify that programs are completing the background checks as required.

There are fewer regulations for recorded programs compared to licensed facilities. These programs are not required to meet health and safety standards, are not monitored regularly, and their staff are not required to participate in ongoing training. This was intentional. Laws were enacted to ensure recorded programs, which were not created to provide full child care services, meet a minimum safety standard of criminal background checks. However, that minimum safety standard, which covers many children that receive care in these programs, cannot be ensured without verification that background checks are actually occurring.

### **Better coordination is needed to share new and relevant information regarding criminal activity**

Regulatory agencies conduct initial background checks when approving a new provider and again at renewal junctures. However, it may be a significant period of time from when agencies conduct initial background checks to when renewal checks are performed. Any new criminal activity by a provider may go undetected by regulatory agencies for months or even years before a renewal check is done. Instead of waiting for renewal, agencies could proactively share pertinent information they collect to help ensure the ongoing safety of children in child care settings.

### ***Relevant background check information not always shared within or between agencies overseeing child care providers***

CPS, within DHS, is required by law to notify certain entities of reported child abuse and neglect allegations and the results of its investigations. If the allegation involves a licensed child care provider, CPS is to notify OCC. This way, OCC is promptly informed of potential safety concerns. However, we found some instances where OCC or BCU were unaware of a CPS allegation.

From our review, OCC was unaware of new CPS history for 17 providers. Once we informed OCC, they initiated a new fitness determination for those providers in fall 2019.

Additionally, OCC is required to conduct an adult protective services check as a part of the background check. Again, OCC does not have direct access to, or regularly receives, adult abuse and neglect information. When an applicant self-discloses they were involved in an adult abuse and neglect investigation, then OCC requests that from DHS. OCC was unaware eight providers had adult abuse and neglect history. These allegations occurred prior to OCC reviewing such information; the division plans to conduct a new fitness determination for those providers.

***Child care and law enforcement agencies are not updating each other when they identify new or corrected sex offender information***

Registered sex offenders are federally disqualified from being child care providers or even from working as staff at a child care facility. We compared listed addresses for sex offenders in Oregon's sex offender registry to those of providers. With the results of our data match, we met with OSP staff and reviewed sex offender registry records on 35 offenders whose addresses matched providers. Of those, five offenders had not updated their current locations as required and were out of compliance with self-reporting requirements, but the system did not readily indicate them as such.

We found further instances of offenders failing to update their address in the registry by looking into potential matches between the registry and providers paid through the ERDC program. For example, one sex offender's address matched a provider, and a CPS investigation noted that the individual was living in the backyard. One agency told us they do not forward such information to OSP. This leaves OSP without key information that could be shared among law enforcement or used under certain circumstances to make community notifications. We also found instances where a sex offender's Social Security number in the registry was incorrect. It is common to have inaccuracies with self-reported information.

***Some sex offenders report having an occupation in the child care field, but OSP is not allowed to share that information***

When we analyzed the sex offender registry focusing on offender occupation, we identified 26 individuals who voluntarily stated their employment was related to providing care for a vulnerable population (e.g., child care, caregiver, care provider). According to OSP staff, they enter the information as provided by the offender and do not communicate any potential concerns related to child care providers to OCC or DHS. Although OSP is a mandatory reporter, it is limited by statute in its ability to be a proactive sharer of sex offender information.

We found none of the 26 individuals were licensed providers or providers who participate in a state child care subsidy program. However, there is a risk that, should OSP become aware of an individual on the registry who is licensed to provide care, they would be unable to share this information with the regulatory agencies.

**Shortcomings to the sex offender registry lessen the ability to protect children**

Apart from OSP's limited ability to proactively share sex offender information with the regulatory agencies, we also found weaknesses in Oregon's sex offender public registry site that affect not only background checks completed by other states, but checks performed by parents when choosing a provider for their children.<sup>20</sup>

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<sup>20</sup> The final rule of the CCDBG Act does not specify whether or not a search beyond a state's general public sex offender registry is required when completing the background check requirement of searching other state sex offender registries.



All 50 states are required to have sex offender registries, but implementation has been left up to each state. Thus, requirements for sex offenders vary considerably between states — registering can be for a few years or for life, and some offenders have to check in every few days while others can go several months. With differences in state laws, an offender can be required to register in one state but not another.

Oregon's Legislature, like those in all other states, makes its own determinations about who is required to be reported in its sex offender registry, what information offenders must provide, and which offenders are posted on the public registry site. The Legislature and Oregon Board of Parole and Post-Prison Supervision enact and implement, respectively, the laws that set these determinations.

Oregon's sex offender registry rules are complex. As rules have been added, they have not all been retroactive. Also, depending on factors such as age or the date of the crime or conviction, there are some sex offenders not required to report in Oregon. For example, an individual convicted of a military sex crime before June 18, 2013, is not required to report in Oregon.

Currently, the public is not notified about the majority of sex offenders in Oregon's registry. In addition, inaccurate and incomplete information, delays with notification, and limitations to the public registry site hinders the accuracy and thoroughness of sex offender background check results by other states and parents' ability to screen providers before selecting one to care for their children.

***OSP's sex offender registry relies on offenders to accurately and regularly report, which does not always happen***

National data shows Oregon has the highest number of registered offenders per capita, and almost 2.5 times the national average.<sup>21</sup> This could be in part because Oregon has up to 26 registerable sex crimes and an offender must report for registration and continue to report unless the offender is approved for relief or pardoned, or the conviction is reversed or cancelled.<sup>22</sup>

Oregon has almost **2.5 times the national average** of registered sex offenders per capita.

Registered sex offenders are required to regularly report their current information, such as residence and employment, to law enforcement. However, offenders' reporting forms may contain inaccuracies not caught by local law enforcement, and some offenders do not report at all. All information in the registry is self-reported.

It is difficult for law enforcement to identify offenders who do not register as required unless they are arrested for another crime. In an effort to mitigate that problem, OSP staff run system reports and manually go through the registry to update inaccuracies. OSP also conducts sweeps to bring offenders into compliance.

***Leveling and reporting issues limit the public's ability to check for sex offenders at or near child care locations***

Not all of Oregon's sex offenders have been classified into risk levels, or "leveled," as required by state and federal law. Those who have yet to be leveled are not included on the public website, regardless of the severity of their offense.

Federal law requires each state to provide the public with information about registered sex offenders living in their area. This public notification is typically made available through the

<sup>21</sup> Statistics are from Oregon State Police's 2019-2021 Agency Request Budget.

<sup>22</sup> Registerable sex crimes are referenced in ORS 163A.005. Adults and juveniles convicted of certain sexual offenses are required to register with the Oregon's Sex Offender Registry (SOR).

public sex offender website. In Oregon, however, a sex offender must undergo leveling before their information can be viewed by the public. The leveling process, which classifies an offender into one of three risk levels, determines how likely the person is to sexually reoffend, which in turn determines whether information about the sex offender is made public.

**Figure 7: Majority of sex offenders have not been leveled and Oregon’s public registry includes only Level 3 offenders**

Oregon’s Sex Offender Registry	
Offenders required to register:	31,177
Offenders not leveled:	25,054
Offenders leveled:	6,122
Level 3 ( <i>high risk to reoffend, and only level listed on the public website</i> ):	914
Level 2 ( <i>moderate risk to reoffend</i> ):	1,081
Level 1 ( <i>low risk to reoffend</i> ):	4,127

Source: OSP Sex Offender Registry management provided registry totals as of February 4, 2020

As of February 4, 2020, there were about 31,180 offenders in Oregon’s registry; 25,054 of those offenders, or 80%, had not yet been leveled. Of those not yet leveled, OSP reports there are 524 offenders who were previously designated as predatory and most, if not all, are reportedly in police custody or under supervision. Until a sex offender is leveled, their information is not disclosed, meaning high-risk sex offenders who have not been leveled are not publicly known.<sup>23</sup>

In 2013, the Oregon Legislature passed a law to adopt a three-level sex offender classification system, with only Level 3 offenders listed on Oregon’s public sex offender website. The law required the Board of Parole and Post-Prison Supervision to classify and level all adult convicted and registered sex offenders. Originally, the board was given until December 1, 2016, to complete the classifications; this has since been extended to December 1, 2026.

The new classification system removed references to predatory designations and replaced them with references based on an offender’s risk level. It also inadvertently limited OSP’s authority to notify the public about concerning sex offenders. According to OSP management, these changes were based on the assumption that all existing predatory offenders had been classified into a risk level prior to the new laws going into effect. When this did not occur, a series of consequences unfolded that required OSP to remove 29 offenders from the public sex offender registry website who had previously been designated as predatory but who had not been assigned a risk level as of December 1, 2018.

#### Sex offender registry relief from registration and reclassification

In certain circumstances:

Registered Level 2 and 3 sex offenders can request reclassification to a lower notification level

Registered Level 1 sex offenders can request terminating the obligation to report as a sex offender

The Board of Parole and Post-Prison Supervision has until December 2026 to complete this notification leveling. However, the board testified during the 2019 legislative session that it is unlikely to meet this deadline. Given current resource levels, the board estimated it would take almost 44 years to complete the backlog of leveling along with leveling the approximate 100 new sex offender registrants added each month. This estimate may be further impacted by another new law allowing sex offenders to request relief from registration and reclassification.

<sup>23</sup> If a Level 3 sex offender is under supervision of the Psychiatric Security Review Board, the Board may authorize OSP to release that offender’s information on the public site.

Oregon law requires public notification for Level 3 offenders. Level 2 offender information can only be disclosed by OSP upon specific request, to certain persons the offender has a relationship with, care facilities, and other places where children and other potential victims might frequent, such as schools, residential neighbors, churches, and businesses. Level 1 offender information can only be disclosed by OSP to a person who resides with the offender.

Comparatively, Washington State, which uses a similar risk-based leveling system for sex offenders, publishes all of its Level 2 and Level 3 offenders on its public registry site as well as any non-compliant and transient Level 1 offenders.

Until the board is able to complete its risk notification leveling, thousands of potentially moderate- and high-risk sex offenders will remain undisclosed and unknown to parents and other members of the public.

### ***Oregon's sex offender registry is not meeting national minimum standards***

Enacted in 2006, Title 1 of the Adam Walsh Child Protection and Safety Act created a baseline standard for sex offender registration and public notification, known as SORNA. As of June 2019, 18 states, four territories, and over 130 federally recognized Indian tribes have met all minimum SORNA requirements.

Oregon has met the minimum requirements for two of the five categories on which states are graded: tracking and penalizing truants, and information sharing (e.g., with law enforcement and prosecution agencies).<sup>24</sup>

Where Oregon still lags behind is in the categories of having offenses and offenders included in its sex offender registry, community notification, and offender appearance and verification.

SORNA standards also require expanding the amount of information available to the public regarding registered sex offenders. Oregon, however, has chosen to reduce the available information. Previously, Oregon's registry provided information about the offender's victim profile (e.g., juvenile females under seven years of age), methods of offending, and conditions and restrictions, but OSP stated this information is only sporadically provided by the Board of Parole and Post-Prison Supervision and has been removed from the public registry.<sup>25</sup>

Legislative changes in 2019 will bring Oregon closer to complying with these federal standards. When these changes take effect, Oregon's sex offender registry will meet over half of SORNA's offender appearance and verification standards. For example, House Bill 2045B, which goes into effect January 1, 2021, will require sex offenders to report a legal name change within 10 days of that change taking effect and to report international travel at least 21 days in advance. However, even with these changes, Oregon's sex offender registry still falls short of national standards.

Strengthening the registry and the consistency and measures used in conducting child care provider background checks will better protect children in child care settings that are licensed and regulated by the state.

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<sup>24</sup> Two of Oregon's tribes, the Confederated Tribes of the Umatilla Indian Reservation and the Confederated Tribes of Warm Springs, have substantially implemented SORNA requirements.

<sup>25</sup> ORS 163A.060 requires the Board of Parole and Post-Prison Supervision to provide offender profiling information to OSP for Level 3 sex offenders and those designated as a predatory sex offender prior to January 1, 2014. Offender profiling information includes such records as presentence investigations, sex offender risk assessments, and conditions of parole and probation and other corrections records.

## Recommendations

To help the OCC and BCU strengthen child care provider background checks to more consistently protect children in child care settings, we recommend:

1. To ensure consistency and standardization, OCC and BCU propose legislation to have all child care background checks performed by a single agency that conducts child care provider background checks.
2. Specific actions OCC and BCU should take include:
  - a. In consultation with the Oregon Department of Justice, create a consistent list of automatic disqualifying crimes to use in background check determinations for state licensed and regulated child care providers, and periodically evaluate that list as criminal laws change. Agencies should seek clarification from the U.S. Department of Health and Human Services Office of Child Care, as needed, for act requirements.
  - b. Work together to set the same background check requirements for all child care providers that are at a high enough standard to protect the welfare of children. At a minimum, this should happen on a regular basis due to law changes and include determining other concerning crimes to consider, looking at trends or patterns of concerning behavior, timing of renewal and interim background checks, setting minimum age requirements, and reporting requirements.
  - c. Advocate to the U.S. Department of Health and Human Services Office of Child Care the need for interstate sharing of information critical in assessing child care providers.
  - d. Establish policies and procedures to share updated, pertinent information resulting from background checks on related individuals.
  - e. Check the provider's address with Oregon's sex offender registry when conducting background check procedures on a provider whose home is where child care is provided.

To further strengthen coordination with child care background checks and help with the safety of children, we recommend DHS:

3. Work with OCC to regularly provide OCC with adult protective services reports.
4. Have common identifiers within its abuse and neglect registries that are reliable and can be used to readily identify a person involved in a protective service allegation. DHS should collect and work with OCC to also collect those identifiers for all child care providers. This will allow a more complete check of abuse and neglect registries.
5. Regularly check department employees for criminal convictions and involvement in founded abuse and neglect allegations.

In order to strengthen the safety of children in recorded programs, we recommend OCC:

6. Propose legislative changes to confirm or conduct criminal background checks on employees and volunteers in preschool and school-age recorded programs, and ensure

employees and volunteers are held to the same background check standards as licensed child care providers.

Further, for OSP to help with safety and community notification, we recommend the agency:

7. Propose legislative changes to allow proactively providing information to DHS, such as when registered sex offenders state their occupation involves caring for a vulnerable population. This would allow a check to ensure the care being provided is in a safe manner.
8. For Oregon's sex offender registry public site, propose legislative changes to follow SORNA standards. Also, OSP should work with the Board of Parole and Post-Prison Supervision to regularly obtain the required offender profile information and include further information on the public registry site such as general victim profiles.



# Objective, Scope, and Methodology

## Objective

The purpose of this audit was to report on Oregon's efforts to meet the federal and state child care background check requirements to help ensure the safety of children in child care.

## Scope

This audit focused on the CCDBG 2014 reauthorization and additional state requirements for child care background checks implemented since 2018.

## Methodology

To address our objective, we interviewed key staff and management DHS, OCC, and OSP. We also obtained information from the U.S. Administration for Children and Families' Office of Child Care staff responsible for overseeing the CCDBG, and management at agencies in other states responsible for conducting child care provider background checks.

We reviewed CCDBG rules, state laws, and agency policies and procedures related to child care background checks and our audit objective. We also reviewed Oregon's and other states' plans to adhere to CCDBG funding requirements, states' waiver requests in meeting CCDBG requirements, the National Fingerprint File program, and the Sex Offender Registration and Notification Act standards for state sex offender registries. Further, we reviewed studies and reports related to child care and child welfare.

We obtained lists of approved child care providers from BCU as of January 1, 2017, through January 31, 2019, and from the ERDC unit as of January 1, 2016, through January 1, 2018, and OCC individual providers as of April 2019 and facilities as of December 19, 2018. This provided us with a list of all state approved child care providers and staff during that time, which totaled about 56,000 individuals. For those on the list, we obtained and reviewed criminal history information as of the first part of July 2019. We also compared the list of approved providers and staff to the following sets of data:

- all sex offenders as of January 29, 2019, in Oregon's Sex Offender Registry, which we obtained from OSP;
- individuals with child welfare abuse and neglect allegations that occurred between January 1, 2012, and December 31, 2018, which we obtained from DHS's Child Welfare Program; and
- individuals with allegations of abuse against an elderly person or a person with a disability or mental illness, occurring between January 1, 2012, and February 21, 2019, and January 1, 2012, and March 1, 2019, provided, respectively, by DHS's Aging and People with Disabilities program and its Office of Training, Investigations, and Safety.

We performed limited data reliability testing and analyzed data to identify the extent criminal and abuse and neglect histories were included in a fitness determination. We performed matches between the list and data sets based on Social Security number, name, date of birth, and address to attempt to identify individuals who were providing care that should not be or who reside in a home in which a provider is providing care. We used multiple unique identifier combinations as not every list had Social Security number or date of birth information and there is a possibility of different first and last name conventions or a provider may not reported all of the individuals living in their household. For any approved child care provider or staff who had

criminal, abuse, or neglect histories, we confirmed with the agency that the information was included in a fitness determination as part of the background check.

Further, we obtained lists of DHS and OCC employees as of February 7, 2019, as there are state background check rules and the potential for employees to have access to vulnerable populations or their information. We obtained criminal histories and compared those employees to the same sets of data used to compare to child care providers and staff. Likewise, we used multiple unique identifier combinations to check for matches. For any approved employees who had criminal or abuse and neglect histories, we confirmed whether the agency included a fitness determination as part of the background check.

During the course of the audit, there were delays due to the needed security measures we added for maintaining and analyzing criminal justice information, and delays with publicly issuing our audit report due to the focus and impact of the coronavirus pandemic (COVID-19). Throughout these delays, we had continued communication with the Governor's Office and agencies so they were alerted of matters timely.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We sincerely appreciate the courtesies and cooperation extended by officials and employees of the Governor's Office, ODE, DHS, and OSP during the course of this audit.

## Appendix A: Information Available to the Parents Seeking Child Care



Parents who entrust their children to state approved child care providers also trust those providers have been rigorously vetted to safeguard child safety. However, parents should know that while the state conducts background checks, [details from state background checks](#), which involve sensitive criminal justice information, [cannot be shared with the public](#). There are resources available to parents who wish to independently confirm the background information of a child care provider:

<input checked="" type="checkbox"/>	Oregon State Police <a href="#">Open Records Program</a>	<ul style="list-style-type: none"><li>» Must, under state law, provide public access to Oregon criminal history record information</li><li>» Includes convictions and recent open arrests (within the past year)</li><li>» \$10 fee</li></ul>
<input checked="" type="checkbox"/>	<a href="#">Oregon eCourt System</a>	<ul style="list-style-type: none"><li>» Provides non-confidential court and case records information</li><li>» Includes all Oregon circuit and tax courts</li></ul>
<input checked="" type="checkbox"/>	U.S. Department of Justice <a href="#">National Sex Offender Public Website</a>	<ul style="list-style-type: none"><li>» Contains registered sex offender information reported by participating jurisdictions</li><li>» Federal database that spans nationwide</li></ul>
<input checked="" type="checkbox"/>	Oregon public <a href="#">Sex Offender Registry</a>	<ul style="list-style-type: none"><li>» Lists sex offenders with the highest risk of reoffending (Level 3 sex offenders)</li><li>» State database that is Oregon specific</li></ul>
<input checked="" type="checkbox"/>	Oregon State Police <a href="#">Sex Offender Registry Unit</a>	<ul style="list-style-type: none"><li>» Can contact the unit directly to ask about a specific individual by name (provided it is for a public safety purpose)</li><li>» Phone: (503) 934-1258</li><li>» Email: <a href="mailto:sexoffender.questions@osp.oregon.gov">sexoffender.questions@osp.oregon.gov</a></li></ul>
<input checked="" type="checkbox"/>	Office of Child Care <a href="#">Safety Portal</a>	<ul style="list-style-type: none"><li>» Available for parents to check the safety and quality monitoring results of licensed child care providers</li><li>» Includes information such as license status, results of inspection visits, complaints, and enforcement activity</li></ul>

Want more information on choosing child care? Visit the [Early Learning Division](#) of the Oregon Department of Education or [Child Care Aware of America](#).

Do you have suspicious activity or criminal acts to report involving your children? Contact local law enforcement or your [local Oregon State Police office](#).



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# Oregon

Kate Brown, Governor

Early Learning Division



May 6, 2020

Kip Memmott, Director  
Secretary of State, Audits Division  
255 Capitol St. NE, Suite 500  
Salem OR 97310

Dear Mr. Memmott,

This letter provides a written response to the Audits Division's final draft audit report titled "Oregon Should Improve Child Safety by Strengthening Child Care Background Checks and the State's Sex Offender Registry."

The Office of Child Care (OCC), part of the Early Learning Division of the Department of Education, welcomed the Secretary of State's audit of the OCC background check process, the Department of Human Services (DHS) background check process, and the related work of Oregon State Police (OSP). OCC appreciates the Governor requesting the review in an effort to determine compliance with federal law, and to identify issues and solutions.

OCC also appreciates the expertise and professionalism demonstrated by the Audits Division's staff. The audit report provides important information and reflects the philosophy which ELD shares—that audits are tools to improve processes, laws, and ultimately outcomes for the populations served.

In addition, the audit highlights the struggles Oregonians face: child care deserts in all 36 counties, and a lack of affordability for many families. The Early Learning Division (ELD) works to keep children in child care safe, and to expand access so that parents can find quality care at an affordable price.

The background checks on child care providers in Oregon are far more robust than many states. For enrollment in OCC's Central Background Registry (CBR), background checks are fingerprint-based for accuracy. Criminal records are checked and routinely re-checked, child and adult abuse and neglect records are also checked, and more. However, "better than others" should not be the standard.

Oregon agencies and policy-makers should pursue the appropriate decisions for Oregon: assessing the right crimes, findings, and behaviors for the right period of time with routine coordination among agencies. In short, the OCC agrees with the audit recommendations. The two agencies performing background checks related to child care must, in the short term,

better align our standards. OCC appreciates that the auditors adopted the suggestions made by OCC and DHS. With appropriate time and resources, all child care-related background checks should be performed by one agency – OCC – so there is a single standard with a single point of accountability. In addition, staff in recorded programs should be subject to OCC-conducted background checks and enrollment in the CBR.

The agencies will work together to meet the dates described, but there is significant uncertainty due to the COVID-19 crisis policy work and legislative priorities.

Below is our detailed response to each recommendation in the audit.

<b>RECOMMENDATION 1</b> To ensure consistency and standardization, OCC and BCU propose legislation to have all child care background checks performed by a single agency that conducts child care provider background checks.		
<b>Agree or Disagree with Recommendation</b>	<b>Target date to complete implementation activities</b>	<b>Name and phone number of specific point of contact for implementation</b>
Agree	February 2021	Amy Joyce, OCC Director 503-373-0865

#### **Narrative for Recommendation 1**

OCC agrees with the recommendation. OCC and DHS-BCU suggested this idea to the auditors, as this is the best way for the state to have the most consistent background checks performed on child care providers, regardless of whether they are licensed through OCC or only receiving ERDC payment through DHS. An earlier potential recommendation was for the BCU and OCC standards to be amended to more closely align. OCC and DHS-BCU suggested, however, that the better way to achieve uniformity, while also make use of state resources more efficiently, is for one agency to conduct all background checks using the same criteria.

OCC is better situated to perform this work. OCC and BCU are already working with DAS and the Governor's Office to introduce legislation for the 2021 session. The agencies ask that the executive branch introduce such legislation, to allow this task to be complete by February 2021. In addition, OCC commits to actively pursuing passage of that legislation.



**RECOMMENDATION 2a**

Specific actions OCC and BCU should take include:

- a. In consultation with the Oregon Department of Justice, create a consistent list of automatic disqualifying crimes to use in background check determinations for state licensed and regulated child care providers, and periodically evaluate that list as criminal laws change. Agencies should seek clarification from the U.S. Dept. of Health & Human Services Office of Child Care, as needed, for act requirements.

<b>Agree or Disagree with Recommendation</b>	<b>Target date to complete implementation activities</b>	<b>Name and phone number of specific point of contact for implementation</b>
Agree	June 2021	Amy Joyce, OCC Director 503-373-0865

**Narrative for Recommendation 2a**

OCC agrees with the recommendation. The two agencies need to work with multiple attorneys at the Department of Justice and with our federal partners to create a consistent list of automatically disqualifying crimes. Once the agencies develop a beginning list, both agencies should open their respective rule-making processes, which must include a Rules Advisory Committee (RAC).

OCC is governed by the Early Learning Council (ELC) and must seek approval at one of their quarterly meetings. OCC anticipates being ready to propose rules at the second quarter 2021 meeting. OCC must then take implementation measures. This includes programming computer information systems, updating materials, training staff, and then evaluating the existing CBR enrollees (approximately 50,000 people) against the newly adopted standards. Because this recommendation could be implemented much sooner than Recommendation 1 (unified background check by a single agency), the agencies should move forward with this work and rule adoption even if the legislation in Recommendation 1 passes.

**RECOMMENDATION 2b**

Specific actions OCC and BCU should take include:

- b. Work together to set the same background check requirements for all child care providers that are at a high enough standard to protect the welfare of children. At a minimum, this should happen on a regular basis due to law changes and include determining other concerning crimes to consider, looking at trends or patterns of concerning behavior, timing of renewal and interim background checks, setting minimum age requirements, and reporting requirements.

<b>Agree or Disagree with Recommendation</b>	<b>Target date to complete implementation activities</b>	<b>Name and phone number of specific point of contact for implementation</b>
Agree	September 2021	Amy Joyce, OCC Director 503-373-0865

#### **Narrative for Recommendation 2b**

OCC agrees with the recommendation. However, if the legislation in Recommendation 1 becomes law, this recommendation will no longer be needed. The analysis, however, still would be necessary for OCC to ensure the appropriate standards are adopted into rule. Therefore, the work between the agencies and DOJ would continue regardless of the outcome of the legislation. Should the legislation pass, the analysis will be used for OCC to improve the forthcoming unified background check standard. Should the legislation not pass, the agencies will continue with a rule-writing process to achieve this recommendation.

<b>RECOMMENDATION 2c</b> Specific actions OCC and BCU should take include: <ul style="list-style-type: none"> <li>c. Advocate to the U.S. Dept. of Health and Human Services Office of Child Care the need for interstate sharing of information critical in assessing child care providers.</li> </ul>		
<b>Agree or Disagree with Recommendation</b>	<b>Target date to complete implementation activities</b>	<b>Name and phone number of specific point of contact for implementation</b>
Agree	Ongoing. (Conversations with US-OCC have been occurring since 2017.)	Amy Joyce, OCC Director 503-373-0865

#### **Narrative for Recommendation 2c**

OCC and BCU have been advocating to the US Office of Child Care since 2017 for a national leadership clearinghouse of state data. Oregon's OCC will continue to advocate at the regional and national level. To date our advocacy has primarily been through the Federal Region 10 Office, whose staff counsels states and acts as liaison between states and the federal decision-makers in Washington D.C. In March 2020, ELD-OCC submitted comments to the Federal Register regarding a regulation requiring states to post information on the web that would describe how to obtain that state's background information. OCC used the opportunity

to again describe the difficulties in obtaining interstate records and request the national clearinghouse. OCC will continue discussions with federal partners, and engage Oregon's federal delegation in effort to gain change at the federal level.

<b>RECOMMENDATION 2d</b> Specific actions OCC and BCU should take include: d. Establish policies and procedures to share updated, pertinent information resulting from background checks on related individuals.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Agree	January 2022	Amy Joyce, OCC Director 503-373-0865

#### Narrative for Recommendation 2d

OCC agrees with this recommendation. OCC and BCU will collaborate with Department of Justice and Oregon State Police to clearly identify what information may be exchanged under which circumstances, and establish a clear process for consistent and accurate exchange. OCC notes that there is no computerized data system, in existence or planned, that would gather all the various types of information into one central, accessible data pool. Rather, the agencies will develop better systems and processes to ensure the information is exchanged timely and accurately. If any statutory or rule changes are needed to allow that data exchange, OCC will pursue those legal changes.

<b>RECOMMENDATION 2e</b> Specific actions OCC and BCU should take include: e. Check on the provider's address in its search of the state sex offender registry when conducting a background check on a provider whose home is where child care is provided.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Agree	January 2021	Amy Joyce, OCC Director 503-373-0865

## Narrative for Recommendation 2e

OCC and BCU will collaborate with OSP's Sex Offender Unit to identify and implement the specific procedures necessary to review home-based provider applicants' addresses and cross-check for offenders listed at that address. The agencies will collaboratively develop procedures to take appropriate action when a check reveals a potential hit on a provider address.

<b>RECOMMENDATION 6</b> OCC propose legislative changes to confirm or conduct criminal background checks on employees and volunteers in preschool and school-age recorded programs, and ensure employees and volunteers are held to the same background check standards as licensed child care providers.		
<b>Agree or Disagree with Recommendation</b>	<b>Target date to complete implementation activities</b>	<b>Name and phone number of specific point of contact for implementation</b>
Agree	February 2021	Amy Joyce, OCC Director 503-373-0865

## Narrative for Recommendation 6

OCC agrees with this recommendation. Recorded programs have very little oversight from the state agency entrusted to regulate child care. Background checks are done by the facilities themselves and no law requires any particular standard for those background checks. The Legislature should consider requiring recorded programs' staff to be subject to the full background check and enrolled in the Central Background Registry before providing unsupervised care of children. OCC is developing a legislative concept and Policy Option Package (POP) for the 2021 Legislative session. The concept and POP development process for all agencies is occurring now. We will present this through DAS for the Governor's consideration to introduce for the 2021 legislative session.

Please contact Amy Joyce, OCC Director, 503-373-0865 with any questions.

Sincerely,



**Miriam Calderon**  
**Early Learning Division Director**

Cc: Sue Miller, Early Learning Council Chair



# Oregon

Kate Brown, Governor

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Salem, OR 97301

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May 18, 2020

Kip Memmott, Director  
Secretary of State, Audits Division  
255 Capitol St. NE, Suite 500  
Salem, OR 97310

Dear Mr. Memmott,

This letter provides a written response to the Audits Division's final draft audit report titled "Oregon Should Improve Child Safety by Strengthening Child Care Background Checks and the State's Sex Offender Registry."

DHS thanks the Audits Division for the opportunity to rigorously explore its background check systems, and for the advocacy in improving those systems and cross-agency communication identified in Findings 3 and 4 of the Executive Summary. DHS agrees with Recommendations 1 through 4, and partially agrees with Recommendation 5.

As DHS and the Oregon Office of Child Care (OCC) move forward in work related to Findings 1 and 2 of the Executive Summary, and as community leaders and legislators discuss any changes to law, DHS poses some factors for consideration in social policy development.

As noted in the audit report, DHS and OCC are required by ORS 181A.195 to perform a fitness determination weighing multiple factors including but not limited to evidence of rehabilitation, and passage of time since the commission of the crime. Evidence of rehabilitation can include training, education, counseling, therapy or other activities performed for courts, adult or child protective services, or other authorities.

For example, before potentially approving any individual with criminal or protective service history, DHS does not only note an individual's criminal conviction or abuse substantiation, but thoroughly reviews the specific events as described in a variety of official documentation. When available, these documents include but are not limited to: police and court records; parole and probation records; witness and mandatory reporter statements; Oregon abuse investigation reports; out-of-state abuse information; case details of ongoing protective service involvement and evaluations; behavioral health evaluations; treatment and counseling records; compliance with court and protective service requirements; restitution records; and other verifications.

*"Assisting People to Become Independent, Healthy and Safe"*



This Oregon statutory requirement is directly supported by Equal Employment Opportunity Commission (EEOC) guidance. Nationally acknowledged disparities in arrest and convictions of African Americans, Native Americans, and Latinos exist. Title VII of the Civil Rights Act of 1964 addresses disparate impact.<sup>1</sup> Consequently the EEOC has established the following three factors for consideration in background checks to reduce how disparities in the criminal justice system affect protected populations' chances at employment or licensing:

1. The nature and gravity of the offense or conduct;
2. The time that has passed since the offense or conduct and/or completion of the sentence;
3. The nature of the job held or sought.<sup>2</sup>

Since there is nationally acknowledged disproportionality in child protective service (CPS) assessments, and CPS information is used in fitness determinations for employment and licensing, EEOC guidelines based on Title VII's disparate impact apply. Factors of time since a substantiation, rehabilitative activities, and the severity of the abuse or neglect must also be considered in the weigh test. For example, during the audit, concerning crimes and abuse patterns of history were found in many cases. However the vast majority ended a decade or longer in the past, generally with rehabilitative activities including but not limited to successful treatment of substance abuse and mental health disorders.

Fitness determinations look at specific circumstances in both any potentially disqualifying history and specific actions of each individual to recompense those they harmed, serve their community, and stabilize their life. In that regard, fitness determinations create an important balance between laws that will always make someone ineligible for a position or profession (i.e., a disqualifying crime) regardless of years or decades since a conviction, and laws that automatically remove a crime from consideration after a set number of years.

The weighing process allows for a person-centered, research-informed analysis of the individual's risk to vulnerable Oregonians. This is especially important when certain crimes or abuse/neglect substantiations are considered societally "concerning" at face value.

DHS agrees that greater consistency must be achieved between DHS and OCC regarding mandatory exclusions. This process of policy alignment will be performed carefully

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<sup>1</sup> Equal Employment Opportunity Commission. (2012, April 25). Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e *et seq.* Retrieved from [https://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm)

<sup>2</sup> EEOC 2012, p. 11.

under federal guidelines from the EEOC and Title VII of the Civil Rights Act based on disparate impact. In addition to being permanently barred from a position (in this audit's case, child care), mandatory exclusions may result in the individual losing constitutional rights of due process to appeal the decision.

As the EEOC explains:

To establish that a criminal conduct exclusion that has a disparate impact is job related and consistent with business necessity under Title VII, the employer needs to show that the policy operates to effectively link specific criminal conduct, and its dangers, with the risks inherent in the duties of a particular position.<sup>3</sup>

Compliance to federal statutory and regulatory requirements that mandatorily exclude individuals with specific types of criminal history from employment in some industries provide a defense against a charge of discrimination under Title VII.<sup>4</sup> However Title VII preempts state and local laws and regulations, consequently compliance to state or county-dictated mandatory exclusions would not shield an employer or background check organization from a charge of discrimination.<sup>5</sup> Any state-initiated mandatory exclusions should consequently be carefully considered to preserve legal sufficiency.

There are additional legal precedents in support of caution in establishing mandatory exclusions. In *Nixon v. Commonwealth* (2001) and *Peake v. Commonwealth* (2015), Pennsylvania courts (including the Pennsylvania Supreme Court in appeal) determined that lifetime exclusions violated the defendants' constitutional right to pursue a lawful occupation and required hiring decisions be made on an individual basis.

In these cases it was determined that there was no merit to the assumption that individuals with certain barrier crimes would always pose a danger. The lifetime ban was deemed unconstitutional as a violation of due process, and the Commonwealth was instructed to use individual assessments of risk, additionally considering factors of rehabilitation and previous experience in pertinent employment without committing abuse or neglect.<sup>6</sup>

Modern research on recidivism has also demonstrated that mandatory exclusions unnecessarily restrict employment. Most studies have found that if someone will recidivate, it will occur within the first 5 years after release.<sup>7</sup> Two of the highest recidivism factors for crimes involve (1) violence and (2) theft of money or property. Due

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<sup>3</sup> EEOC 2012, p. 14.

<sup>4</sup> EEOC 2012, p. 24.

<sup>5</sup> EEOC 2012, p. 24.

<sup>6</sup> *Peake v. Commonwealth of Pennsylvania, et al.*, 216 (M.D. 2015)

<sup>7</sup> Congressional Research Service, 2016, p. 10; Cooper, Durose & Snyder, 2014, p. 14-15. Blumstein, A. & Nakamura, K. (2009b). Redemption in the Presence of Widespread Criminal Background Checks. *Criminology*, 47(2), 327-359.

to that combination of violence and theft, robbery had a higher risk of recidivism than either burglary or aggravated assault in one study of 27 years of New York recidivism data. Yet 7.7 years after release robbery hit a point where the risk of recidivism was lower than the risk of someone with no criminal history offending for the first time.<sup>8</sup>

Lastly employment is a factor in preventing recidivism. A Canadian study found that 45% of recidivism was due to lack of employment upon reentry, with lack of pertinent education as a secondary factor.<sup>9</sup> A British study of individuals reentering society after being incarcerated for a year or less found that up to 70% of recidivism was due to lack of employment.<sup>10</sup> As a U. S. Department of Justice report explained:

The individual's interest in the fair use of criminal history information is mirrored by the broader social policy of facilitating the reentry of ex-offenders into the workforce. Steady gainful employment is a leading factor in preventing recidivism. The unfair use of or discrimination based upon criminal records can raise barriers to employment by ex-offenders and, as a result, undermine the reentry that makes us all safer.<sup>11</sup>

Use of the weigh test provides an individual assessment of both the history and positive changes an individual has enacted in their life. This process allows for the potential approval of an individual who has achieved meaningful changes in their life and thereby significantly reduced their risk to vulnerable Oregonians to provide meaningful care and earn a constructive living.

DHS looks forward to working on these findings and recommendations, utilizing guidance from federal and state requirements, principles of due process, EEOC guidance, and the DHS vision and mission achieving safety, well-being and independence for all Oregonians.

Below is our detailed response to each recommendation in the audit. Please note that these responses are made with two caveats: (a) the Oregon Office of Child Care is the lead agency for the Oregon Child Care block grant; (b) all target dates for implementation of recommendations are dependent on policy work and legislative priorities for the public good related to COVID-19.

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<sup>8</sup> Blumstein, A. & Nakamura, K. (2009b).

<sup>9</sup> Warde, B. (2013). Black Male Disproportionality in the Criminal Justice Systems of the USA, Canada, and England: a Comparative Analysis of Incarceration. *Journal of African American Studies*, 17, 461-479. doi 10.1007/s12111-012-9235-0

<sup>10</sup> Warde, 2013.

<sup>11</sup> U. S. Department of Justice (DOJ), Office of the Attorney General (OAG). (2006). *The Attorney General's Report on Criminal History Background Checks*. Page 2. Retrieved from [https://www.bjs.gov/content/pub/pdf/ag\\_bgchecks\\_report.pdf](https://www.bjs.gov/content/pub/pdf/ag_bgchecks_report.pdf)

**RECOMMENDATION 1**

To ensure consistency and standardization, OCC and BCU propose legislation to have all child care background checks performed by a single agency that conducts child care provider background checks.

<b>Agree or Disagree with Recommendation</b>	<b>Target date to complete implementation activities</b>	<b>Name and phone number of specific point of contact for implementation</b>
Agree	2/1/2021	Kirstin Holman, DHS SSP Program Design Manager for Child Care Policy & Direct Pay Unit 503-945-6720

**Narrative for Recommendation 1**

Implementation will require submission of a Policy Option Package (POP) for the 2021 Legislative Session. As OCC is the lead agency for Child Care in Oregon, OCC will be responsible for submitting the POP.

The target date assumes that the POP is passed in the 2021 Session. If the POP was not approved, the target date would need to be extended as needed until legislative authority to centralize background checks was provided.

**RECOMMENDATION 2a**

Specific actions OCC and BCU should take include:

- a. In consultation with the Oregon Department of Justice, create a consistent list of automatic disqualifying crimes to use in background check determinations for state licensed and regulated child care providers, and periodically evaluate that list as criminal laws change. Agencies should seek clarification from the U.S. Dept. of Health & Human Services Office of Child Care, as needed, for act requirements.

<b>Agree or Disagree with Recommendation</b>	<b>Target date to complete implementation activities</b>	<b>Name and phone number of specific point of contact for implementation</b>
Agree	3/1/2021 for rules; 6/1/2021 for training and	Kirstin Holman, DHS SSP Program Design Manager

	final implementation.	for Child Care Policy & Direct Pay Unit 503-945-6720  Barbara Muller, BCU Program Manager, 503- 385-7203
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#### **Narrative for Recommendation 2a**

Implementation will require collaboration between the DHS Background Check Unit (BCU), DHS Child Care Unit (CCU) and the Oregon Office of Child Care (OCC), and Oregon Department of Justice (DOJ) before proceeding to a Rules Advisory Committee (RAC) to publish permanent rules. Crime lists will be reviewed annually thereafter.

#### **RECOMMENDATION 2b**

Specific actions OCC and BCU should take include:

- b. Work together to set the same background check requirements for all child care providers that are at a high enough standard to protect the welfare of children. At a minimum, this should happen on a regular basis due to law changes and include determining other concerning crimes to consider, looking at trends or patterns of concerning behavior, timing of renewal and interim background checks, setting minimum age requirements, and reporting requirements.

<b>Agree or Disagree with Recommendation</b>	<b>Target date to complete implementation activities</b>	<b>Name and phone number of specific point of contact for implementation</b>
Agree	6/1/2021 for rules; 9/1/2021 for training and final implementation.	Kirstin Holman, DHS SSP Program Design Manager for Child Care Policy & Direct Pay Unit 503-945-6720  Barbara Muller, BCU Program Manager, 503- 385-7203

#### **Narrative for Recommendation 2b**

Implementation will require collaboration between BCU, CCU and OCC, and DOJ before proceeding to RCA to publish permanent rules. Thereafter procedural and other



documents will need to be updated and training on new processes provided to all pertinent BCU and OCC staff.

Synchronization of practice and requirements will be reviewed annually thereafter to maintain quality control.

<b>RECOMMENDATION 2c</b>		
Specific actions OCC and BCU should take include:		
c. Advocate to the U.S. Dept. of Health and Human Services Office of Child Care the need for interstate sharing of information critical in assessing child care providers.		
<b>Agree or Disagree with Recommendation</b>	<b>Target date to complete implementation activities</b>	<b>Name and phone number of specific point of contact for implementation</b>
Agree	Conversations with US OCC have been occurring since 2017. Advocacy will be ongoing.	Kirstin Holman, DHS SSP Program Design Manager for Child Care Policy & Direct Pay Unit 503-945-6720  Barbara Muller, BCU Program Manager, 503-385-7203

#### **Narrative for Recommendation 2c**

As noted above, conversations and advocacy for interstate data-sharing tools and processes between BCU, OCC, and the US Office of Child Care have been ongoing since early 2017. Oregon has participated in a variety of Region X teleconferences with US Office of Child Care and other states' licensing and background check agencies, as well as state police departments working toward acquiring Federal statutory data-sharing authority, as well as Federally-provided tools and applications.

<b>RECOMMENDATION 2d</b>  Specific actions OCC and BCU should take include:  d. Establish policies and procedures to share updated, pertinent information resulting from background checks on related individuals.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Agree	1/1/2022	Kirstin Holman, DHS SSP Program Design Manager for Child Care Policy & Direct Pay Unit 503-945-6720  Barbara Muller, BCU Program Manager, 503- 385-7203

**Narrative for Recommendation 2d**

BCU and OCC will collaborate with DOJ and Oregon State Police (OSP) to identify what information can be shared, and what processes for that sharing are legally sufficient.

BCU and OCC will enact those recommendations for data-sharing as applicable.

<b>RECOMMENDATION 2e</b>  Specific actions OCC and BCU should take include:  e. Check the provider's address with Oregon's sex offender registry when conducting background check procedures on a provider whose home is where child care is provided.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Agree	1/1/2021	Kirstin Holman, DHS SSP Program Design Manager for Child Care Policy & Direct Pay Unit

		503-945-6720  Barbara Muller, BCU Program Manager, 503- 385-7203
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#### **Narrative for Recommendation 2e**

BCU and OCC will collaborate with OSP's Sex Offender Unit to identify and implement the specific procedures necessary to request address-based checks of the Oregon Sex Offender Registry.

BCU, CCU and OCC will thereafter jointly formulate procedures for how to apply such checks when a positive hit on a provider address occurs.

<b>RECOMMENDATION 3</b>		
DHS work with OCC to regularly provide OCC with adult protective services reports.		
<b>Agree or Disagree with Recommendation</b>	<b>Target date to complete implementation activities</b>	<b>Name and phone number of specific point of contact for implementation</b>
Agree	Implementation activities started in Oct. 2018 for APD APS.  The Office of Training, Investigation and Safety (OTIS) are currently meeting with OCC.	Marie Cervantes, APS Administrator, (503) 947-5005  Charles Hibner, Director of OTIS, 503-945-9491

#### **Narrative for Recommendation 3**

The Office of Child Care (OCC) received statutory authority per (HB4054/2018 session) ORS 329A.030(4)(a)(A) to access state adult abuse history when individuals apply to be listed on OCC's Central Background Registry. Upon receipt of this information, Aging & People with Disabilities (APD) coordinated with OCC in October of 2018 to create the following initial process for sharing adult protective services reports for investigations in both licensed (referred to as Facility APS investigations) and unlicensed settings (referred to as Community APS investigations):

1. OCC will request abuse history from APD whenever an applicant self-discloses abuse history on their application.
2. APD established a central APD-APS Unit email address to send requests and created a specific contact person/gatekeeper, so OCC can send the request to one APD entity. Part of the contact person/gatekeeper's role is obtaining information from the Office of Safety, Oversight and Quality (SOQ) for information related to Facility APS investigations and combining it with any information contained in Community APS investigations for a consolidated APD response.
3. The request from OCC is sent via a secure e-mail from the Oregon Department of Education (ODE) helpdesk to the APD-APS Unit mailbox with a subject line identifier "OCC Request for Adult Abuse History." The OCC request includes a cover letter requesting "Adult Abuse History" and provides an APS case number, type of abuse, date the record was closed. APD is asked to return confirmation of all substantiated cases and any details. The applicant's name, DOB and SSN are included in the cover letter as verification points.

It is important to note that APD (in coordination with other DHS/OHA programs) implemented a new Centralized Abuse Management (CAM) System. All APD or Area Agency on Aging (AAA) offices were operational in CAM as of Jan. 1, 2019. Our gatekeeper coordinates with respective contacts in SOQ and APD to ensure all relevant systems (legacy, CAM) are queried for pertinent information to ensure a comprehensive review is completed.

DHS (including APD-APS, SOQ and the OTIS) will continue working with OCC to develop a process for sharing information necessary for OCC to perform their background checks.

#### **RECOMMENDATION 4**

DHS have common identifiers within its abuse and neglect registries that are reliable and can be used to readily identify a person involved in a protective service allegation. DHS should collect and work with OCC to also collect those identifiers for all child care providers. This will allow a more complete check of abuse and neglect registries.

<b>Agree or Disagree with Recommendation</b>	<b>Target date to complete implementation activities</b>	<b>Name and phone number of specific point of contact for implementation</b>
Agree	Statewide APD/APS	Marie Cervantes, APS

	identifiers established 1/1/2019, SOQ identifiers established 2/18/2019.	Administrator (503) 947-5005  Charles Hibner, Director of OTIS, 503-945-9491
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#### **Narrative for Recommendation 4**

DHS Aging and People with Disabilities (APD), in coordination with other DHS/OHA programs, implemented a new Centralized Abuse Management (CAM) System for Adult Protective Services (APS). All APD or Area Agency on Aging (AAA) offices were operational in CAM as of Jan. 1, 2019. In addition, the Safety Oversight and Quality Office (SOQ) implemented a new Corrective Action and Licensing Management System (CALMS) as of 02/18/2020. CALMS imports information/records from CAM to SOQ that enables them to perform Licensing and Corrective Action tasks. In each system, several common identifiers exist to identify a person involved in an APS investigations and SOQ corrective action.

Examples include:

1. Each intake or investigation is assigned a CAM/CALMS identification number as a unique identifier.
2. CAM has a global search feature that allows a user to search for an individual and any role they had in an APS intake or investigation. The roles include: alleged victim, alleged perpetrator, reporter, witness, collateral contact, etc. This is another identification source that can be utilized.
3. Each individual involved in an APS intake or investigation has a unique person record created in CAM that contains identifiers such as name, alias, date of birth (DOB), address, Social Security Number (SSN), as available. A person record must be created before an intake or investigation can be assigned or closed.

APD and OTIS recognize that DOB or SSN information is not always available. It is important to note, APS is not an eligibility-based program that requires this type of identification. Investigation parties have the right to decline APS interventions and asking for this type of identification during a case of familial type abuse could create a safety risk for a vulnerable adult.

However, whenever possible, this information is included in the CAM/CALMS system or provided via other sources such as through SOQ for licensed providers. Currently, a data

analysis query is being conducted by the APS Unit, QA/QI Coordinator to determine data trends for SSN and DOB numbers for both Community and Facility APS settings. The data analysis will be shared with Field Administration and respective offices for a quality improvement plan. Early results from the data query show a modest improvement in this area of data collection.

OTIS investigations similarly are using CAM and will review data capture for these common identifiers.

Child Welfare (CW) consistently requests identifying information, such as: name, DOB, address and SSN numbers. Like APS, child protective services (CPS) is not an eligibility-based program that requires this type of identification. Case participants have the right to decline providing this type of information during the investigation phase and even when a case is opened for services. When the information is available, it is added to the CW case record and is searchable.

CW and OTIS have developed business processes that facilitate the entry of OTIS investigations into the OR-Kids system for enhanced tracking of perpetrators and individuals involved in investigations.

In terms of working with OCC to collect common identifiers, there are notable privacy and security issues with gathering and storing sensitive information such as SSNs. Establishing data-sharing with DHS protective services for OCC-collected Employment Identification Numbers (EINs) or Social Security Numbers (SSNs), and other common identifiers would require review by DOJ to establish what could be requested and shared between parties while remaining legally sufficient.

Secure methods of sharing the information would need to be implemented. Data-sharing would also need to include data integrity procedures to ensure that fraudulent or incorrect information (ex., incorrect SSNs) was not being added to protective service records. Likewise, even correct information would need to be cross-matched accurately to the correct APS or CPS files. Erroneous or incorrectly-matched information could create false negatives or false positives that would erode the integrity of the background check process as well as protective service records.



<b>RECOMMENDATION 5</b>		
DHS regularly check department employees for criminal convictions and involvement in founded abuse and neglect allegations.		
<b>Agree or Disagree with Recommendation</b>	<b>Target date to complete implementation activities</b>	<b>Name and phone number of specific point of contact for implementation</b>
Partially Agree	Immediately	Belinda Teague, DHS HR Director, 503-931-8179  Mark Rasmussen, DHS HR Deputy Director, 971-273-6134

#### **Narrative for Recommendation 5**

Currently OAR 407-007-0020 (3) requires DHS employees to report to DHS Human Resources (HR) any new arrest, charge or conviction of any crime within 5 days of occurrence. HR is immediately notified by Child Welfare or Adult Protective Services if protective service investigations involve a DHS employee. When an employee is determined to have new criminal or abuse history, progressive discipline may be applied in such situations, or HR may request that a new background check is completed.

BCU and CW are both CJIS programs, consequently BCU and CW employees are all subject to the CJIS background check requirements. If an employee commits a crime that does not meet CJIS clearance thresholds, DHS will currently be notified by OSP, and are required to take action to remove CJIS-related duties. These requirements may circumvent progressive discipline and could make a new background check superfluous.

DHS has previously advocated unsuccessfully (HB 2228 in 2015) for statutory language that would have provided Oregon access to the FBI's Rap Back Program. This program provides employers with immediate updates when enrolled employees acquire new criminal history anywhere within the United States. Such a program could bring efficiencies to both provider and state employee background checks, especially for larger organizations like DHS. Without such an efficiency, ongoing rechecks of employees may lead to increased workload and fiscal impacts without proportional increases to safety.

Per BCU and HR records during the audit, a total of eight employees were found to have not complied explicitly with OAR 407-007-0020 (3); two of the eight reported the history to their supervisor.

DHS currently has 10,084 employees resulting in 0.0008% non-compliance. Due to the extremely low rate of non-compliance, DHS HR will continue to recheck employees under current procedures.

It should be noted that DHS adheres in its employment practices to EEOC guidelines, including those requirements delineated at the beginning of this response. In addition, due to the variety of populations that DHS serves, in most circumstances it is best practice to have staff with lived experience who have successfully overcome issues such as addiction disorders, mental health issues, domestic violence, and other crisis to work with families with similar challenges. Experience has shown that a person-centered approach that takes into consideration individual circumstances always works better than a one size fits all approach.

Please contact Frank T. Miles at 503-507-7851 with any questions.

Sincerely,



Fariborz Pakseresht  
DHS Director

cc:

Liesl Wendt, DHS Deputy Director  
Don Erickson, DHS Chief Administrative Officer  
Dan Haun, SSP Program Director  
Rebecca Jones Gaston, CW Program Director  
Sarah Landis, DHS Director of Audits and Consulting



# Oregon

Kate Brown, Governor

## Department of State Police

Sex Offender Registry Section

Criminal Investigation Division

General Headquarters

3565 Trelstad Ave SE

Salem, OR 97317

503-378-3720

503-378-8282

TTY 503-585-1452

April 16<sup>th</sup>, 2020

Kip Memmott, Director  
Secretary of State, Audits Division  
255 Capitol St. NE, Suite 500  
Salem, OR 97310

Dear Mr. Memmott,

This letter provides a written response to the Audits Division's final draft audit report titled "Oregon Should Improve Child Safety by Strengthening Child Care Background Checks and the State's Sex Offender Registry."

Foremost, OSP would like to thank the Secretary of State audit team for their thorough engagement throughout the audit process. This topic is of the utmost importance to Oregon communities and the audit brings to light many areas for improvement within the background check processes conducted by state government agencies. Secondly, OSP agrees with the audit findings and appreciates the recommendations for this agency, as detailed below, and will make coordinated efforts to improve OSP's practices where feasible. Sex Offender Registration (SOR) management is in the process of determining the most appropriate method of addressing the audit findings and will pursue the remedies most likely to enhance public safety, communication with our partner agencies, and further the State of Oregon's implementation of the Sex Offender Registration and Notification Act (SORNA) standards.

Below is our detailed response to each recommendation in the audit.

<b>RECOMMENDATION 7</b>		
OSP propose legislative changes to allow proactively providing information to DHS, such as when registered sex offenders state their occupation involves caring for a vulnerable population. This would allow a check to ensure the care being provided is in a safe manner.		
<b>Agree or Disagree with Recommendation</b>	<b>Target date to complete implementation activities</b>	<b>Name and phone number of specific point of contact for implementation</b>
Agree	July 2021 (*see narrative)	Dave Piercy, SOR Program Administrator – (503) 302-7359



# Oregon

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### Narrative for Recommendation 7

OSP is committed to proactively sharing information with its partners in the interest of community safety within its legislative bounds. The SOR Section will identify the most expeditious way to accomplish this change and will provide its recommendations to the Governor's office in the form of a legislative concept for the 2021 Legislative Session. As a member of the executive branch, OSP must obtain approval from the Governor's office prior to submitting a request for legislative change.

### RECOMMENDATION 8

For Oregon's sex offender registry public site, OSP propose legislative changes to follow SORNA standards. Also, OSP should work with the Board of Parole and Post-Prison Supervision to regularly obtain the required offender profile information and include further information on the public registry site such as general victim profiles.

Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Agree	July 2021	Dave Piercy, SOR Program Administrator

### Narrative for Recommendation 8

The OSP SOR Section has begun a procedural review of its public website and relevant state and federal legislation in order to identify ways to better communicate information about offenders, to include relevant victim characteristics. OSP supports efforts to bring the State of Oregon into greater compliance with SORNA standards and, in conjunction with its agency partners, will consider including language in future legislative concepts which furthers that goal, where changes cannot be addressed through administrative rule updates.

Please contact Captain Jon Harrington (971) 563-9555 with any questions.

Sincerely,

Jon Harrington, Captain  
Criminal Investigation Services Division  
Director



## **Audit Team**

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