

## Questions related to Oregon State Police Financial Impact Projections in the Draft Report

1. The report indicates OSP will process the background checks for permits to purchase. What is required in that process?
  - a. **OSP Response:** The proposed language creates several requirements for OSP in addition to the requirement specific to processing the permit to purchase background checks. OSP will establish a new program called the Firearms Permit to Purchase (FPTP) program, hire additional staff to perform the duties, and establish or complete all of the other requirements of OSP that are outlined in the initiative. The permit to purchase packet will be received from the permit agent. A permit to purchase background check also includes a firearms transaction background to be conducted. Results of these two background checks will be provided back to the permit agent.

Every time a permit to purchase holder goes to a dealer to purchase a firearm: The current process for the OSP Firearms Instant Check System (FICS) Unit when receiving the ATF form 4473 from an FFL dealer will be completed which includes a firearms transaction background check each time the permit to purchase holder purchases a firearm.

Permit to Purchase Renewal process: Permit to purchase packet will be received from the permit agent, and both a permit to purchase background check and a firearms transaction background check will be completed by the Firearms Permit To Purchase (FPTP) unit (required and established under IP-17).

2. (a) How does this differ, if any, from the processing of the current background checks for a purchase? (b) For example, will some be processed online without the involvement of a processor? And, will some require a processor to be involved? (c) Should the time for processing the checks related to a permit be about the same amount of processor time/interaction as the time a regular gun purchase check take?
  - a. **OSP Response:**
    - 2.(a) The current firearms transaction background check is a name and date of birth only check that is completed by the FICS unit staff. There is currently no permit to purchase background check completed by OSP as it relates to the purchase or ownership of firearms (no fingerprint-based background check).

2.(b) No, all permit to purchase background checks require an OSP FPTP staff member (processor) to complete. The permit to purchase background check accesses different data sources than the firearms transaction background check and requires OSP FPTP staff to review fingerprints to make positive identification. All permit to purchase background permit packets will initially be created in paper format and received by OSP FPTP staff primarily through U.S. Postal mail or other courier options. There are limited options for some permit agents to use an electronic transfer means if their agency is equipped with specialized fingerprinting technology. The future FPTP system or data base will need to be developed, created, and implemented prior to automated workflows being utilized.

**2.(c)** No, since the permit to purchase process includes both a permit to purchase background check and a firearms transaction background check, the process will take more time. The current firearms transaction background check portion of the permit to purchase application packet should take the same amount of time as the current process. However, the additional background check requirements for the permit to purchase permit and the manual data entry tasks required to document the information will require additional time for the OSP FPTP staff to complete the work.

3. (a) If the background check for a permit to purchase has been completed a few weeks or so before the purchaser goes in to buy a gun, would the OSP expect the check, done at the time of purchase, will be completed either all by the computer or very quickly because any problems would have been cleared up? (b) How might that enter into the estimate of the number of new processor positions needed?

a. **OSP Response:**

**3.(a)** Yes, if FBI NICS will allow OSP to access the NICS indexes as part of the permit to purchase application process it is reasonable to assume that if a purchaser attempts to buy a gun in close proximity to being issued the permit to purchase permit, the process should move expediently. OSP anticipates that as the FPTP staff are processing the permit to purchase packets, they will identify similar issues and discrepancies which are currently being identified by our OSP FICS staff during the firearms transaction background checks. The FPTP staff would address the issues and discrepancies during the permit to purchase process, therefore, during a firearms transaction background check, the process (once the person has a valid permit) should go quickly for most persons.

Currently, when an OSP FICS staff member locates an issue or discrepancy in a persons' computerized criminal history (CCH) or in other data sources that must be reviewed as part of the firearms transaction background check, a staff member must review and determine if the issue or discrepancy requires research or if it can be immediately addressed. People with common names or very similar information are less likely to pass through the FICS system automatically. In addition, any typos, or issues on the FFL form (using nick names vs. full legal name, address change that hasn't been updated at DMV, etc.) will require a staff person to manually process the firearms transaction background check. When in depth research must be done, it can involve working with public safety agencies across the nation (law enforcement, courts, parole and probation, etc.) in order to determine whether a person is eligible to purchase a firearm. Under the permit to purchase program, most of the CCH and other data source research would be conducted by FPTP staff during the permit to purchase process, however, it is anticipated that OSP FICS staff will locate new issues or new discrepancies in a person's CCH or in other data sources during the firearms transaction background checks.

The OSP FICS program can complete a majority of all transactions electronically and it will continue in the same format. The OSP FPTP program staff members will be processing packets that are mainly in paper format and these packets include paper fingerprint cards. There are limited options for some permit agents to use an electronic transfer means for fingerprint cards, if their agency is equipped with specialized

fingerprinting technology. The future FFTP system or data base will need to be developed, created, and implemented prior to automated workflows being utilized.

**3.(b)** The new Firearms Permit to Purchase (FFTP) program staff/processors needed are estimated based upon the current staff levels in the OSP Firearms Instant Check System (FICS) program. FICS staff are used to perform both the firearms transaction background checks and the needed research. The firearms transactions that can't be approved immediately go into the pended research process. OSP's current staffing levels in the FICS program are not able to keep up with the pended research process. The additional staff anticipated to be needed in the FFTP program will be required to meet the proposed 30-day permit turnaround time.

4. (a) When background checks are not cleared immediately, does OSP have an estimate of the amount of time that a processor actually spends taking steps to research and resolve the issues? (b) Would that likely be the same amount of time when handling a permit to purchase background check?

a. **OSP Response:**

**4.(a)** It is not possible to estimate an average amount of time required to complete the research needed on transactions that do not clear immediately. OSP is completely dependent on the other public safety agencies throughout the nation that hold the required information (law enforcement, courts, parole and probation, etc.) and some agencies take multiple months to respond with the needed information. Each pended transaction (does not clear immediately) is a unique situation that can have many factors which contribute to the length of time required to research and resolve.

**4.(b)** Yes, the research needed to determine if a person is eligible for a permit is the same as the research needed to determine if a person is eligible to purchase a firearm.

5. (a) Is there a process for initial denials to be resolved informally after the applicant provides additional information to correct the record? (b) Does OSP know how often or what percent of the time that happens? (c) We assume that an applicant for a permit to purchase could also use that informal process to help clear up problems?

a. **OSP Response:**

**5.(a)** Currently under the firearms transaction background within state statute, there is no informal denial process. If a transaction is outright denied the person is not eligible to purchase the firearm and the transaction is over. If the issue is not an outright denial, the transaction is put into the "pended research" queue and an OSP FICS staff person begins the process to obtain the needed information that will help determine if the transaction can be approved or denied. All information provided by a purchaser must be validated with the agency who holds the record.

**5.(b)** There is no current informal denial process, therefore no data to track or provide.

**5.(c)** There will be no informal process. OSP and the permit agents will need to define processes for how a permit applicant may provide information that will have to be validated by OSP. It is true that resolving any issues that prevent the issuance of a permit or a firearms transaction background during the permit to purchase application process will in the vast majority of cases allow the second firearms transaction

background check conducted when the person goes to purchase a firearm to go more quickly.

6. The report mentions that some temporary processors were brought on in 2021 to clear up a backlog. Has the backlog been clearing steadily or will the temporary processors be on board for a while and might they help with the initial influx or permit to purchase background checks?

- a. **OSP Response:** There are several backlogs within the FICS unit. The limited duration positions have position authority and funding through June 30, 2023. While some backlogs are getting better, others are getting worse. The limited duration FICS staff should not be counted on to be able to help with the new process at this time. The new process will be a separate program within the Oregon State Police. Initially, the Firearm Permit to Purchase (FPTP) program will require FPTP staff (processors) to manually process each permit to purchase packet. The permit to purchase background check accesses different data sources than the background checks currently conducted by OSP FICS staff members and the process will require OSP FPTP staff to review fingerprints to make positive identification. A searchable data base will be needed for the FPTP program and the goal would be for the new system to interface with existing technology utilized by OSP. All permit to purchase background permit packets will initially be created in paper format and received by OSP FPTP staff primarily through U.S. Postal mail or other courier options. There are limited options for some permit agents to use an electronic transfer means if their agency is equipped with specialized fingerprinting technology. The future FPTP system or data base will need to be developed, created, and implemented prior to automated workflows being utilized. Once that is accomplished the FPTP program and the FICS program structure, staffing and workflows can be analyzed for redundancies and inefficiencies.

The following is an explanation and status of all FICS unit backlog areas:

**Web queue backlog** is firearm transaction backgrounds that did not pass through the system automatically and require a FICS staff member to review the transaction. As of July 27, 2022, this number was 166. Since the beginning of the FICS program in Oregon up to the start of COVID-19 this queue was empty or at zero by the end of each business day with a handful of exceptions where the queue was emptied within one or two days. These temporary backlogs were usually following Black Friday or other extraordinarily high purchase transaction dates. The peak of the web queue backlog was on February 11, 2021, when there were 7,265 transactions in this backlog. Sometimes these issues are simple typos, mismatch of data (full legal name vs. nick name used on form, etc.) and can be immediately approved or denied without significant research.

**Pended transactions/research not started backlog** is firearm transaction backgrounds that have been categorized as needing research to determine if the purchaser is eligible to purchase the firearms based upon both the state and federal firearms prohibitions. These have not been reviewed by FICS staff. Historically there has always been a small number within this backlog due to the amount of work each employee is assigned and priorities for the workforce. In September 2021, this backlog was 3,789 and on July 27, 2022, it was 4,952 which is the largest backlog we have had in at least the last four years (as of January 1, 2018).

**Pended transactions/research started backlog** is firearm transaction backgrounds that have been reviewed by FICS staff and requests have been made to the agency holding the missing or needed documentation to make the determination if the purchaser is eligible to purchase the firearm based upon both the state and federal prohibitions. Historically there has always been a backlog in this category due to OSP FICS staff waiting for documentation from other agencies which is out of our control. In September 2021, the backlog was 2,802 and on July 27, 2022, it was 3,224 which is the largest backlog we have had in at least the last four years (as of January 1, 2018).

**Challenge Call Line backlog** is the backlog of phone calls and/or emails from purchasers who want to challenge either the denial, to check the status of their firearm transaction backlog or to provide information to help determine if they are eligible to purchase a firearm. In September 2021, this backlog was 1,425 and on July 27, 2022, the backlog was 14,806 which is the largest backlog we have had in this area since the beginning of the FICS program.

Staffing challenges have been an issue since the beginning of the COVID pandemic. Management has attempted many different methods to address all of the backlog areas within the FICS unit. OSP's FICS unit first focused on the Web queue backlog, which negatively impacted the other backlogs. As staffing continues to increase, more time will be allotted to focus on other backlog areas. The expedient growth in the Challenge Call Line backlog is partially due to purchasers making multiple inquires on the status of their pended transactions. It has been the agency's priority to focus limited personnel resources on the Web queue backlog and in getting the research started. As capacity grows, an increased number of Challenge Call Line backlog contacts will be made.

7. (a) Does OSP know how many applicants will be repeat purchasers after getting a five-year permit? Do you have a way to identify how many? (b) It seems that might reduce the estimate of 300,000 checks being needed because they will already have a permit. Should that be reflected in the estimated costs?
  - a. **OSP Response:**  
**7.(a)** OSP has no way to know or identify how many applicants will be repeat purchasers after getting a five-year permit. We do know that over the past five years approximately 550,000 individuals purchased over 1.4 million firearms so 2.5 firearms per individual over the last five years.  
  
**7.(b)** There is no way to determine the impacts of this proposed new law and how the people of Oregon will respond in regard to if or when they decide to apply for a permit.
8. OSP now charges \$33 for most background checks. Does this cover the actual cost of performing the check?
  - a. **OSP Response:** The \$33 fee for fingerprint-based background checks covers the OSP Regulatory and Public Access Unit costs and the core services and systems required to perform the work.

The Regulatory and Public Access Unit: This unit provides fingerprint identification background checks for regulatory agencies and qualifying private companies to ensure record information is reported for applicants working with the state's most vulnerable people – children, seniors, the disabled and more. State and national security issues have increased the need and number of agencies reaching out for a means to ensure the persons and property in their care or responsibility will not cause harm or destruction. Several Oregon and federal laws make such backgrounds a priority and requirement for a growing number of purposes. Within the Regulatory unit, fingerprint background checks are performed in support of the Concealed Handgun License program administered by the Sheriff in each county. Public access services include the following examples of use: Requests for another person's Oregon record and review of one's own record for purposes such as: Visa and access to foreign countries, adoption, employment, property management, housing, etc.

CJIS Core Services: Identification Services is responsible for maintaining Oregon's criminal offender records, comprised of arrest fingerprint and palm print images, arrest photo images, and related crime data reported by all Oregon law enforcement, corrections agencies, courts and District Attorneys for the purpose of establishing and maintaining a history of criminal events related to each individual. The Oregon criminal offender file is established only through positive fingerprint identification and provides the basis for the ability to search forensic crime scene fingerprint and palm print evidence. These mandated repository functions make up the ISS Core Services, which are supported by Other Fund revenue from CJIS fee services as well as a General Fund appropriation to cover the amount not fully covered by program fees.

It should be noted the FBI charges a fee for conducting a fingerprint check. The FBI's fee, which includes the convenience processing fees is, \$13.25.

### **Questions related to Local Government Financial Impact Projections in the Draft Report**

1. The plan is to have 250 more employees and then supervisors at a ratio of 10:1, which should be 25? But later in the report the number of supervisors listed is 50? Can you clarify that?
  - a. **DAS Response:** This was an error DAS made in analysis document, the information from OSSA is a 10:1 ratio and the pricing provided is for 25 supervisory employees at an average cost of \$120K per employee. The pricing shown in the document is correct and represents 25 supervisor employees. DAS inadvertently typed "50" in the narrative, which should be changed to "25".
  
2. The cost of the supervisor is listed as \$120k annually. What duties did the counties envision the supervisors will take on? In small counties might the sheriff perform some or all of those or would the supervisor typically be a new full-time position? And, did the counties provide an estimate of a salary range or are they all at that level?
  - a. **OSSA Response:** The supervisory positions (identified above) will hire processing clerks, oversee the performance and work that is being performed by these clerks. The supervisors will perform audits, provide guidance and instruction to employees, answer questions from the public, review all license approvals/denials and perform the duties of a clerk as necessary. The vast majority of these supervisory positions will be in Police

Departments and Sheriff's Offices in the most populated cities and counties of the state as these organizations will process the most permits. For local police agencies, these supervisors will be tasked with implementing an entirely new program, including hiring, equipping, obtaining appropriate software and other tools to implement the program, writing a procedures manual and troubleshooting the implementation. With this being said, small agencies probably will feel a greater impact as they often must depend on the Sheriff or Chief to perform multiple supervisory related duties in addition to their primary responsibilities of providing direct Law Enforcement Services to their community. Over 60 agencies in Oregon have 10 or less sworn officers. In these agencies, the Chief of Police often provides back-up to officers responding to calls for service and many fill shifts. The salary and benefits estimate are based on the average market cost for this type of a position in the most populated portions of the state as this is where the highest concentration of these employees will be.

3. The reports lists the cost of the 250 employees at \$100,000 a year for each employee. Does that correspond with a particular position or rank, like a deputy sheriff or a clerk? Or is there a range?
  - a. **OSSA Response:** This position would have the identical duties and responsibilities of a CHL Processing clerk in a Sheriff's Office. The salary and benefits estimate for this position has been based on the average market cost for this type of position in the most populated portions of the state as this is where the highest concentration of these employees will be. Given the costs of benefits including PERS and health care, even small agencies have few positions that don't have a full cost to the agency of at least \$100,000.
  
4. Could the counties describe what these 250 employees, who are hired to "process applications", will be doing? Fingerprinting? Photographing? Review paperwork? Meet with the applicant? How much time do they estimate for each application?
  - a. **OSSA Response:** After careful review of this measure, OSSA has determined that this measure will require a license process that is nearly identical to the current CHL process. Using experience from Sheriff's Office CHL Professionals from across the state OSSA has identified the following duties and responsibilities for this position. This process includes all of the items mentioned above as well as performing in-depth background checks, running approvals or denials past supervisors, creating and issuing licenses, answering questions from the public, computer entries, mailing correspondence and making notifications to other public safety system stakeholders. For cases involving an applicant that has lived in other states, it can take significant amounts of time to try and access documents to complete the background check. In addition, we anticipate that there will be a substantial number of appeals of denied permits, which will require these clerks to work with local counsel to provide all documentation to support the denial and to provide live testimony in court. We have conservatively estimated each Clerk can process 1200 applications per year as renewals take a little less time.

5. Was the processing estimate based on a model, like the process for concealed handgun licenses or some other process? Can they estimate how much time a concealed carry permit process typically takes per applicant?
  - a. **OSSA Response:** Yes, OSAA has modeled its process estimate on the current CHS process where typically one full-time employee can process about 1,200 CHL's annually. Please see the above response for additional details.
  
6. The estimate in the draft report of the time for an attorney to handle an appeal is 10 hours? Is that based on anything similar, like an appeal from a denied background check? Or from a denied concealed carry permit denial? Did the counties know how many appeals for each of those are filed every year? If not, is that available?
  - a. **OSSA Response:** The estimate for appeals is based on the experience of CHL denials that are appealed. OSSA estimated a very conservative .5% of all permit applications per year will be appealed. CHL professionals have been seeing an increase statewide of denial appeals, and we anticipate that as new case law is developing the number of appeals may be significantly higher for a few years.
  
7. Are those decisions often appealed beyond the trial court to the Court of Appeals? Do the counties say how often? Do they recall any that were filed?
  - a. **OSSA Response:** If a Circuit Court Judge upholds a CHL denial this decision can be appealed to the Court of Appeals. Because the CHL system has been in place since 1989, the case law is pretty well-established. If this initiative petition becomes law, it will create an entirely new program for issuing these permits and there will be no cases interpreting the new law. We anticipate a significant number of appeals for the first few years as the case law is developed. Yes, CHL professionals are aware of a number of significant cases that have been appealed to the Court of Appeals, and some on to the Oregon Supreme Court. Many cases that are appealed are affirmed without opinion, but here are some CHL cases that were appealed resulted in published opinions. For every case appealed to the Court of Appeals, the local agency will have to prepare an appellate brief, regardless of whether the Court decides to affirm without opinion or move forward to oral argument and a written opinion. This will be particularly onerous for Oregon smallest agencies where resources are limited and they are typically understaffed. Note that these are very litigious cases, and they often result in more than one opinion as they move up the appellate system. It is not unusual for a County to be in litigation for several years when one of these cases is challenged. Here is a sample of some CHL cases that resulted in published opinions. Stanley v. Myers, 276 Or App 321 (2016); Willis v. Winters, 350 Or 299 (2011) (Oregon Supreme Court); Willis v. Winters, 235 Or App 615 (2010) (Court of Appeals); Held v. Hanlin, 239 Or App 486 (2010); Bates v. Gordon, 212 Or App 336 (2007) (Court of Appeals on Remand); Bates v. Gordon, 341 Or 449 (2006) (Oregon Supreme Court); Bates v. Gordon, 201 Or App 609 (2005) (Court of Appeals); Young v. Noelle, 184 Or App 726 (2002); Rossi v. Jackson, 183 Or App 235 (2002); Langlotz v. Noelle, 179 Or App 317 (2002).



8. Do the cost projections provided by the Oregon State Sheriffs' Association assume that every Sheriff in Oregon will fully implement the provisions of Initiative Petition 17, if it is passed by voters?

- a. **OSSA Response:** OSSA was asked to provide a financial impact statement for local governments to implement this measure and the association has done its very best to estimate the financial impact of this measure to local governments based upon the numbers of FICS transactions that OSP provided and CHL program experiences statewide. While Oregon Sheriffs and their deputies have discretion in most cases about whether they will take enforcement action in a specific situation (like making an arrest) we are not aware of any Sheriff refusing to obey a statutory mandate enacted by the Legislature (or vote of the people) as all Sheriffs are sworn to uphold the law.

**OSSA additional information:** It should be noted that OSSA has determined the following areas will have a local government costs but they are very hard to estimate so they were not included in this estimate.

1. Cost to create and implement a firearm license program for every Police Department in Oregon. All 36 Sheriff's Offices in the state already process CHL applications, so these offices have personnel and systems in place to perform the kind of backgrounds that are required by this measure. All 126 Oregon local police agencies currently do not perform these functions. Planning and creating these systems within each Police Departments will incur a cost. We anticipate that a majority of these licenses will be processed by Police agencies based on the fact that cities have the highest concentration of the state population.
2. Physical space to house all the new employees/positions.
3. Office supplies, computers, desks, software and software license fees.
4. Oregon's smaller law enforcement agencies will be required to create the functionality necessary to perform the functions required by the law and will likely have to divert resources currently dedicated to direct policing services that are already insufficient.

Miscellaneous:

Did DAS' calculations take into account any savings related to medical or police investigation and enforcement that might occur based on a reduction in gun-related injuries, as a result of the closer scrutiny of purchasing or the ban on large-capacity magazines that the initiative will provide?

- a. **DAS Response:** No, the calculations in the draft analysis posted for the July 25<sup>th</sup> meeting of the Financial Estimates Committee do not consider any potential savings in this regard. I have spoken with the Criminal Justice Commission on this issue and the agency has indicated that they are unable to provide such an estimate.