

ORS 147.620

Certification procedures

- duties of certifying agency or official
 - liability
-

(1) As used in this section:

(a) “Certifying agency” means:

- (A)** A state or local law enforcement agency;
- (B)** A prosecutor’s or district attorney’s office;
- (C)** The Judicial Department, with respect to a judge of a state court acting as a certifying official;
- (D)** A judge other than a judge of a state court; **or**
- (E)** Any other agency that has responsibility for the detection, investigation or prosecution of a qualifying criminal activity, including but not limited to a certifying agency as defined in 8 C.F.R. 214.14.

(b) “Certifying official” means:

- (A)** The head of a certifying agency;
- (B)** A judge; **or**
- (C)** A person in a supervisory role who has been designated by the head of a certifying agency to issue certifications under this section on behalf of the agency.

(c) “Law enforcement agency” has the meaning given that term in ORS 146.003 (Definitions for ORS 146.003 to 146.189 and 146.710 to 146.992).

(d) “Petitioner” means a person requesting certification under this section.

(e) “Qualifying criminal activity” has the meaning given that term in 8 C.F.R. 214.14.

(f) “Victim of qualifying criminal activity” has the meaning given that term in 8 C.F.R. 214.14.

(2) Upon the request of a victim or a victim’s representative, a certifying official shall in writing certify that a victim has been helpful on a certification form designated by the United States Citizenship and Immigration Services if:

- (a) The victim is a victim of qualifying criminal activity; **and**
 - (b) The victim has been helpful, is being helpful or is likely to be helpful to the detection, investigation or prosecution of the qualifying criminal activity.
- (3) An ongoing investigation, a prosecution or a conviction is not required for a certification under this section.
- (4) For purposes of determining victim helpfulness, there is a rebuttable presumption that a victim is helpful, has been helpful or is likely to be helpful to the detection, investigation or prosecution of a qualifying criminal activity if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement officials.
- (5) Intentionally left blank —Ed.
 - (a) A certifying official processing a certification under this section shall:
 - (A) Fully complete and sign the certification form; **and**
 - (B) Except as provided in paragraph (b) of this subsection, include in the form specific details about the nature of the qualifying criminal activity investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness.
 - (b) If the qualifying criminal activity was committed by an adjudicated youth as defined in ORS 419A.004 (Definitions), the certifying official shall include on the certification form only the following information:
 - (A) The name of the adjudicated youth;
 - (B) The case number, if applicable; **and**
 - (C) A description of the qualifying criminal activity.
- (6) Except under circumstances in which there is good cause for delay, a certifying agency shall grant or deny a request for certification:
 - (a) Within 90 days of the date of the certification request; **or**
 - (b) Within 14 days of the date of the certification request if the victim is in removal proceedings.
- (7) Intentionally left blank —Ed.
 - (a) If a certifying official or agency denies certification under this section, the official or agency shall in writing notify the petitioner of the reason for the denial. The denial notification must contain the following information:
 - (A) An internal case number that allows the certifying agency to individually identify each certification request;
 - (B) The date of the denial; **and**

- (C)** The reason for the denial consisting of one of the following:
- (i)** Lack of qualifying criminal activity;
 - (ii)** Lack of helpfulness;
 - (iii)** Lack of jurisdiction over certification request; **or**
 - (iv)** Other circumstances for which a certifying official or agency may lawfully deny certification.
- (b)** Upon receiving notice that a request for certification under this section is denied, a petitioner may provide supplemental information to the certifying agency and request that the certification denial be reviewed by the certifying agency.
- (c)** A petitioner may submit a new request for certification, after a previous request is denied, to another certifying agency for processing if the other certifying agency was involved in investigating the qualifying criminal activity.
- (d)** A certification agency shall keep a copy of a denial notification for at least three years from the date of the notification.
- (e)** A decision by a certifying agency to deny certification under this section is not appealable under ORS chapter 19.
- (8)** Intentionally left blank —Ed.
- (a)** Certifying agencies and certifying officials are prohibited from disclosing the immigration status of a victim or other petitioner unless the disclosure is:
- (A)** Required by federal law or legal process; **or**
 - (B)** Authorized by the victim or other petitioner.
- (b)** Documents submitted with a request for certification under this section and any written response to a certification request from a certifying official or agency are confidential and may not be disclosed unless the disclosure is:
- (A)** Required by state or federal law or legal process;
 - (B)** Required by ORS 135.815 (Disclosure to defendant);
 - (C)** Constitutionally required;
 - (D)** Requested by a law enforcement agency and necessary for the investigation of a criminal charge; **or**
 - (E)** Authorized by the victim.
- (9)** A certifying official is immune from civil and criminal liability for, in good faith, certifying or denying certification under this section.
- (10)** A certifying agency shall:

- (a) Designate a person or persons within the agency responsible for processing requests for certification under this section.
- (b) Develop written procedures for processing requests for certification under this section. [2019 c.472 §1; 2021 c.489 §10]

Note: 147.620 (Certification procedures) was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 147 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 2 and 3, chapter 472, Oregon Laws 2019, provide:

Sec. 2. (1)(a) Beginning June 1, 2021, and annually thereafter, all certifying agencies that received certification requests under section 1 of this 2019 Act [147.620 (Certification procedures)] within the previous calendar year shall report to the Oregon Criminal Justice Commission in the manner described in this subsection.

- (b) A report required under this subsection shall be in a format specified by the commission by rule and must include the following information:
 - (A) The total number, within the previous year, of certification requests received, requests granted and requests denied, and the number of pending certifications on the date of the report; **and**
 - (B) For denied certification requests, the number of times each of the following were the reason for the denial:
 - (i) Lack of qualifying criminal activity;
 - (ii) Lack of helpfulness;
 - (iii) Lack of jurisdiction over certification request; **or**
 - (iv) Other circumstances for which a certifying official or agency may lawfully deny certification.
- (c) A report made under this subsection may not contain any personally identifying information.
- (2) The commission shall maintain a list of certifying agencies other than individual judges within the state in order to monitor compliance with the reporting requirement described in subsection (1) of this section.
- (3) Intentionally left blank —Ed.
 - (a) Within 90 days of receiving reports under subsection (1) of this section, the commission shall prepare a comprehensive report on the certification process within this state and submit the comprehensive report, in the manner described in ORS 192.245 (Form of report to legislature), to the committees of the Legislative Assembly related to the judiciary. The report shall identify any

certifying agency that did not submit a report as required by subsection (1) of this section.

- (b)** Notwithstanding section 1 (8)(b) of this 2019 Act, in preparing the report under paragraph (a) of this subsection, the commission may request from a certifying agency or official copies of denial notifications containing personally identifying information if the information is needed in order to prepare an accurate report. The certifying agency or official shall provide the denial notification to the commission on request. A denial notification received under this paragraph is confidential. [2019 c.472 §2]

Sec. 3. Section 2 of this 2019 Act is repealed on January 2, 2023. [2019 c.472 §3]

Location: https://oregon.public.law/statutes/ors_147.620

Original Source: Section 147.620 — Certification procedures; duties of certifying agency or official; liability, https://www.oregonlegislature.gov/bills_laws/ors/ors147.html (last accessed Aug. 25, 2023).