

A-Engrossed
Senate Bill 725

Ordered by the Senate April 24
Including Senate Amendments dated April 24

Sponsored by Senator TAYLOR, Representative NATHANSON; Senators DEMBROW, MANNING JR, MONNES
ANDERSON, Representatives ALONSO LEON, KENY-GUYER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Specifies charges or convictions that may not be considered in fitness determinations. **Specifies types of licenses, certifications or employment for which conviction of certain crimes or charges, deferred sentences or pending indictments regarding certain crimes are disqualifying.**

Prohibits Oregon Health Authority or Department of Human Services from conducting criminal records checks on long term care and support service providers more than once in every two-year period **except under stated conditions.**

A BILL FOR AN ACT

1
2 Relating to background checks of individuals who provide care; amending ORS 181A.195, 181A.200,
3 181A.400, 181A.875, 443.004 and 703.090 and section 42, chapter 837, Oregon Laws 2009.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 181A.195 is amended to read:

6 181A.195. (1) As used in this section:

7 (a) "Authorized agency" means state government as defined in ORS 174.111 and the Oregon
8 State Bar. "Authorized agency" does not include:

9 (A) The Oregon State Lottery Commission or the Oregon State Lottery; or

10 (B) A criminal justice agency, as defined in ORS 181A.010, that is authorized by federal law to
11 receive fingerprint-based criminal records checks from the Federal Bureau of Investigation.

12 (b) "Subject individual" means a person from whom an authorized agency may require finger-
13 prints pursuant to statute for the purpose of enabling the authorized agency to request a state or
14 nationwide criminal records check.

15 (2) An authorized agency may request that the Department of State Police conduct a criminal
16 records check on a subject individual for non-criminal justice purposes. If a nationwide criminal
17 records check of a subject individual is necessary, the authorized agency may request that the De-
18 partment of State Police conduct the check, including fingerprint identification, through the Federal
19 Bureau of Investigation.

20 (3) The Department of State Police shall provide the results of a criminal records check con-
21 ducted pursuant to subsection (2) of this section to the authorized agency requesting the check.

22 (4) The Federal Bureau of Investigation shall return or destroy the fingerprint cards used to
23 conduct the criminal records check and may not keep any record of the fingerprints, except that the
24 Federal Bureau of Investigation may retain the fingerprint cards and records of the fingerprints for
25 purposes described in ORS 181A.205. If the federal bureau policy authorizing return or destruction

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 of the fingerprint cards is changed, the Department of State Police shall cease to send the cards to
2 the federal bureau but shall continue to process the information through other available resources.

3 (5) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of
4 State Police, the Department of State Police shall destroy the fingerprint cards and may not retain
5 facsimiles or other material from which a fingerprint can be reproduced, except that the Department
6 of State Police may retain the fingerprint cards or create facsimiles for the purpose of providing
7 information under ORS 181A.205.

8 (6) If only a state criminal records check is conducted, after the criminal records check is
9 completed, the Department of State Police shall destroy the fingerprint cards and the results of the
10 criminal records check provided to the authorized agency and may not retain facsimiles or other
11 material from which a fingerprint can be reproduced, except that the Department of State Police
12 may retain the fingerprint cards and results or create facsimiles for the purpose of providing infor-
13 mation under ORS 181A.205.

14 (7) An authorized agency may conduct criminal records checks on subject individuals through
15 the Law Enforcement Data System maintained by the Department of State Police in accordance with
16 rules adopted, and procedures established, by the Department of State Police.

17 (8) An authorized agency and the Department of State Police shall permit a subject individual
18 for whom a fingerprint-based criminal records check was conducted to inspect the individual's own
19 state and national criminal offender records and, if requested by the subject individual, provide the
20 individual with a copy of the individual's own state and national criminal offender records.

21 (9) Each authorized agency, in consultation with the Department of State Police, may adopt
22 rules to implement this section and other statutes relating to criminal offender information obtained
23 through fingerprint-based criminal records checks. The rules may include but need not be limited to:

24 (a) Identifying applicable categories of subject individuals as specified by the Oregon Depart-
25 ment of Administrative Services under ORS 181A.215 who are subject to criminal records checks
26 by the authorized agency.

27 (b) Identifying applicable information that may be required from a subject individual to permit
28 a criminal records check as specified by the Oregon Department of Administrative Services under
29 ORS 181A.215.

30 (c) Specifying which programs or services are subject to this section.

31 (d) If the authorized agency uses criminal records checks for agency employment purposes:

32 (A) Determining when and under what conditions a subject individual may be hired on a pre-
33 liminary basis pending a criminal records check; and

34 (B) Defining the conditions under which a subject individual may participate in training, orien-
35 tation and work activities pending completion of a criminal records check.

36 (e) Establishing fees in an amount not to exceed the actual cost of acquiring and furnishing
37 criminal offender information.

38 **(10) A subject individual is not entitled to a fitness determination under subsection (11)**
39 **of this section, and the subject individual may not hold a position, provide services, be em-**
40 **ployed or be granted a license, certification, registration or permit, in the following circum-**
41 **stances:**

42 (a) **A person who has been convicted for any crime listed in ORS 443.004 (3) or (5) may**
43 **not be employed in any capacity having contact with a recipient of support services or a**
44 **resident of a residential facility or adult foster home as provided in ORS 443.004 (1).**

45 (b)(A) **A person with a conviction described in subparagraph (C) of this paragraph may**

1 **not be approved, licensed, certified, employed or hold a position:**

2 (i) **Described in ORS 418.016; or**

3 (ii) **In a child-caring agency, as defined in ORS 418.205.**

4 (B) **A person with a conviction described in subparagraph (C) of this paragraph, or who**
5 **has a household member with a conviction described in subparagraph (C) of this paragraph,**
6 **may not be approved, licensed, certified, employed or hold a position:**

7 (i) **As a proctor foster parent; or**

8 (ii) **As an adoptive parent.**

9 (C) **Paragraph (b) of this subsection applies to:**

10 (i) **A felony conviction involving child abuse or neglect or any other crime against a child,**
11 **spousal abuse or a crime involving violence, including rape, sexual assault or homicide but**
12 **excluding physical assault or battery.**

13 (ii) **A felony conviction, within five years of the date of the request for a criminal records**
14 **check, involving physical assault or battery.**

15 [(10)(a)] (11)(a) Except as otherwise provided in ORS 181A.400, 181A.875, 342.143, 342.223,
16 443.735, 475B.785 to 475B.949 and 703.090 and [paragraph (d) of this subsection] **subsection (10) of**
17 **this section**, an authorized agency, using the rules adopted by the Oregon Department of Adminis-
18 trative Services under ORS 181A.215, shall determine whether a subject individual is fit to hold a
19 position, provide services, be employed or be granted a license, certification, registration or permit.
20 If a subject individual is determined to be unfit, then the individual may not hold the position, pro-
21 vide services, be employed or be granted a license, certification, registration or permit.

22 (b)(A) Subject to subparagraph (B) of this paragraph, an authorized agency making a fitness
23 determination of an individual under this subsection may request results of a previously made fitness
24 determination from an authorized agency that has already made a fitness determination for the in-
25 dividual. An authorized agency that receives a request under this paragraph shall provide the re-
26 quested information.

27 (B) An authorized agency may make a request under this paragraph only for individuals:

28 (i) Who are applying to hold a position, provide services, be employed or be granted a license,
29 certification, registration or permit;

30 (ii) Who are in a category of individuals as specified by the Oregon Department of Administra-
31 tive Services by rule under ORS 181A.215; and

32 (iii) For whom a fitness determination has already been made.

33 (c) Except as otherwise provided in ORS 181A.400, in making the fitness determination under
34 this subsection, the authorized agency shall consider:

35 (A) The nature of the crime;

36 (B) The facts that support the conviction or pending indictment or that indicate the making of
37 a false statement;

38 (C) The relevancy, if any, of the crime or the false statement to the specific requirements of the
39 subject individual's present or proposed position, services, employment, license, certification or reg-
40 istration; and

41 (D) Intervening circumstances relevant to the responsibilities and circumstances of the position,
42 services, employment, license, certification, registration or permit, such as:

43 (i) The passage of time since the commission of the crime;

44 (ii) The age of the subject individual at the time of the crime;

45 (iii) The likelihood of a repetition of offenses or of the commission of another crime;

- 1 (iv) The subsequent commission of another relevant crime;
- 2 (v) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
- 3 (vi) The recommendation of an employer.

4 *[(d) An individual prohibited from receiving public funds for employment under ORS 443.004 (3)*
5 *is not entitled to a determination of fitness as a subject individual under this subsection.]*

6 **(d) In making the fitness determination under this subsection, the authorized agency**
7 **may not consider:**

8 **(A) Convictions that are more than 10 years old, except as provided in subsection (10) of**
9 **this section;**

10 **(B) Charges or arrests for which there was no conviction, unless the subject individual**
11 **is an individual described in ORS 443.004 (1) and the charge or arrest was for a crime listed**
12 **in ORS 443.004 (3) or (5);**

13 **(C) A conviction on a charge relating to marijuana if the charge is no longer a criminal**
14 **offense;**

15 **(D) A conviction under ORS 813.010, if the conviction occurred more than five years prior**
16 **to the date of the criminal records check;**

17 **(E) A deferred sentence, conditional discharge or participation in a diversion program for**
18 **any crime, except as provided in subsection (10) of this section; or**

19 **(F) A pending indictment for a crime, unless the subject individual is an individual de-**
20 **scribed in ORS 443.004 (1) and the pending indictment is for a crime listed in ORS 443.004 (3)**
21 **or (5).**

22 *[(11)]* **(12)** Criminal offender information is confidential. Authorized agencies and the Depart-
23 ment of State Police shall adopt rules to restrict dissemination of information received under this
24 section to persons with a demonstrated and legitimate need to know the information.

25 *[(12)]* **(13)** If a subject individual refuses to consent to the criminal records check or refuses to
26 be fingerprinted, the authorized agency shall deny the employment of the individual, or revoke or
27 deny any applicable position, authority to provide services, license, certification, registration or
28 permit.

29 *[(13)]* **(14)** If an authorized agency requires a criminal records check of employees, prospective
30 employees, contractors, vendors or volunteers or applicants for a license, certification, registration
31 or permit, the application forms of the authorized agency must contain a notice that the person is
32 subject to fingerprinting and a criminal records check.

33 **SECTION 2.** ORS 181A.200 is amended to read:

34 181A.200. (1) As used in this section:

35 (a) "Care" means the provision of care, treatment, education, training, instruction, supervision,
36 placement services, recreation or support to children, the elderly or persons with disabilities.

37 (b) "Native American tribe" has the meaning given that term in ORS 181A.210 (4).

38 (c) "Qualified entity" means a community mental health program, a community developmental
39 disabilities program, a local health department, the government of a Native American tribe or an
40 agency of a Native American tribe responsible for child welfare or an individual or business or or-
41 ganization, whether public, private, for-profit, nonprofit or voluntary, that provides care, including
42 a business or organization that licenses, certifies or registers others to provide care.

43 (2) For the purpose of requesting a state or nationwide criminal records check under ORS
44 181A.195, the Department of Human Services, the Oregon Health Authority and the Employment
45 Department may require the fingerprints of a person:

- 1 (a) Who is employed by or is applying for employment with either department or the authority;
2 (b) Who provides or seeks to provide services to either department or the authority as a con-
3 tractor, subcontractor, vendor or volunteer who:
- 4 (A) May have contact with recipients of care;
5 (B) Has access to personal information about employees of either department or the authority,
6 recipients of care from either department or the authority or members of the public, including Social
7 Security numbers, dates of birth, driver license numbers, medical information, personal financial in-
8 formation or criminal background information;
9 (C) Has access to information the disclosure of which is prohibited by state or federal laws,
10 rules or regulations, or information that is defined as confidential under state or federal laws, rules
11 or regulations;
12 (D) Has access to property held in trust or to private property in the temporary custody of the
13 state;
14 (E) Has payroll or fiscal functions or responsibility for:
15 (i) Receiving, receipting or depositing money or negotiable instruments;
16 (ii) Billing, collections, setting up financial accounts or other financial transactions; or
17 (iii) Purchasing or selling property;
18 (F) Provides security, design or construction services for government buildings, grounds or fa-
19 cilities;
20 (G) Has access to critical infrastructure or secure facilities information; or
21 (H) Is providing information technology services and has control over or access to information
22 technology systems;
- 23 (c) For the purposes of licensing, certifying, registering or otherwise regulating or administering
24 programs, persons or qualified entities that provide care;
25 (d) For the purposes of employment decisions by or for qualified entities that are regulated or
26 otherwise subject to oversight by the Department of Human Services or the Oregon Health Au-
27 thority and that provide care;
28 (e) For the purposes of employment decisions made by a mass transit district or transportation
29 district for qualified entities that, under contracts with the district or the Oregon Health Authority,
30 employ persons to operate motor vehicles for the transportation of medical assistance program cli-
31 ents; or
32 (f) For the purposes of licensure, certification or registration of foster homes by the government
33 of a Native American tribe or an agency of a Native American tribe responsible for child welfare.
- 34 (3) The Department of Human Services and the Oregon Health Authority may conduct criminal
35 records checks on a person through the Law Enforcement Data System maintained by the Depart-
36 ment of State Police, if deemed necessary by the Department of Human Services or the Oregon
37 Health Authority to protect children, elderly persons, persons with disabilities or other vulnerable
38 persons.
- 39 (4) The Department of Human Services and the Oregon Health Authority may furnish to quali-
40 fied entities, in accordance with the rules of the Department of Human Services or the Oregon
41 Health Authority and the rules of the Department of State Police, information received from the
42 Law Enforcement Data System. However, any criminal offender records and information furnished
43 to the Department of Human Services or the Oregon Health Authority by the Federal Bureau of
44 Investigation through the Department of State Police may not be disseminated to qualified entities.
- 45 (5)(a) Except as otherwise provided in ORS 443.735 and 475B.785 to 475B.949, a qualified entity,

1 subject to rules adopted by the Oregon Department of Administrative Services under ORS 181A.215,
2 shall determine under this section whether a person is fit to hold a position, provide services, be
3 employed or, if the qualified entity has authority to make such a determination, be licensed, certified
4 or registered. If a person is determined to be unfit, then that person may not hold the position,
5 provide services or be employed, licensed, certified or registered.

6 (b) **Except as provided in paragraph (d)(E) of this subsection**, a person prohibited from re-
7 ceiving public funds for employment under ORS 443.004 (3) **or (5)** is not entitled to a determination
8 of fitness under this subsection.

9 (c) In making the fitness determination under this subsection, the qualified entity shall consider:

10 (A) The nature of the crime;

11 (B) The facts that support the conviction or pending indictment or indicate the making of a false
12 statement;

13 (C) The relevancy, if any, of the crime or the false statement to the specific requirements of the
14 person's present or proposed position, services, employment, license, certification or registration;
15 and

16 (D) Intervening circumstances relevant to the responsibilities and circumstances of the position,
17 services, employment, license, certification or registration, such as:

18 (i) The passage of time since the commission of the crime;

19 (ii) The age of the person at the time of the crime;

20 (iii) The likelihood of a repetition of offenses;

21 (iv) The subsequent commission of another relevant crime; and

22 (v) The recommendation of an employer.

23 (d) **In making the fitness determination under this subsection, the qualified entity may**
24 **not consider:**

25 (A) **Convictions that are more than 10 years old;**

26 (B) **Charges or arrests without conviction;**

27 (C) **A conviction on a charge related to marijuana that is no longer a criminal offense;**

28 (D) **A conviction under ORS 813.010, if the subject individual had only one conviction**
29 **under ORS 813.010 in the past five years; or**

30 (E) **A deferred sentence, conditional discharge or participation in a diversion program for**
31 **any crime, other than crimes listed in ORS 443.004 (3) and (5).**

32 (6) The Department of Human Services and the Oregon Health Authority, subject to rules
33 adopted by the Oregon Department of Administrative Services under ORS 181A.215, shall develop
34 systems that maintain information regarding criminal records checks in order to minimize the ad-
35 ministrative burden imposed by this section and ORS 181A.195. Records maintained under this sub-
36 section are confidential and may not be disseminated except for the purposes of this section and in
37 accordance with the rules of the Department of Human Services, the Oregon Health Authority and
38 the Department of State Police. Nothing in this subsection permits the Department of Human Ser-
39 vices to retain fingerprint cards obtained pursuant to this section.

40 (7) In addition to the rules required by ORS 181A.195, the Department of Human Services and
41 the Oregon Health Authority, in consultation with the Department of State Police, shall adopt rules:

42 (a) Specifying which qualified entities are subject to this section;

43 (b) Specifying which qualified entities may request criminal offender information;

44 (c) Specifying which qualified entities are responsible for deciding, subject to rules adopted by
45 the Oregon Department of Administrative Services under ORS 181A.215, whether a subject individ-

1 ual is not fit for a position, service, license, certification, registration or employment; and

2 (d) Specifying when a qualified entity, in lieu of conducting a completely new criminal records
3 check, may proceed to make a fitness determination under subsection (5) of this section using the
4 information maintained by the Department of Human Services and the Oregon Health Authority
5 pursuant to subsection (6) of this section.

6 (8) If a person refuses to consent to the criminal records check or refuses to be fingerprinted,
7 the qualified entity shall deny or terminate the employment of the person, or revoke or deny any
8 applicable position, authority to provide services, employment, license, certification or registration.

9 (9) If the qualified entity requires a criminal records check of employees or other persons, the
10 application forms of the qualified entity must contain a notice that employment is subject to fin-
11 gerprinting and a criminal records check.

12 **SECTION 3.** ORS 443.004 is amended to read:

13 443.004. (1)(a) The Department of Human Services or the Oregon Health Authority shall com-
14 plete a criminal records check under ORS 181A.195 on:

15 [(a)] (A) An employee of a residential facility or an adult foster home;

16 [(b)] (B) Any individual who is paid directly or indirectly with public funds who has or will have
17 contact with a recipient of support services or a resident of an adult foster home or a residential
18 facility; and

19 [(c)] (C) A home care worker registering with the Home Care Commission or renewing a regis-
20 tration with the Home Care Commission.

21 **(b) The department or the authority shall complete the criminal records check under**
22 **paragraph (a) of this subsection not more than once during a two-year period unless the**
23 **department or the authority:**

24 **(A) Receives credible evidence of a new criminal conviction;**

25 **(B) Receives credible evidence to substantiate a complaint of abuse or neglect;**

26 **(C) Is required by federal law to conduct more frequent criminal records checks; or**

27 **(D) Is notified that a subject individual has changed positions or duties for which there**
28 **are different criminal records check requirements.**

29 (2)(a) A home health agency shall conduct a criminal background check before hiring or con-
30 tracting with an individual and before allowing an individual to volunteer to provide services on
31 behalf of the home health agency, if the individual will have direct contact with a patient of the
32 home health agency.

33 (b) An in-home care agency shall conduct a criminal background check before hiring or con-
34 tracting with an individual and before allowing an individual to volunteer to provide services on
35 behalf of the in-home care agency, if the individual will have direct contact with a client of the in-
36 home care agency.

37 (c) The authority shall prescribe by rule the process for conducting a criminal background
38 check.

39 (3) Public funds may not be used to support, in whole or in part, the employment in any capacity
40 having contact with a recipient of support services or a resident of a residential facility or an adult
41 foster home, of an individual, other than a mental health or substance abuse treatment provider,
42 who has been convicted:

43 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
44 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,
45 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125 (5)(c) or

1 (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800,
2 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322;

3 (b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465,
4 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date of conviction for which was within the
5 five years immediately preceding employment in any capacity of an individual, other than a mental
6 health or substance abuse treatment provider, having contact with a recipient of support services,
7 a resident of a residential facility or a resident of an adult foster home, when the recipient or resi-
8 dent is 65 years of age or older;

9 (c) Of a crime listed in ORS 163A.005;

10 (d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled sub-
11 stance;

12 (e) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to
13 (d) of this subsection; or

14 (f) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to a
15 crime described in paragraphs (a) to (e) of this subsection.

16 (4) If the criminal background check conducted by a home health agency or in-home care agency
17 under subsection (2) of this section reveals that the individual who is subject to the criminal back-
18 ground check has been convicted of any of the crimes described in subsection (3) of this section, the
19 home health agency or in-home care agency may not employ the individual.

20 (5) Public funds may not be used to support, in whole or in part, the employment, in any ca-
21 pacity having contact with a recipient of support services or a resident of a residential facility or
22 an adult foster home, of a mental health or substance abuse treatment provider who has been con-
23 victed of committing, or convicted of an attempt, conspiracy or solicitation to commit, a crime de-
24 scribed in ORS 163.095, 163.115, 163.375, 163.405, 163.411 or 163.427.

25 (6) Upon the request of a mental health or substance abuse treatment provider, the department
26 or authority shall maintain a record of the results of any fitness determination made under ORS
27 181A.195 [(10)] (11). The department or authority may disclose the record only to a person the pro-
28 vider specifically authorizes, by a written release, to receive the information.

29 (7) If the department or authority has a record of substantiated abuse committed by an employee
30 or potential employee of a home health agency, in-home care agency, adult foster home or residen-
31 tial facility, regardless of whether criminal charges were filed, the department or authority shall
32 notify, in writing, the employer and the employee or potential employee.

33 (8) As used in this section:

34 (a) "Adult foster home" has the meaning given that term in ORS 443.705.

35 (b) "Home care worker" has the meaning given that term in ORS 410.600.

36 (c) "Home health agency" has the meaning given that term in ORS 443.014.

37 (d) "In-home care agency" has the meaning given that term in ORS 443.305.

38 (e) "Mental health or substance abuse treatment provider" means:

39 (A) A peer support specialist;

40 (B) An employee of a residential treatment facility or a residential treatment home that is li-
41 censed under ORS 443.415 to provide treatment for individuals with alcohol or drug dependence;

42 (C) An individual who provides treatment or services for persons with substance use disorders;

43 or

44 (D) An individual who provides mental health treatment or services.

45 (f) "Peer support specialist" has the meaning given that term in ORS 414.025.

1 (g) “Residential facility” has the meaning given that term in ORS 443.400.

2 **SECTION 4.** ORS 443.004, as amended by section 24, chapter 75, Oregon Laws 2018, is amended
3 to read:

4 443.004. (1)(a) The Department of Human Services or the Oregon Health Authority shall complete a criminal records check under ORS 181A.195 on:

5 [(a)] (A) An employee of a residential facility or an adult foster home;

6 [(b)] (B) Any individual who is paid directly or indirectly with public funds who has or will have
7 contact with a recipient of support services or a resident of an adult foster home or a residential
8 facility; and
9

10 [(c)] (C) A home care worker or personal support worker registering with the Home Care Commission or renewing a registration with the Home Care Commission.

11
12 (b) **The department or the authority shall complete the criminal records check under
13 paragraph (a) of this subsection not more than once during a two-year period unless the
14 department or the authority:**

15 (A) **Receives credible evidence of a new criminal conviction;**

16 (B) **Receives credible evidence to substantiate a complaint of abuse or neglect;**

17 (C) **Is required by federal law to conduct more frequent criminal records checks; or**

18 (D) **Is notified that a subject individual has changed positions or duties for which there
19 are different criminal records check requirements.**

20 (2)(a) A home health agency shall conduct a criminal background check before hiring or contracting with an individual and before allowing an individual to volunteer to provide services on
21 behalf of the home health agency, if the individual will have direct contact with a patient of the
22 home health agency.
23

24 (b) An in-home care agency shall conduct a criminal background check before hiring or contracting with an individual and before allowing an individual to volunteer to provide services on
25 behalf of the in-home care agency, if the individual will have direct contact with a client of the in-home care agency.
26
27

28 (c) The authority shall prescribe by rule the process for conducting a criminal background
29 check.

30 (3) Public funds may not be used to support, in whole or in part, the employment in any capacity
31 having contact with a recipient of support services or a resident of a residential facility or an adult
32 foster home, of an individual, other than a mental health or substance abuse treatment provider,
33 who has been convicted:

34 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
35 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,
36 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125 (5)(c) or
37 (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800,
38 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322;

39 (b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465,
40 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date of conviction for which was within the
41 five years immediately preceding employment in any capacity of an individual, other than a mental
42 health or substance abuse treatment provider, having contact with a recipient of support services,
43 a resident of a residential facility or a resident of an adult foster home, when the recipient or resident is 65 years of age or older;
44

45 (c) Of a crime listed in ORS 163A.005;

1 (d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled sub-
2 stance;

3 (e) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to
4 (d) of this subsection; or

5 (f) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to a
6 crime described in paragraphs (a) to (e) of this subsection.

7 (4) If the criminal background check conducted by a home health agency or in-home care agency
8 under subsection (2) of this section reveals that the individual who is subject to the criminal back-
9 ground check has been convicted of any of the crimes described in subsection (3) of this section, the
10 home health agency or in-home care agency may not employ the individual.

11 (5) Public funds may not be used to support, in whole or in part, the employment, in any ca-
12 pacity having contact with a recipient of support services or a resident of a residential facility or
13 an adult foster home, of a mental health or substance abuse treatment provider who has been con-
14 victed of committing, or convicted of an attempt, conspiracy or solicitation to commit, a crime de-
15 scribed in ORS 163.095, 163.115, 163.375, 163.405, 163.411 or 163.427.

16 (6) Upon the request of a mental health or substance abuse treatment provider, the department
17 or authority shall maintain a record of the results of any fitness determination made under ORS
18 181A.195 [(10)] (11). The department or authority may disclose the record only to a person the pro-
19 vider specifically authorizes, by a written release, to receive the information.

20 (7) If the department or authority has a record of substantiated abuse committed by an employee
21 or potential employee of a home health agency, in-home care agency, adult foster home or residen-
22 tial facility, regardless of whether criminal charges were filed, the department or authority shall
23 notify, in writing, the employer and the employee or potential employee.

24 (8) As used in this section:

25 (a) "Adult foster home" has the meaning given that term in ORS 443.705.

26 (b) "Home care worker" has the meaning given that term in ORS 410.600.

27 (c) "Home health agency" has the meaning given that term in ORS 443.014.

28 (d) "In-home care agency" has the meaning given that term in ORS 443.305.

29 (e) "Mental health or substance abuse treatment provider" means:

30 (A) A peer support specialist;

31 (B) An employee of a residential treatment facility or a residential treatment home that is li-
32 censed under ORS 443.415 to provide treatment for individuals with alcohol or drug dependence;

33 (C) An individual who provides treatment or services for persons with substance use disorders;
34 or

35 (D) An individual who provides mental health treatment or services.

36 (f) "Peer support specialist" has the meaning given that term in ORS 414.025.

37 (g) "Personal support worker" has the meaning given that term in ORS 410.600.

38 (h) "Residential facility" has the meaning given that term in ORS 443.400.

39 **SECTION 5.** Section 42, chapter 837, Oregon Laws 2009, is amended to read:

40 **Sec. 42. (1)** [Section 6 of this 2009 Act] **ORS 443.004** applies to employees who are hired on or
41 after [the effective date of this 2009 Act] **July 28, 2009.**

42 **(2) ORS 443.004 does not apply to an employee hired prior to July 28, 2009, who has re-**
43 **mained with the same employer, even if the employee has been promoted or transferred to**
44 **a different position with the employer since that date.**

45 **SECTION 6.** ORS 181A.400 is amended to read:

1 181A.400. (1) For the purpose of requesting a state or nationwide criminal records check under
2 ORS 181A.195, the Department of Public Safety Standards and Training may require the fingerprints
3 of a person who:

4 (a) Is employed or applying for employment by the department;

5 (b) Provides services or seeks to provide services to the department as a contractor, vendor or
6 volunteer; or

7 (c) Is applying to be certified as a public safety officer, is applying to be reissued certification
8 as a public safety officer or is an applicant or public safety officer who is under investigation by the
9 department.

10 (2) Notwithstanding ORS 181A.195 (5) and (6), the Department of State Police shall maintain in
11 the department's files the fingerprint cards used to conduct a criminal records check on persons
12 described in subsection (1)(c) of this section.

13 (3) ORS 181A.195 [(10)] (11) does not apply to the Department of Public Safety Standards and
14 Training when the department makes denial or revocation decisions regarding persons described in
15 subsection (1)(c) of this section.

16 (4) The department and an employee of the department acting within the course and scope of
17 employment are immune from any civil liability that might otherwise be incurred or imposed for
18 making denial or revocation decisions regarding persons described in subsection (1)(c) of this sec-
19 tion. The department, an employee of the department acting within the course and scope of em-
20 ployment and an employer or employer's agent who in good faith comply with the requirements of
21 ORS 181A.640, any rules adopted by the department and the decision of the department or employee
22 of the department acting within the course and scope of employment are not liable for
23 employment-related decisions based on decisions made under ORS 181A.640. The department or an
24 employee of the department acting within the course and scope of employment is not liable for
25 defamation or invasion of privacy in connection with the lawful dissemination of information law-
26 fully obtained under ORS 181A.195.

27 **SECTION 7.** ORS 181A.875 is amended to read:

28 181A.875. (1) A license or certificate issued by the Department of Public Safety Standards and
29 Training under ORS 181A.870 expires two years following the date of issuance or on the assigned
30 renewal date.

31 (2) The department shall offer certificates or licenses to private security providers in levels and
32 categories as established by the Board on Public Safety Standards and Training in consultation with
33 the department.

34 (3) Upon receipt of an application for certification or licensure under ORS 181A.860, the de-
35 partment shall forward a complete set of the applicant's fingerprints to the Department of State
36 Police and request that the Department of State Police conduct a nationwide criminal records check
37 of the applicant as provided in ORS 181A.195.

38 (4) ORS 181A.195 [(10)] (11) does not apply to the Department of Public Safety Standards and
39 Training when the department makes a denial or revocation decision as a result of information re-
40 ceived pursuant to subsection (3) this section.

41 (5) The department and an employee of the department acting within the course and scope of
42 employment are immune from any civil liability that might otherwise be incurred or imposed for
43 making a denial or revocation decision regarding an applicant pursuant to subsection (3) of this
44 section. The department, an employee of the department acting within the course and scope of em-
45 ployment and an employer or employer's agent who in good faith comply with the requirements of

1 ORS 181A.855 or 181A.860, any rules adopted by the department and the decision of the department
2 or employee of the department acting within the course and scope of employment are not liable for
3 employment-related decisions based on decisions made under ORS 181A.855 or 181A.860. The de-
4 partment or an employee of the department acting within the course and scope of employment is
5 not liable for defamation or invasion of privacy in connection with the lawful dissemination of in-
6 formation lawfully obtained under ORS 181A.195.

7 **SECTION 8.** ORS 703.090 is amended to read:

8 703.090. (1) All of the following requirements apply to an applicant for a license as a general
9 polygraph examiner. The applicant must:

10 (a) Be at least 18 years of age.

11 (b) Be a citizen of the United States.

12 (c) Not have demonstrated, in the preceding 10 years, a course of behavior that indicates a high
13 degree of probability that the applicant will be unlikely to perform the duties of a polygraph exam-
14 iner in a manner that would serve the interests of the public.

15 (d) If previously convicted for a criminal offense, provide information, as required by the De-
16 partment of Public Safety Standards and Training, relating to the circumstances of the conviction.
17 ORS 670.280 is applicable when the department considers information provided under this paragraph.

18 (e)(A) Have received a baccalaureate degree from a college or university that is accredited by
19 the American Association of Collegiate Registrars and Admissions Officers; or

20 (B) Have graduated from high school or have been awarded a certificate for passing an approved
21 high school equivalency test such as the General Educational Development (GED) test, and have at
22 least five years of active investigative experience before the date of application.

23 (f) Have graduated from a polygraph examiners course approved by the department and con-
24 forming to any minimum training standards approved by the Board on Public Safety Standards and
25 Training and have satisfactorily completed at least 200 examinations, or have worked as a polygraph
26 examiner for a period of at least five years for a governmental agency within the State of Oregon
27 and have satisfactorily completed at least 200 examinations.

28 (g) Have successfully completed an examination conducted by the department to determine,
29 consistent with any standards approved by the board, competency to act as a polygraph examiner.

30 (2) An applicant meets the requirements of subsection (1)(e) or (f) of this section if the applicant
31 provides the department with documentation of military training or experience that the department
32 determines is substantially equivalent to the education or experience required by subsection (1)(e)
33 or (f) of this section.

34 (3) For the purpose of requesting a state or nationwide criminal records check under ORS
35 181A.195, the department shall require each applicant to be fingerprinted as part of the licensing
36 procedure.

37 (4) When the department refuses to issue a license based upon an applicant's failure to meet the
38 requirements of subsection (1)(c) of this section, the department shall prepare a concise, specific
39 written statement of the facts supporting the department's conclusion that there is a high degree
40 of probability that the applicant will be unlikely to perform required duties in a manner that would
41 serve the interests of the public. A copy of the statement must be given to the applicant. ORS
42 181A.195 [(10)] (11) does not apply to the department when the department refuses to issue a license
43 under this subsection.

44 (5) The department and an employee of the department acting within the course and scope of
45 employment are immune from any civil liability that might otherwise be incurred or imposed for

1 refusing to issue a license under subsection (4) of this section. The department, an employee of the
2 department acting within the course and scope of employment and an employer or employer's agent
3 who in good faith comply with the requirements of this section, any rules adopted by the department
4 and the decision of the department or employee of the department acting within the course and
5 scope of employment are not liable for employment-related decisions based on decisions made under
6 this section. The department or an employee of the department acting within the course and scope
7 of employment is not liable for defamation or invasion of privacy in connection with the lawful dis-
8 semination of information lawfully obtained under ORS 181A.195.

9
