

B-Engrossed
Senate Bill 725

Ordered by the House May 28
Including Senate Amendments dated April 24 and House Amendments
dated May 28

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, **arrests, deferred sentences, conditional discharges, referrals for diversion programs and pending indictments** that may not be considered in fitness determinations. Specifies types of licenses, certifications or employment for which conviction of certain crimes or charges, **arrests, conditional discharges, referrals for diversion programs, deferred sentences or pending indictments** regarding certain crimes *[are]* **may be** 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.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to background checks of individuals who provide care; amending ORS 181A.195 and 443.004
3 and section 42, chapter 837, Oregon Laws 2009; and prescribing an effective date.

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

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 Federal Bureau of Investigation may retain the fingerprint cards and records of the fingerprints for
2 purposes described in ORS 181A.205. If the federal bureau policy authorizing return or destruction
3 of the fingerprint cards is changed, the Department of State Police shall cease to send the cards to
4 the federal bureau but shall continue to process the information through other available resources.

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

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

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

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

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

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

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

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

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

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

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

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

40 (10)(a) Except as otherwise provided in ORS 181A.400, 181A.875, 342.143, 342.223, 443.735,
41 475B.785 to 475B.949 and 703.090 and paragraph (d) of this subsection, an authorized agency, using
42 the rules adopted by the Oregon Department of Administrative Services under ORS 181A.215, shall
43 determine whether a subject individual is fit to hold a position, provide services, be employed or be
44 granted a license, certification, registration or permit. If a subject individual is determined to be
45 unfit, then the individual may not hold the position, provide services, be employed or be granted a

1 license, certification, registration or permit.

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

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

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

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

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

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

15 (A) The nature of the crime;

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

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

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

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

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

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

26 (iv) The subsequent commission of another relevant crime;

27 (v) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

28 (vi) The recommendation of an employer.

29 (d) *[An individual prohibited from receiving public funds for employment under ORS 443.004 (3)*
30 *is not entitled to a determination of fitness as a subject individual under this subsection.]* **A subject**
31 **individual is not entitled to a fitness determination under this subsection if the subject in-**
32 **dividual:**

33 (A) **Is or seeks to be employed in any capacity having contact with a recipient of support**
34 **services or a resident of a residential facility or adult foster home, as provided in ORS 443.004**
35 **(3), and has been convicted of any crime listed in ORS 443.004 (3) or (5).**

36 (B) **Is prohibited by federal law from holding a position, providing services, being em-**
37 **ployed or being granted a license, certification, registration or permit for which the fitness**
38 **determination is requested by an authorized agency.**

39 (11)(a) **In conducting a fitness determination regarding a subject individual other than**
40 **an individual described in paragraph (b) of this subsection, the Department of Human Ser-**
41 **vices or the Oregon Health Authority may not consider:**

42 (A) **A conviction that is more than 10 years old unless the conviction is for a crime listed**
43 **in ORS 443.004 (3) or (5);**

44 (B) **A charge or arrest for which there was no conviction unless the charge or arrest is**
45 **for a crime listed in ORS 443.004 (3) or (5);**

1 (C) A conviction on a charge relating to marijuana if the charge is no longer a criminal
2 offense;

3 (D) A conviction under ORS 813.010, if the subject individual had no more than one con-
4 viction under ORS 813.010 in the five-year period prior to the date of the criminal records
5 check;

6 (E) A deferred sentence, conditional discharge or participation in a diversion program for
7 any crime unless the crime is listed in ORS 443.004 (3) and (5); and

8 (F) A pending indictment for a crime unless the crime is listed in ORS 443.004 (3) or (5).

9 (b) The department or the authority may consider a charge, arrest, conviction, deferred
10 sentence, conditional discharge, participation in a diversion program or pending indictment
11 that may not be considered under paragraph (a) of this subsection in making a fitness de-
12 termination for a subject individual who is:

13 (A) Described in ORS 418.016;

14 (B) An employee, volunteer, contractor or provider in, or an agent of, a proctor foster
15 home as defined in ORS 418.205 or a child-caring agency as defined in ORS 418.205;

16 (C) An exempt family child care provider, as defined in ORS 329A.430, the provider's
17 household members who are 16 years of age or older or a frequent visitor of a provider who
18 is subject to a criminal records check;

19 (D) An employee or volunteer in a facility that:

20 (i) Provides care to children and is operated by a school district, as defined in ORS
21 332.002, a political subdivision of this state, a preschool recorded program, as defined in ORS
22 329A.250, or a government agency; and

23 (ii) Is not required to be certified under ORS 329A.280; or

24 (E) An emergency medical services provider, as defined in ORS 682.025, for the purpose
25 of determining the fitness of the emergency medical services provider to receive or hold a
26 license under ORS 670.280.

27 [(11)] (12) Criminal offender information is confidential. Authorized agencies and the Depart-
28 ment of State Police shall adopt rules to restrict dissemination of information received under this
29 section to persons with a demonstrated and legitimate need to know the information.

30 [(12)] (13) If a subject individual refuses to consent to the criminal records check or refuses to
31 be fingerprinted, the authorized agency shall deny the employment of the individual, or revoke or
32 deny any applicable position, authority to provide services, license, certification, registration or
33 permit.

34 [(13)] (14) If an authorized agency requires a criminal records check of employees, prospective
35 employees, contractors, vendors or volunteers or applicants for a license, certification, registration
36 or permit, the application forms of the authorized agency must contain a notice that the person is
37 subject to fingerprinting and a criminal records check.

38 **SECTION 2.** ORS 443.004 is amended to read:

39 443.004. (1)(a) The Department of Human Services or the Oregon Health Authority shall com-
40 plete a criminal records check under ORS 181A.195 on:

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

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

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

1 tration with the Home Care Commission.

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

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

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

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

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

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

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

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

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

24 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
25 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,
26 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125 (5)(c) or
27 (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800,
28 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322;

29 (b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465,
30 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date of conviction for which was within the
31 five years immediately preceding employment in any capacity of an individual, other than a mental
32 health or substance abuse treatment provider, having contact with a recipient of support services,
33 a resident of a residential facility or a resident of an adult foster home, when the recipient or resi-
34 dent is 65 years of age or older;

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

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

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

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

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

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

6 (6) Upon the request of a mental health or substance abuse treatment provider, the department
7 or authority shall maintain a record of the results of any fitness determination made under ORS
8 181A.195 (10). The department or authority may disclose the record only to a person the provider
9 specifically authorizes, by a written release, to receive the information.

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

14 (8) As used in this section:

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

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

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

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

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

20 (A) A peer support specialist;

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

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

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

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

27 (g) "Residential facility" has the meaning given that term in ORS 443.400.

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

30 443.004. (1)(a) The Department of Human Services or the Oregon Health Authority shall com-
31 plete a criminal records check under ORS 181A.195 on:

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

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

36 [(c)] (C) A home care worker or personal support worker registering with the Home Care Com-
37 mission or renewing a registration with the Home Care Commission.

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

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

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

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

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

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

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

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

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

15 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
16 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,
17 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125 (5)(c) or
18 (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800,
19 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322;

20 (b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465,
21 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date of conviction for which was within the
22 five years immediately preceding employment in any capacity of an individual, other than a mental
23 health or substance abuse treatment provider, having contact with a recipient of support services,
24 a resident of a residential facility or a resident of an adult foster home, when the recipient or resi-
25 dent is 65 years of age or older;

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

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

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

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

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

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

42 (6) Upon the request of a mental health or substance abuse treatment provider, the department
43 or authority shall maintain a record of the results of any fitness determination made under ORS
44 181A.195 (10). The department or authority may disclose the record only to a person the provider
45 specifically authorizes, by a written release, to receive the information.

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

5 (8) As used in this section:

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

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

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

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

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

11 (A) A peer support specialist;

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

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

15 or

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

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

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

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

20 **SECTION 4.** Section 42, chapter 837, Oregon Laws 2009, is amended to read:

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

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

26 **SECTION 5.** This 2019 Act takes effect on the 91st day after the date on which the 2019
27 regular session of the Eightieth Legislative Assembly adjourns sine die.

28