

Senate Bill 725

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 **as introduced**.

Specifies charges or convictions that may not be considered in fitness determinations. 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.

A BILL FOR AN ACT

1
2 Relating to background checks of individuals who provide care; amending ORS 181A.190, 181A.200
3 and 443.004 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.190 is amended to read:

6 181A.190. (1) As used in this section:

7 (a) "Authorized agency" means the Department of State Police or other governmental agency
8 designated by the State of Oregon to report, receive or disseminate criminal offender information.

9 (b) "Qualified entity" means a business or organization that:

10 (A) Provides care or placement services, or licenses or certifies others to provide care or
11 placement services, for children, elderly persons or dependent persons;

12 (B) Is not governed by a state regulatory or licensing agency; and

13 (C) Has been determined by an authorized agency to meet the criteria established by the au-
14 thorized agency by rule under subsection (9) of this section.

15 (c) "Subject individual" means a person who is employed or seeks to be employed by a qualified
16 entity or who is providing services or seeks to provide services to a qualified entity on a contractual
17 or volunteer basis.

18 (2) An entity may request from an authorized agency a criminal records check for purposes of
19 evaluating the fitness of a subject individual as an employee, contractor or volunteer. The author-
20 ized agency may access state and federal criminal records under this subsection only through use
21 of the subject individual's fingerprints.

22 (3) Before an authorized agency may conduct a criminal records check under this section:

23 (a) The authorized agency must determine whether the entity requesting the criminal records
24 check is a qualified entity; and

25 (b) The qualified entity must have informed the subject individual that the qualified entity might
26 request a fingerprint-based criminal records check and that the subject individual may obtain a copy
27 of the record check report from, or challenge the accuracy or completeness of the record check re-
28 port through, the authorized agency or the Federal Bureau of Investigation.

29 (4)(a) Upon receipt of a subject individual's criminal offender information, the authorized agency
30 shall submit the criminal offender information to the Department of Human Services.

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 **(b) Except as provided in paragraph (f)(E) of this subsection, if the criminal offender in-**
 2 **formation includes a conviction or pending indictment for any crime listed in ORS 443.004 (3)**
 3 **or (5), the Department of Human Services shall inform the qualified entity that the subject**
 4 **individual may not be employed in any capacity having contact with a recipient of support**
 5 **services or a resident of a residential facility or an adult foster home, as provided in ORS**
 6 **443.004 (3) or (5).**

7 **(c) If the criminal offender information includes a conviction or pending indictment for**
 8 **a crime other than a crime listed in ORS 443.004 (3) or (5) or if the subject individual is not**
 9 **applying for employment described in paragraph (b) of this subsection,** the Department of Hu-
 10 man Services shall, subject to rules adopted by the Oregon Department of Administrative Services
 11 under ORS 181A.215, make a fitness determination.

12 **(d) After making a fitness determination under this subsection, the Department of Human Ser-**
 13 **vices shall inform the qualified entity of the results of the fitness determination.**

14 **[(b)] (e) In making the fitness determination under this subsection,** the Department of Human
 15 Services shall consider:

16 (A) The nature of the crime;

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

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

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

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

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

25 (iii) The likelihood of a repetition of offenses; *[and]*

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

27 (v) The recommendation of an employer.

28 **(f) In making the fitness determination under this subsection, the Department of Human**
 29 **Services may not consider:**

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

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

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

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

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

37 (5) An authorized agency may not transfer a fingerprint card used to conduct the criminal re-
 38 cords check unless the public agency or person receiving the fingerprint card agrees to destroy or
 39 return the fingerprint card to the authorized agency.

40 (6) Except as provided in ORS 181A.205, if the public agency or person returns a fingerprint
 41 card to the authorized agency, the authorized agency:

42 (a) Shall destroy the fingerprint card; and

43 (b) May not keep a record of the fingerprints.

44 (7) The authorized agency or the Department of Human Services shall permit a subject individ-
 45 ual to inspect the individual's Oregon and Federal Bureau of Investigation criminal offender infor-

1 mation after positive identification has been established based upon fingerprints.

2 (8) Challenges to the accuracy or completeness of information provided by the Federal Bureau
3 of Investigation and agencies reporting information to the federal bureau must be made through the
4 federal bureau.

5 (9) The authorized agency shall adopt rules to implement this section. The rules may include but
6 are not limited to:

7 (a) Criteria to be used by the authorized agency to determine whether an entity is a qualified
8 entity; and

9 (b) Fees to be charged for conducting criminal records checks under this section in amounts not
10 to exceed the actual costs of acquiring and furnishing criminal offender information.

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

12 181A.200. (1) As used in this section:

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

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

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

21 (2) For the purpose of requesting a state or nationwide criminal records check under ORS
22 181A.195, the Department of Human Services, the Oregon Health Authority and the Employment
23 Department may require the fingerprints of a person:

24 (a) Who is employed by or is applying for employment with either department or the authority;

25 (b) Who provides or seeks to provide services to either department or the authority as a con-
26 tractor, subcontractor, vendor or volunteer who:

27 (A) May have contact with recipients of care;

28 (B) Has access to personal information about employees of either department or the authority,
29 recipients of care from either department or the authority or members of the public, including Social
30 Security numbers, dates of birth, driver license numbers, medical information, personal financial in-
31 formation or criminal background information;

32 (C) Has access to information the disclosure of which is prohibited by state or federal laws,
33 rules or regulations, or information that is defined as confidential under state or federal laws, rules
34 or regulations;

35 (D) Has access to property held in trust or to private property in the temporary custody of the
36 state;

37 (E) Has payroll or fiscal functions or responsibility for:

38 (i) Receiving, receipting or depositing money or negotiable instruments;

39 (ii) Billing, collections, setting up financial accounts or other financial transactions; or

40 (iii) Purchasing or selling property;

41 (F) Provides security, design or construction services for government buildings, grounds or fa-
42 cilities;

43 (G) Has access to critical infrastructure or secure facilities information; or

44 (H) Is providing information technology services and has control over or access to information
45 technology systems;

1 (c) For the purposes of licensing, certifying, registering or otherwise regulating or administering
2 programs, persons or qualified entities that provide care;

3 (d) For the purposes of employment decisions by or for qualified entities that are regulated or
4 otherwise subject to oversight by the Department of Human Services or the Oregon Health Au-
5 thority and that provide care;

6 (e) For the purposes of employment decisions made by a mass transit district or transportation
7 district for qualified entities that, under contracts with the district or the Oregon Health Authority,
8 employ persons to operate motor vehicles for the transportation of medical assistance program cli-
9 ents; or

10 (f) For the purposes of licensure, certification or registration of foster homes by the government
11 of a Native American tribe or an agency of a Native American tribe responsible for child welfare.

12 (3) The Department of Human Services and the Oregon Health Authority may conduct criminal
13 records checks on a person through the Law Enforcement Data System maintained by the Depart-
14 ment of State Police, if deemed necessary by the Department of Human Services or the Oregon
15 Health Authority to protect children, elderly persons, persons with disabilities or other vulnerable
16 persons.

17 (4) The Department of Human Services and the Oregon Health Authority may furnish to quali-
18 fied entities, in accordance with the rules of the Department of Human Services or the Oregon
19 Health Authority and the rules of the Department of State Police, information received from the
20 Law Enforcement Data System. However, any criminal offender records and information furnished
21 to the Department of Human Services or the Oregon Health Authority by the Federal Bureau of
22 Investigation through the Department of State Police may not be disseminated to qualified entities.

23 (5)(a) Except as otherwise provided in ORS 443.735 and 475B.785 to 475B.949, a qualified entity,
24 subject to rules adopted by the Oregon Department of Administrative Services under ORS 181A.215,
25 shall determine under this section whether a person is fit to hold a position, provide services, be
26 employed or, if the qualified entity has authority to make such a determination, be licensed, certified
27 or registered. If a person is determined to be unfit, then that person may not hold the position,
28 provide services or be employed, licensed, certified or registered.

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

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

33 (A) The nature of the crime;

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

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

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

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

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

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

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

45 (v) The recommendation of an employer.

1 (d) In making the fitness determination under this subsection, the qualified entity may
 2 not consider:

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

4 (B) Charges or arrests without conviction;

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

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

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

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

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

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

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

22 (c) Specifying which qualified entities are responsible for deciding, subject to rules adopted by
 23 the Oregon Department of Administrative Services under ORS 181A.215, whether a subject individ-
 24 ual is not fit for a position, service, license, certification, registration or employment; and

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

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

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

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

36 443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete
 37 a criminal records check under ORS 181A.195 **no more than once in every two-year period** on:

38 (a) An employee of a residential facility or an adult foster home;

39 (b) Any individual who is paid directly or indirectly with public funds who has or will have
 40 contact with a recipient of support services or a resident of an adult foster home or a residential
 41 facility; and

42 (c) A home care worker registering with the Home Care Commission or renewing a registration
 43 with the Home Care Commission.

44 (2)(a) A home health agency shall conduct a criminal background check before hiring or con-
 45 tracting with an individual and before allowing an individual to volunteer to provide services on

1 behalf of the home health agency, if the individual will have direct contact with a patient of the
2 home health agency.

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

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

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

13 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
14 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,
15 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125 (5)(c) or
16 (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800,
17 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322;

18 (b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465,
19 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date of conviction for which was within the
20 five years immediately preceding employment in any capacity of an individual, other than a mental
21 health or substance abuse treatment provider, having contact with a recipient of support services,
22 a resident of a residential facility or a resident of an adult foster home, when the recipient or resi-
23 dent is 65 years of age or older;

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

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

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

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

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

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

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

44 (7) If the department or authority has a record of substantiated abuse committed by an employee
45 or potential employee of a home health agency, in-home care agency, adult foster home or residen-

1 tial facility, regardless of whether criminal charges were filed, the department or authority shall
2 notify, in writing, the employer and the employee or potential employee.

3 (8) As used in this section:

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

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

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

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

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

9 (A) A peer support specialist;

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

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

13 or

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

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

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

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

19 443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete
20 a criminal records check under ORS 181A.195 **no more than once in every two-year period** on:

21 (a) An employee of a residential facility or an adult foster home;

22 (b) Any individual who is paid directly or indirectly with public funds who has or will have
23 contact with a recipient of support services or a resident of an adult foster home or a residential
24 facility; and

25 (c) A home care worker or personal support worker registering with the Home Care Commission
26 or renewing a registration with the Home Care Commission.

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

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

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

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

41 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
42 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,
43 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125 (5)(c) or
44 (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800,
45 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322;

1 (b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465,
2 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date of conviction for which was within the
3 five years immediately preceding employment in any capacity of an individual, other than a mental
4 health or substance abuse treatment provider, having contact with a recipient of support services,
5 a resident of a residential facility or a resident of an adult foster home, when the recipient or resi-
6 dent is 65 years of age or older;

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

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

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

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

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

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

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

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

31 (8) As used in this section:

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

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

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

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

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

37 (A) A peer support specialist;

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

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

41 or

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

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

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

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

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

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

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

7
