

Senate Bill 280

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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**.

Modifies provisions relating to criminal records checks performed by Department of Human Services and Oregon Health Authority.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to criminal records checks of individuals who provide care; amending ORS 181A.195 and
3 443.004; and declaring an emergency.

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)(a) 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.

17 (b) A criminal records check under this subsection must, if requested by the authorized agency,
18 include a name-based check of the national sex offender registry maintained by the National Crime
19 Information Center.

20 (c) If a nationwide criminal records check of a subject individual is necessary, the authorized
21 agency may request that the Department of State Police conduct the check, including fingerprint
22 identification, through the Federal Bureau of Investigation.

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

25 (4) The Federal Bureau of Investigation shall return or destroy the fingerprint cards used to
26 conduct the criminal records check and may not keep any record of the fingerprints, except that the
27 Federal Bureau of Investigation may retain the fingerprint cards and records of the fingerprints for
28 purposes described in ORS 181A.205. If the federal bureau policy authorizing return or destruction
29 of the fingerprint cards is changed, the Department of State Police shall cease to send the cards to
30 the federal bureau but shall continue to process the information through other available resources.

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

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

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

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

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

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

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

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

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

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

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

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

36 (10)(a) Except as otherwise provided in ORS 181A.400, 181A.875, 342.143, 342.223, 443.735,
37 475B.785 to 475B.949 and 703.090 and paragraph (d) of this subsection, an authorized agency, using
38 the rules adopted by the Oregon Department of Administrative Services under ORS 181A.215, shall
39 determine whether a subject individual is fit to hold a position, provide services, be employed or be
40 granted a license, certification, registration or permit. If a subject individual is determined to be
41 unfit, then the individual may not hold the position, provide services, be employed or be granted a
42 license, certification, registration or permit.

43 (b)(A) Subject to subparagraph (B) of this paragraph, an authorized agency making a fitness
44 determination of an individual under this subsection may request results of a previously made fitness
45 determination from an authorized agency that has already made a fitness determination for the in-

1 individual. An authorized agency that receives a request under this paragraph shall provide the re-
2 quested information.

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

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

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

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

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

11 (A) The nature of the crime;

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

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

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

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

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

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

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

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

24 (vi) The recommendation of an employer.

25 (d) A subject individual is not entitled to a fitness determination under this subsection if the
26 subject individual:

27 (A) Is or seeks to be employed in any capacity having contact with a recipient of support ser-
28 vices or a resident of a residential facility or adult foster home, as provided in ORS 443.004 (3), and
29 has been convicted of any crime listed in ORS 443.004 (3) or (5).

30 (B) Is prohibited by federal law from holding a position, providing services, being employed or
31 being granted a license, certification, registration or permit for which the fitness determination is
32 requested by an authorized agency.

33 (11)(a) In conducting a fitness determination regarding a subject individual other than an indi-
34 vidual described in paragraph (b) of this subsection, the Department of Human Services or the
35 Oregon Health Authority may not consider:

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

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

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

41 (D) A conviction under ORS 813.010 **or 830.325, or a misdemeanor conviction under a law**
42 **in another jurisdiction that imposes criminal penalties for operating a vehicle or boat while**
43 **under the influence of intoxicants**, if the subject individual had no more than one conviction
44 [under ORS 813.010] **described in this subparagraph** in the five-year period prior to the date of the
45 criminal records check;

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

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

4 (b) The department or the authority may consider a charge, arrest, conviction, deferred sen-
 5 tence, conditional discharge, participation in a diversion program or pending indictment that may
 6 not be considered under paragraph (a) of this subsection in making a fitness determination for a
 7 subject individual who is:

8 (A) Described in ORS 418.016;

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

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

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

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

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

19 (E) An emergency medical services provider, as defined in ORS 682.025, for the purpose of de-
 20 termining the fitness of the emergency medical services provider to receive or hold a license under
 21 ORS 670.280.

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

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

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

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

33 443.004. (1)(a) The Department of Human Services or the Oregon Health Authority shall com-
 34 plete a criminal records check under ORS 181A.195 on:

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

36 (B) Any individual who is paid directly or indirectly with public funds who has or will have
 37 contact with a recipient of support services or a resident of an adult foster home or a residential
 38 facility; and

39 (C) A home care worker or personal support worker registering with the Home Care Commission
 40 or renewing a registration with the Home Care Commission.

41 (b) The department or the authority shall complete the criminal records check under paragraph
 42 (a) of this subsection not more than once during [a two-year] **an 18-month** period unless the de-
 43 partment or the authority:

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

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

1 (C) Is required by federal law to conduct more frequent criminal records checks; [or]

2 (D) Is notified that a subject individual has changed positions or duties for which there are
 3 different criminal records check requirements[.]; or

4 **(E) Determines, under criteria set forth in rules adopted by the department or the au-**
 5 **thority, that it would be burdensome for a subject individual to wait for a new criminal re-**
 6 **ords check.**

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

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

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

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

21 (a) Of a crime described in ORS 163.095, 163.107, 163.115, 163.118, 163.125, 163.145, 163.149,
 22 163.165, 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275,
 23 163.465, 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125
 24 (5)(c) or (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032,
 25 165.800, 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322;

26 (b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465,
 27 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date of conviction for which was within the
 28 five years immediately preceding employment in any capacity of an individual, other than a mental
 29 health or substance abuse treatment provider, having contact with a recipient of support services,
 30 a resident of a residential facility or a resident of an adult foster home, when the recipient or resi-
 31 dent is 65 years of age or older;

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

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

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

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

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

43 (5) Public funds may not be used to support, in whole or in part, the employment, in any ca-
 44 pacity having contact with a recipient of support services or a resident of a residential facility or
 45 an adult foster home, of a mental health or substance abuse treatment provider who has been con-

1 victed of committing, or convicted of an attempt, conspiracy or solicitation to commit, a crime de-
 2 scribed in ORS 163.095, 163.107, 163.115, 163.375, 163.405, 163.411 or 163.427.

3 (6) Upon the request of a mental health or substance abuse treatment provider, the department
 4 or authority shall maintain a record of the results of any fitness determination made under ORS
 5 181A.195 (10). The department or authority may disclose the record only to a person the provider
 6 specifically authorizes, by a written release, to receive the information.

7 (7) If the department or authority has a record of substantiated abuse committed by an employee
 8 or potential employee of a home health agency, in-home care agency, adult foster home or residen-
 9 tial facility, regardless of whether criminal charges were filed, the department or authority shall
 10 notify, in writing, the employer and the employee or potential employee and may conduct a fitness
 11 determination in accordance with this section and ORS 181A.195.

12 (8) As used in this section:

13 (a) “Adult foster home” has the meaning given that term in ORS 443.705.

14 (b) “Home care worker” has the meaning given that term in ORS 410.600.

15 (c) “Home health agency” has the meaning given that term in ORS 443.014.

16 (d) “In-home care agency” has the meaning given that term in ORS 443.305.

17 (e) “Mental health or substance abuse treatment provider” means:

18 (A) A peer support specialist;

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

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

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

24 (f) “Peer support specialist” has the meaning given that term in ORS 414.025.

25 (g) “Personal support worker” has the meaning given that term in ORS 410.600.

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

27 **SECTION 3. This 2021 Act being necessary for the immediate preservation of the public**
 28 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
 29 **on its passage.**

30 _____