

House Bill 2650

Sponsored by Representative BARKER; Representative OLSON (Presession filed.)

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**.

Requires Oregon Health Authority and Department of Human Services to develop systems that run criminal records checks quarterly and to update criminal records check information on certain health care workers in order to minimize administrative burden on agencies and individuals in conducting subsequent criminal records checks.

A BILL FOR AN ACT

1
2 Relating to criminal records checks; amending ORS 181.537, 443.004 and 678.153.

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

4 **SECTION 1.** ORS 181.537 is amended to read:

5 181.537. (1) As used in this section:

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

8 (b) "Qualified entity" means a community mental health program, a community developmental
9 disabilities program, a local health department or an individual or business or organization, whether
10 public, private, for-profit, nonprofit or voluntary, that provides care, including a business or organ-
11 ization that licenses, certifies or registers others to provide care.

12 (2) For the purpose of requesting a state or nationwide criminal records check under ORS
13 181.534, the Department of Human Services, the Oregon Health Authority and the Employment De-
14 partment may require the fingerprints of a person:

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

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

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

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

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

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

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

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

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

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 (iii) Purchasing or selling property;
- 2 (F) Provides security, design or construction services for government buildings, grounds or fa-
- 3 cilities;
- 4 (G) Has access to critical infrastructure or secure facilities information; or
- 5 (H) Is providing information technology services and has control over or access to information
- 6 technology systems;
- 7 (c) For the purposes of licensing, certifying, registering or otherwise regulating or administering
- 8 programs, persons or qualified entities that provide care;
- 9 (d) For the purposes of employment decisions by or for qualified entities that are regulated or
- 10 otherwise subject to oversight by the Department of Human Services or the Oregon Health Au-
- 11 thority and that provide care; or
- 12 (e) For the purposes of employment decisions made by a mass transit district or transportation
- 13 district for qualified entities that, under contracts with the district or the Oregon Health Authority,
- 14 employ persons to operate motor vehicles for the transportation of medical assistance program cli-
- 15 ents.
- 16 (3) The Department of Human Services and the Oregon Health Authority may conduct criminal
- 17 records checks on a person through the Law Enforcement Data System maintained by the Depart-
- 18 ment of State Police, if deemed necessary by the Department of Human Services or the Oregon
- 19 Health Authority to protect children, elderly persons, persons with disabilities or other vulnerable
- 20 persons.
- 21 (4) The Department of Human Services and the Oregon Health Authority may furnish to quali-
- 22 fied entities, in accordance with the rules of the Department of Human Services or the Oregon
- 23 Health Authority and the rules of the Department of State Police, information received from the
- 24 Law Enforcement Data System. However, any criminal offender records and information furnished
- 25 to the Department of Human Services or the Oregon Health Authority by the Federal Bureau of
- 26 Investigation through the Department of State Police may not be disseminated to qualified entities.
- 27 (5) A qualified entity, using rules adopted by the Department of Human Services or the Oregon
- 28 Health Authority, shall determine under this section whether a person is fit to hold a position,
- 29 provide services, be employed or, if the qualified entity has authority to make such a determination,
- 30 be licensed, certified or registered, based on the criminal records check obtained pursuant to ORS
- 31 181.534, any false statements made by the person regarding the criminal history of the person and
- 32 any refusal to submit or consent to a criminal records check including fingerprint identification. If
- 33 a person is determined to be unfit, then that person may not hold the position, provide services or
- 34 be employed, licensed, certified or registered.
- 35 (6) In making the fitness determination under subsection (5) of this section, the qualified entity
- 36 shall consider:
 - 37 (a) The nature of the crime;
 - 38 (b) The facts that support the conviction or pending indictment or indicate the making of the
 - 39 false statement;
 - 40 (c) The relevancy, if any, of the crime or the false statement to the specific requirements of the
 - 41 person's present or proposed position, services, employment, license, certification or registration;
 - 42 and
 - 43 (d) Intervening circumstances relevant to the responsibilities and circumstances of the position,
 - 44 services, employment, license, certification or registration. Intervening circumstances include but
 - 45 are not limited to the passage of time since the commission of the crime, the age of the person at

1 the time of the crime, the likelihood of a repetition of offenses, the subsequent commission of an-
 2 other relevant crime and a recommendation of an employer.

3 (7) The Department of Human Services, the Oregon Health Authority and the Employment De-
 4 partment may make fitness determinations based on criminal offender records and information fur-
 5 nished by the Federal Bureau of Investigation through the Department of State Police only as
 6 provided in ORS 181.534.

7 (8) A qualified entity and an employee of a qualified entity acting within the course and scope
 8 of employment are immune from any civil liability that might otherwise be incurred or imposed for
 9 determining pursuant to subsection (5) of this section that a person is fit or not fit to hold a position,
 10 provide services or be employed, licensed, certified or registered. A qualified entity, employee of a
 11 qualified entity acting within the course and scope of employment and an employer or employer's
 12 agent who in good faith comply with this section and the decision of the qualified entity or employee
 13 of the qualified entity acting within the course and scope of employment are not liable for the fail-
 14 ure to hire a prospective employee or the decision to discharge an employee on the basis of the
 15 qualified entity's decision. An employee of the state acting within the course and scope of employ-
 16 ment is not liable for defamation or invasion of privacy in connection with the lawful dissemination
 17 of information lawfully obtained under this section.

18 (9) The Department of Human Services and the Oregon Health Authority shall develop systems
 19 that maintain information regarding criminal records checks in order to minimize the administrative
 20 burden imposed by this section and ORS 181.534. *[Records maintained under this subsection are*
 21 *confidential and may not be disseminated except for the purposes of this section and in accordance with*
 22 *the rules of the Department of Human Services, the Oregon Health Authority and the Department of*
 23 *State Police. Nothing in this subsection permits the Department of Human Services to retain finger-*
 24 *print cards obtained pursuant to this section.]* **The systems developed pursuant to this subsection**
 25 **must include the following components with respect to each person who is subject to a**
 26 **criminal records check under ORS 443.004 or who is required by the Oregon State Board of**
 27 **Nursing under ORS 678.150 to undergo a criminal records check:**

28 (a) **Notwithstanding ORS 181.534 (6), the systems must maintain the minimum records**
 29 **that are necessary to perform subsequent criminal records checks on the person. The re-**
 30 **records maintained are confidential and may not be disseminated except for the purposes of**
 31 **this section and in accordance with the rules of the Department of Human Services, the**
 32 **Oregon Health Authority and the Department of State Police.**

33 (b) **Each calendar quarter, the Department of Human Services and the authority shall**
 34 **request a criminal records check on the person from the Department of State Police through**
 35 **the Law Enforcement Data System and shall update the records maintained in the systems.**
 36 **The Department of Human Services, the authority and the board shall use current records,**
 37 **if any, that are maintained in the systems for conducting state criminal records checks of**
 38 **the person that are required by ORS 443.004 (1) or 678.150.**

39 (c) **Except as provided in ORS 443.004 (2), if a quarterly criminal records check under this**
 40 **subsection identifies a new record of a criminal offense, the Department of Human Services,**
 41 **the authority or a qualified entity may conduct a fitness determination in accordance with**
 42 **subsection (5) of this section or ORS 181.534 (11) or take other action as prescribed by the**
 43 **Department of Human Services and the authority by rule.**

44 (10) In addition to the rules required by ORS 181.534, the Department of Human Services and
 45 the Oregon Health Authority, in consultation with the Department of State Police, shall adopt rules:

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

2 (b) Specifying which qualified entities may request criminal offender information; **and**

3 (c) Specifying which qualified entities are responsible for deciding whether a subject individual
4 is not fit for a position, service, license, certification, registration or employment[; and]

5 [(d) *Specifying when a qualified entity, in lieu of conducting a completely new criminal records*
6 *check, may proceed to make a fitness determination under subsection (5) of this section using the in-*
7 *formation maintained by the Department of Human Services and the Oregon Health Authority pursuant*
8 *to subsection (9) of this section].*

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

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

15 **SECTION 2.** ORS 443.004, as amended by section 12, chapter 93, Oregon Laws 2010, is amended
16 to read:

17 443.004. (1) **Subject to ORS 181.537 (9)**, the Department of Human Services or the Oregon
18 Health Authority shall complete a criminal records check under ORS 181.534 on:

19 (a) An employee of a residential facility, adult foster home, in-home care agency or home health
20 agency;

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

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

26 (2) Public funds may not be used to support, in whole or in part, the employment in any capacity
27 having contact with a recipient of home health, in-home care or support services or a resident of a
28 residential facility or an adult foster home, of an individual who has been convicted:

29 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
30 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,
31 163.467, 163.535, 163.537, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215,
32 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.022, 165.032, 165.800, 165.803, 167.012, 167.017,
33 167.054 or 167.057;

34 (b) Of a crime listed in ORS 181.594;

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

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

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

41 (3) Subsection (2) of this section does not apply to:

42 (a) A peer support specialist; or

43 (b) An employee of a residential treatment facility or a residential treatment home that is li-
44 censed under ORS 443.415 to provide for individuals with alcohol or drug dependence.

45 (4) If the department or authority has a record of substantiated abuse committed by an employee

1 or potential employee of a home health agency, in-home care agency, adult foster home or residen-
 2 tial facility, regardless of whether criminal charges were filed, the department or authority shall
 3 notify, in writing, the employer and the employee or potential employee.

4 (5) As used in this section:

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

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

7 (c) "Home health agency" has the meaning given that term in ORS 443.005.

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

9 (e) "Peer support specialist" means a person who:

10 (A) Is providing peer support services as defined by the authority by rule;

11 (B) Is under the supervision of a qualified clinical supervisor;

12 (C) Has completed training required by the authority; and

13 (D) Is currently receiving or has formerly received mental health services, or is in recovery from
 14 a substance use disorder and meets the abstinence requirements for staff providing services in al-
 15 cohool or other drug treatment programs.

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

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

18 (h) "Residential treatment home" has the meaning given that term in ORS 443.400.

19 **SECTION 3.** ORS 443.004, as amended by sections 12 and 13, chapter 93, Oregon Laws 2010, is
 20 amended to read:

21 443.004. (1) **Subject to ORS 181.537 (9)**, the Department of Human Services or the Oregon
 22 Health Authority shall complete a criminal records check under ORS 181.534 on:

23 (a) An employee of a residential facility, adult foster home, in-home care agency or home health
 24 agency;

25 (b) Any individual who is paid directly or indirectly with public funds who has or will have
 26 contact with a recipient of home health, in-home care or support services or a resident of an adult
 27 foster home or a residential facility; and

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

30 (2) 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 home health, in-home care or support services or a resident of a
 32 residential facility or an adult foster home, of an individual who has been convicted:

33 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
 34 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,
 35 163.467, 163.535, 163.537, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215,
 36 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.022, 165.032, 165.800, 165.803, 167.012, 167.017,
 37 167.054 or 167.057;

38 (b) Of a crime listed in ORS 181.594;

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

41 (d) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to
 42 (c) of this subsection; or

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

45 (3) Subsection (2) of this section does not apply to a peer support specialist.

1 (4) 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 (5) 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 443.005.

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

10 (e) "Peer support specialist" means a person who:

11 (A) Is providing peer support services as defined by the authority by rule;

12 (B) Is under the supervision of a qualified clinical supervisor;

13 (C) Has completed training required by the authority; and

14 (D) Is currently receiving or has formerly received mental health services, or is in recovery from
15 a substance use disorder and meets the abstinence requirements for staff providing services in al-
16 cohol or other drug treatment programs.

17 (f) "Residential facility" has the meaning given that term in ORS 443.400.

18 **SECTION 4.** ORS 678.153 is amended to read:

19 678.153. The Department of Human Services, the Oregon Health Authority and the Oregon State
20 Board of Nursing shall enter into an interagency agreement to share the results of nationwide
21 criminal records checks conducted under ORS 181.534 **and the records maintained pursuant to**
22 **ORS 181.537 (9)** on subject individuals who are subject to criminal records checks by the depart-
23 ment, the authority and the board.

24