

A-Engrossed
House Bill 4084

Ordered by the House February 13
Including House Amendments dated February 13

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Human Services)

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.

[Creates crime of assault in third degree for intentionally or knowingly causing physical injury to elderly person. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.]

Provides that prosecution of certain felonies committed against person 65 years of age or older may be commenced within six years.

Prohibits entry of order setting aside conviction for criminal mistreatment in first or second degree when victim was person 65 years of age or older.

Requires health care provider to permit inspection and copying of protected health information of person who is alleged victim in abuse investigation.

Requires financial institution, upon receipt of certification, to disclose and provide copies of financial records of person who is alleged victim in abuse investigation.

Permits Department of Human Services to make names of witnesses and vulnerable persons, and records and reports compiled in abuse investigations, available to certain entities.

Creates Resident Safety Review Council. Sunsets council on June 30, 2013.

Permits person convicted of certain crimes more than five years before employment to receive public funds in employment where person has contact with vulnerable person.

Clarifies that person whose employment cannot be supported by public funds is not entitled to determination of fitness or right of appeal of determination of unfitness.

Directs Department of Human Services to *[establish]* **submit report on statewide call system for reporting abuse of elderly person to appropriate interim committees of Legislative Assembly.**

Requires Department of Human Services to, **using new or existing materials**, develop and implement training for persons investigating abuse and providing care to persons 65 years of age or older.

[Directs Department of Human Services to apply for federal grant under Patient Protection and Affordable Care Act.]

Re-creates Oregon Elder Abuse Work Group. Sunsets work group on June 30, 2013.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to vulnerable persons; creating new provisions; amending ORS 124.085, 124.090, 131.125,
3 137.225, 181.534, 181.537, 192.586, 411.990, 441.671 and 443.004; and declaring an emergency.

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

5 **NOTE:** Section 1 was deleted by amendment. Subsequent sections were not renumbered.

6 **SECTION 2.** ORS 131.125 is amended to read:

7 131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated
8 murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of
9 manslaughter may be commenced at any time after the commission of the attempt, conspiracy or
10 solicitation to commit aggravated murder or murder, or the death of the person killed.

11 (2) A prosecution for any of the following felonies may be commenced within six years after the
12 commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime
13 before the victim attains 30 years of age or within 12 years after the offense is reported to a law

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 enforcement agency or the Department of Human Services, whichever occurs first:

- 2 (a) Strangulation under ORS 163.187 (4).
- 3 (b) Criminal mistreatment in the first degree under ORS 163.205.
- 4 (c) Rape in the third degree under ORS 163.355.
- 5 (d) Rape in the second degree under ORS 163.365.
- 6 (e) Rape in the first degree under ORS 163.375.
- 7 (f) Sodomy in the third degree under ORS 163.385.
- 8 (g) Sodomy in the second degree under ORS 163.395.
- 9 (h) Sodomy in the first degree under ORS 163.405.
- 10 (i) Unlawful sexual penetration in the second degree under ORS 163.408.
- 11 (j) Unlawful sexual penetration in the first degree under ORS 163.411.
- 12 (k) Sexual abuse in the second degree under ORS 163.425.
- 13 (L) Sexual abuse in the first degree under ORS 163.427.
- 14 (m) Using a child in a display of sexual conduct under ORS 163.670.
- 15 (n) Encouraging child sexual abuse in the first degree under ORS 163.684.
- 16 (o) Incest under ORS 163.525.
- 17 (p) Promoting prostitution under ORS 167.012.
- 18 (q) Compelling prostitution under ORS 167.017.
- 19 (r) Luring a minor under ORS 167.057.

20 (3) A prosecution for any of the following misdemeanors may be commenced within four years
21 after the commission of the crime or, if the victim at the time of the crime was under 18 years of
22 age, anytime before the victim attains 22 years of age or within four years after the offense is re-
23 ported to a law enforcement agency or the Department of Human Services, whichever occurs first:

- 24 (a) Strangulation under ORS 163.187 (3).
- 25 (b) Sexual abuse in the third degree under ORS 163.415.
- 26 (c) Exhibiting an obscene performance to a minor under ORS 167.075.
- 27 (d) Displaying obscene materials to minors under ORS 167.080.

28 (4) In the case of crimes described in subsection (2)(m) of this section, the victim is the child
29 engaged in sexual conduct. In the case of the crime described in subsection (2)(o) of this section,
30 the victim is the party to the incest other than the party being prosecuted. In the case of crimes
31 described in subsection (2)(p) and (q) of this section, the victim is the child whose acts of
32 prostitution are promoted or compelled.

33 (5) A prosecution for arson in any degree may be commenced within six years after the com-
34 mission of the crime.

35 **(6) A prosecution for any of the following felonies may be commenced within six years**
36 **after the commission of the crime if the victim at the time of the crime was 65 years of age**
37 **or older:**

- 38 (a) **Theft in the first degree under ORS 164.055.**
- 39 (b) **Aggravated theft in the first degree under ORS 164.057.**
- 40 (c) **Theft by extortion under ORS 164.075.**
- 41 (d) **Robbery in the third degree under ORS 164.395.**
- 42 (e) **Robbery in the second degree under ORS 164.405.**
- 43 (f) **Robbery in the first degree under ORS 164.415.**
- 44 (g) **Forgery in the first degree under ORS 165.013.**
- 45 (h) **Fraudulent use of a credit card under ORS 165.055 (4)(b).**

1 **(i) Identity theft under ORS 165.800.**

2 [(6)] (7) Except as provided in subsection [(7)] (8) of this section or as otherwise expressly pro-
3 vided by law, prosecutions for other offenses must be commenced within the following periods of
4 limitations after their commission:

- 5 (a) For any other felony, three years.
6 (b) For any misdemeanor, two years.
7 (c) For a violation, six months.

8 [(7)] (8) If the period prescribed in subsection [(6)] (7) of this section has expired, a prosecution
9 nevertheless may be commenced as follows:

10 (a) If the offense has as a material element either fraud or the breach of a fiduciary obligation,
11 prosecution may be commenced within one year after discovery of the offense by an aggrieved party
12 or by a person who has a legal duty to represent an aggrieved party and who is not a party to the
13 offense, but in no case shall the period of limitation otherwise applicable be extended by more than
14 three years;

15 (b) If the offense is based upon misconduct in office by a public officer or employee, prosecution
16 may be commenced at any time while the defendant is in public office or employment or within two
17 years thereafter, but in no case shall the period of limitation otherwise applicable be extended by
18 more than three years; or

19 (c) If the offense is an invasion of personal privacy under ORS 163.700, prosecution may be
20 commenced within one year after discovery of the offense by the person aggrieved by the offense,
21 by a person who has a legal duty to represent the person aggrieved by the offense or by a law
22 enforcement agency, but in no case shall the period of limitation otherwise applicable be extended
23 by more than three years.

24 [(8)] (9) Notwithstanding subsection (2) of this section, if the defendant is identified after the
25 period described in subsection (2) of this section on the basis of DNA (deoxyribonucleic acid) sample
26 comparisons, a prosecution for:

27 (a) Rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first
28 degree or sexual abuse in the first degree may be commenced at any time after the commission of
29 the crime.

30 (b) Rape in the second degree, sodomy in the second degree or unlawful sexual penetration in
31 the second degree may be commenced within 25 years after the commission of the crime.

32 [(9)] (10) Notwithstanding subsection [(8)] (9) of this section, if a prosecution for a felony listed
33 in subsection [(8)] (9) of this section would otherwise be barred by subsection (2) of this section, the
34 prosecution must be commenced within two years of the DNA-based identification of the defendant.

35 **SECTION 3.** ORS 411.990 is amended to read:

36 411.990. (1) Violation of ORS 411.320 or 411.335 is a Class C misdemeanor.

37 (2) Violation of any provision of ORS 411.630 or 411.840 is a Class C felony which may be re-
38 duced to a Class A misdemeanor in accordance with ORS 161.705.

39 (3) Violation of ORS 411.675 is a Class C felony.

40 (4) Criminal prosecution of violators of ORS 411.675 shall be commenced in accordance with
41 ORS 131.125 [(6) and (7)] (7) and (8).

42 **SECTION 4.** ORS 137.225 is amended to read:

43 137.225. (1)(a) At any time after the lapse of three years from the date of pronouncement of
44 judgment, any defendant who has fully complied with and performed the sentence of the court and
45 whose conviction is described in subsection (5) of this section by motion may apply to the court

1 where the conviction was entered for entry of an order setting aside the conviction; or

2 (b) At any time after the lapse of one year from the date of any arrest, if no accusatory in-
3 strument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested per-
4 son may apply to the court that would have jurisdiction over the crime for which the person was
5 arrested, for entry of an order setting aside the record of the arrest. For the purpose of computing
6 the one-year period, time during which the arrested person has secreted himself or herself within
7 or without this state is not included.

8 (2)(a) A copy of the motion and a full set of the defendant's fingerprints shall be served upon
9 the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority
10 to prosecute the charge if there was no accusatory instrument filed, and opportunity shall be given
11 to contest the motion. The fingerprint card with the notation "motion for setting aside conviction,"
12 or "motion for setting aside arrest record" as the case may be, shall be forwarded to the Department
13 of State Police. Information resulting from the fingerprint search along with the fingerprint card
14 shall be returned to the prosecuting attorney.

15 (b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction
16 under this section, the prosecuting attorney shall provide a copy of the motion and notice of the
17 hearing date to the victim, if any, of the crime by mailing a copy of the motion and notice to the
18 victim's last-known address.

19 (c) When a person makes a motion under subsection (1)(a) of this section, the person must pay
20 a fee of \$80 to the Department of State Police. The person shall attach a certified check payable to
21 the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the
22 prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fin-
23 gerprint card to the Department of State Police.

24 (d) In addition to the fee established under paragraph (c) of this subsection, when a person
25 makes a motion under subsection (1)(a) of this section the person must pay the filing fee established
26 under ORS 21.135.

27 (3) Upon hearing the motion, the court may require the filing of such affidavits and may require
28 the taking of such proofs as the court deems proper. The court shall allow the victim to make a
29 statement at the hearing. Except as otherwise provided in subsection [(13)] (14) of this section, if the
30 court determines that the circumstances and behavior of the applicant from the date of conviction,
31 or from the date of arrest as the case may be, to the date of the hearing on the motion warrant
32 setting aside the conviction, or the arrest record as the case may be, the court shall enter an ap-
33 propriate order that shall state the original arrest charge and the conviction charge, if any and if
34 different from the original, date of charge, submitting agency and disposition. The order shall further
35 state that positive identification has been established by the Department of State Police and further
36 identified as to Department of State Police number or submitting agency number. Upon the entry
37 of the order, the applicant for purposes of the law shall be deemed not to have been previously
38 convicted, or arrested as the case may be, and the court shall issue an order sealing the record of
39 conviction and other official records in the case, including the records of arrest whether or not the
40 arrest resulted in a further criminal proceeding.

41 (4) The clerk of the court shall forward a certified copy of the order to such agencies as directed
42 by the court. A certified copy must be sent to the Department of Corrections when the person has
43 been in the custody of the Department of Corrections. Upon entry of the order, the conviction, ar-
44 rest or other proceeding shall be deemed not to have occurred, and the applicant may answer ac-
45 cordingly any questions relating to its occurrence.

1 (5) The provisions of subsection (1)(a) of this section apply to a conviction of:

2 (a) A Class B felony, except for a violation of ORS 166.429 or any crime classified as a person
3 felony as that term is defined in the rules of the Oregon Criminal Justice Commission.

4 (b) A Class C felony, except for criminal mistreatment in the first degree under ORS 163.205
5 when it would constitute child abuse as defined in ORS 419B.005 or any sex crime.

6 (c) The crime of possession of the narcotic drug marijuana when that crime was punishable as
7 a felony only.

8 (d) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, ex-
9 cept for:

10 (A) Any sex crime; or

11 (B) The following crimes when they would constitute child abuse as defined in ORS 419B.005:

12 (i) Criminal mistreatment in the first degree under ORS 163.205; and

13 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

14 (e) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may
15 be imposed, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would
16 constitute child abuse as defined in ORS 419B.005 or any sex crime.

17 (f) A violation, whether under state law or local ordinance.

18 (g) An offense committed before January 1, 1972, that if committed after that date would be:

19 (A) A Class C felony, except for any sex crime or for the following crimes when they would
20 constitute child abuse as defined in ORS 419B.005:

21 (i) Criminal mistreatment in the first degree under ORS 163.205; and

22 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

23 (B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, ex-
24 cept for any sex crime or for the following crimes when they would constitute child abuse as defined
25 in ORS 419B.005:

26 (i) Criminal mistreatment in the first degree under ORS 163.205; and

27 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

28 (C) A misdemeanor, except for endangering the welfare of a minor under ORS 163.575 (1)(a)
29 when it would constitute child abuse as defined in ORS 419B.005 or any sex crime.

30 (D) A violation.

31 (6) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section
32 do not apply to:

33 (a) A conviction for a state or municipal traffic offense.

34 (b) A person convicted, within the 10-year period immediately preceding the filing of the motion
35 pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations,
36 whether or not the other conviction is for conduct associated with the same criminal episode that
37 caused the arrest or conviction that is sought to be set aside. Notwithstanding subsection (1) of this
38 section, a conviction that has been set aside under this section shall be considered for the purpose
39 of determining whether this paragraph is applicable.

40 (c) A person who at the time the motion authorized by subsection (1) of this section is pending
41 before the court is under charge of commission of any crime.

42 **(7) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of**
43 **this section do not apply to:**

44 **(a) Criminal mistreatment in the second degree under ORS 163.200 if the victim at the**
45 **time of the crime was 65 years of age or older; and**

1 **(b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time**
2 **of the crime was 65 years of age or older.**

3 [(7)] **(8)** Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this
4 section do not apply to criminally negligent homicide under ORS 163.145, when that offense was
5 punishable as a Class C felony.

6 [(8)] **(9)** Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this
7 section apply to a conviction for a Class B felony described in subsection (5)(a) of this section only
8 if:

9 (a) Twenty years or more have elapsed from the date of the conviction sought to be set aside
10 or of the release of the person from imprisonment for the conviction sought to be set aside, which-
11 ever is later; and

12 (b) The person has not been convicted of or arrested for any other offense, excluding motor ve-
13 hicle violations, after the date the person was convicted of the offense sought to be set aside.
14 Notwithstanding subsection (1) of this section, a conviction or arrest that has been set aside under
15 this section shall be considered for the purpose of determining whether this paragraph is applicable.

16 [(9)] **(10)** The provisions of subsection (1)(b) of this section do not apply to:

17 (a) A person arrested within the three-year period immediately preceding the filing of the motion
18 for any offense, excluding motor vehicle violations, and excluding arrests for conduct associated
19 with the same criminal episode that caused the arrest that is sought to be set aside. An arrest that
20 has been set aside under this section may not be considered for the purpose of determining whether
21 this paragraph is applicable.

22 (b) An arrest for driving while under the influence of intoxicants if the charge is dismissed as
23 a result of the person's successful completion of a diversion agreement described in ORS 813.200.

24 [(10)] **(11)** The provisions of subsection (1) of this section apply to convictions and arrests that
25 occurred before, as well as those that occurred after, September 9, 1971. There is no time limit for
26 making an application.

27 [(11)] **(12)** For purposes of any civil action in which truth is an element of a claim for relief or
28 affirmative defense, the provisions of subsection (3) of this section providing that the conviction,
29 arrest or other proceeding be deemed not to have occurred do not apply and a party may apply to
30 the court for an order requiring disclosure of the official records in the case as may be necessary
31 in the interest of justice.

32 [(12)] **(13)** Upon motion of any prosecutor or defendant in a case involving records sealed under
33 this section, supported by affidavit showing good cause, the court with jurisdiction may order the
34 reopening and disclosure of any records sealed under this section for the limited purpose of assisting
35 the investigation of the movant. However, such an order has no other effect on the orders setting
36 aside the conviction or the arrest record.

37 [(13)] **(14)** Unless the court makes written findings by clear and convincing evidence that
38 granting the motion would not be in the best interests of justice, the court shall grant the motion
39 and enter an order as provided in subsection (3) of this section if the defendant has been convicted
40 of one of the following crimes and is otherwise eligible for relief under this section:

- 41 (a) Abandonment of a child, ORS 163.535.
- 42 (b) Attempted assault in the second degree, ORS 163.175.
- 43 (c) Assault in the third degree, ORS 163.165.
- 44 (d) Coercion, ORS 163.275.
- 45 (e) Criminal mistreatment in the first degree, ORS 163.205.

- 1 (f) Attempted escape in the first degree, ORS 162.165.
- 2 (g) Incest, ORS 163.525, if the victim was at least 18 years of age.
- 3 (h) Intimidation in the first degree, ORS 166.165.
- 4 (i) Attempted kidnapping in the second degree, ORS 163.225.
- 5 (j) Attempted robbery in the second degree, ORS 164.405.
- 6 (k) Robbery in the third degree, ORS 164.395.
- 7 (L) Supplying contraband, ORS 162.185.
- 8 (m) Unlawful use of a weapon, ORS 166.220.

9 [(14)] (15) As used in this section, “sex crime” has the meaning given that term in ORS 181.594.

10 **SECTION 5. Section 6 of this 2012 Act is added to and made a part of ORS 124.050 to**
11 **124.095.**

12 **SECTION 6. (1) Upon notice by a law enforcement agency that an investigation into abuse**
13 **is being conducted under ORS 124.070, and without the consent of the named elderly person**
14 **or of the named elderly person’s caretaker, fiduciary or other legal representative, a health**
15 **care provider must:**

16 (a) Permit the law enforcement agency to inspect and copy, or otherwise obtain, pro-
17 tected health information of the named elderly person; and

18 (b) Upon request of the law enforcement agency, consult with the agency about the pro-
19 tected health information.

20 (2) A health care provider who in good faith discloses protected health information under
21 this section is not civilly or criminally liable for the disclosure.

22 (3) For purposes of this section:

23 (a) “Health care provider” has the meaning given that term in ORS 192.556.

24 (b) “Protected health information” has the meaning given that term in ORS 192.556.

25 **SECTION 7. Section 8 of this 2012 Act is added to and made a part of ORS 441.630 to**
26 **441.680.**

27 **SECTION 8. (1) Upon notice by a law enforcement agency that an investigation into abuse**
28 **is being conducted under ORS 441.650, and without the consent of the named resident or of**
29 **the named resident’s caretaker, fiduciary or other legal representative, a health care pro-**
30 **vider must:**

31 (a) Permit the law enforcement agency to inspect and copy, or otherwise obtain, pro-
32 tected health information of the named resident; and

33 (b) Upon request of the law enforcement agency, consult with the agency about the pro-
34 tected health information.

35 (2) A health care provider who in good faith discloses protected health information under
36 this section is not civilly or criminally liable for the disclosure.

37 (3) For purposes of this section:

38 (a) “Health care provider” has the meaning given that term in ORS 192.556.

39 (b) “Protected health information” has the meaning given that term in ORS 192.556.

40 **SECTION 9. Section 10 of this 2012 Act is added to and made a part of ORS 192.583 to**
41 **192.607.**

42 **SECTION 10. (1) Upon the request of a law enforcement agency and the receipt of the**
43 **certification required under subsection (2) of this section, a financial institution shall dis-**
44 **close and provide copies of the financial records of the person who is the alleged victim in**
45 **an investigation under ORS 124.070 or 441.650 to the law enforcement agency without the**

1 consent of the person or of the person's caretaker, fiduciary or other legal representative.

2 (2) In requesting the copies of financial records under subsection (1) of this section, the
3 law enforcement agency shall specify the name and Social Security number of the person
4 about whom the copies are sought, and shall certify to the financial institution in writing,
5 signed by an agent of the law enforcement agency:

6 (a) That the person about whom copies of financial records are sought is the alleged
7 victim in an abuse investigation under ORS 124.070 or 441.650;

8 (b) That the law enforcement agency has a reasonable belief that abuse has occurred or
9 is occurring; and

10 (c) That the requested copies of financial records are necessary for a determination in
11 the investigation that abuse has occurred or is occurring.

12 (3) A financial institution that supplies copies of financial records under this section may,
13 but is not required to, inform the person about whom copies of financial records have been
14 requested, or the person's caretaker, fiduciary or other legal representative, about the re-
15 quest and disclosure unless specifically directed by the law enforcement agency not to do so.

16 (4) A financial institution that supplies copies of financial records under this section may
17 be reimbursed for costs incurred as provided in ORS 192.602.

18 (5) A financial institution that supplies copies of financial records under this section is
19 not liable to any person for any loss, damage or injury arising out of or in any way pertaining
20 to the disclosure of the copies.

21 (6) Each financial institution that is requested to supply copies of financial records under
22 this section may specify that requests for copies from the financial institution must be sub-
23 mitted in written, tape or electronic format. A reasonable time must be provided the finan-
24 cial institution to comply with subsection (1) of this section.

25 (7)(a) A law enforcement agency may seek disclosure and copies of financial records un-
26 der this section only with respect to a person who is the alleged victim of abuse in an in-
27 vestigation under ORS 124.070 or 441.650.

28 (b) Notwithstanding paragraph (a) of this subsection, disclosure and copies of financial
29 records may be obtained under this section when the financial records pertain to an account,
30 loan or other financial relationship owned, held or maintained by a person who is the alleged
31 victim in an abuse investigation under ORS 124.070 or 441.650 together with one or more
32 other persons who are not alleged victims in the abuse investigation.

33 **SECTION 10a.** ORS 192.586 is amended to read:

34 192.586. (1) Except as provided in ORS 192.588, 192.591, 192.593, 192.596, 192.598 and 192.603 and
35 **section 10 of this 2012 Act** or as required by ORS 25.643 and 25.646 and the Uniform Disposition
36 of Unclaimed Property Act, ORS 98.302 to 98.436 and 98.992:

37 (a) A financial institution may not provide financial records of a customer to a state or local
38 agency.

39 (b) A state or local agency may not request or receive from a financial institution financial re-
40 cords of customers.

41 (2) Subsection (1) of this section does not preclude a financial institution, in the discretion of
42 the financial institution, from initiating contact with, and thereafter communicating with and dis-
43 closing customer financial records to:

44 (a) Appropriate state or local agencies concerning a suspected violation of the law.

45 (b) The office of the State Treasurer if the records relate to state investments in commercial

1 mortgages involving the customer. The records and the information contained therein are public
2 records but are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest in
3 disclosure clearly outweighs the public interest in confidentiality. However, the following records
4 in the office must remain open to public inspection:

5 (A) The contract or promissory note establishing a directly held residential or commercial
6 mortgage and information identifying collateral;

7 (B) Any copy the office retains of the underlying mortgage note in which the office purchases
8 a participation interest; and

9 (C) Information showing that a directly held loan is in default.

10 (c) An appropriate state or local agency in connection with any business relationship or trans-
11 action between the financial institution and the customer, if the disclosure is made in the ordinary
12 course of business of the financial institution and will further the legitimate business interests of
13 the customer or the financial institution.

14 (3) ORS 192.583 to 192.607 do not prohibit any of the following:

15 (a) The dissemination of any financial information that is not identified with, or identifiable as
16 being derived from, the financial records of a particular customer.

17 (b) The examination by, or disclosure to, the Department of Consumer and Business Services of
18 financial records that relate solely to the exercise of the department's supervisory function. The
19 scope of the department's supervisory function shall be determined by reference to statutes that
20 grant authority to examine, audit, or require reports of financial records or financial institutions.

21 (c) The furnishing to the Department of Revenue of information by the financial institution,
22 whether acting as principal or agent, as required by ORS 314.360.

23 (d) Compliance with the provisions of ORS 708A.655 or 723.844.

24 (4) Notwithstanding subsection (1) of this section, a financial institution may:

25 (a) Enter into an agreement with the Oregon State Bar that requires the financial institution
26 to make reports to the Oregon State Bar whenever a properly payable instrument is presented for
27 payment out of an attorney trust account that contains insufficient funds, whether or not the in-
28 strument is honored by the financial institution; and

29 (b) Submit reports to the Oregon State Bar concerning instruments presented for payment out
30 of an attorney trust account under a trust account overdraft notification program established under
31 ORS 9.685.

32 **SECTION 11.** ORS 124.085 is amended to read:

33 124.085. A proper record of complaints made under ORS 124.060 and 124.065 shall be maintained
34 by the Department of Human Services. The department shall prepare reports in writing when in-
35 vestigation has shown that the condition of the elderly person was the result of abuse even if the
36 cause remains unknown. The complaints and investigative reports shall be cataloged under the name
37 of the victim but shall be treated as confidential information **subject to ORS 124.090**, and shall be
38 disclosed only with the consent of that person or by judicial process.

39 **SECTION 12.** ORS 124.090 is amended to read:

40 124.090. (1) Notwithstanding the provisions of ORS 192.410 to 192.505, the names of the public
41 or private official **or any other person** who made the complaint, **the** witnesses and the elderly
42 persons, **and the reports and records** compiled under the provisions of ORS 124.050 to 124.095, are
43 confidential and are not accessible for public inspection. [*However, the Department of Human Ser-*
44 *VICES shall make the information and any investigative report available to]*

45 **(2) Notwithstanding subsection (1) of this section, the Department of Human Services or**

1 **the department's designee may, if appropriate, make the names of the witnesses and the el-**
2 **derly persons, and the reports and records compiled under ORS 124.050 to 124.095, available**
3 **to:**

4 (a) [Any] A law enforcement agency[, to];

5 (b) [Any] A public agency that licenses or certifies residential facilities or licenses or certifies
6 the persons practicing [therein, to] **in the facilities;**

7 (c) [Any] A public agency **or private nonprofit agency or organization** providing protective
8 services for the elderly person [and to];

9 (d) The Long Term Care Ombudsman[, if appropriate. *The department shall also make the infor-*
10 *mation and any investigative report available to any private nonprofit agency providing protective ser-*
11 *vices for the elderly person. When this information and any investigative report is made available to*
12 *the private agency, ORS 124.050 to 124.095 relating to confidentiality apply to the private agency.];*

13 (e) **A public agency that licenses or certifies a person that has abused or is alleged to**
14 **have abused an elderly person;**

15 (f) **A court pursuant to a court order or as provided in ORS 125.012; and**

16 (g) **An administrative law judge in an administrative proceeding when necessary to pro-**
17 **vide protective services as defined in ORS 410.040 to an elderly person, when in the best in-**
18 **terests of the elderly person or when necessary to investigate, prevent or treat abuse of an**
19 **elderly person.**

20 **(3) Information made available under subsection (2) of this section, and the recipient of**
21 **the information, are otherwise subject to the confidentiality provisions of ORS 124.050 to**
22 **124.095.**

23 **SECTION 13.** ORS 441.671 is amended to read:

24 441.671. (1) Notwithstanding the provisions of ORS 192.410 to 192.505, the names of
25 complainants, **witnesses** and residents, **and the reports and records** compiled under the provisions
26 of ORS [441.640 to 441.660] **441.630 to 441.680**, are confidential and are not accessible for public
27 inspection. [*However, the Department of Human Services shall make the information available to any*]

28 **(2) Notwithstanding subsection (1) of this section, the Department of Human Services or**
29 **the department's designee may, if appropriate, make the names of witnesses and residents,**
30 **and the reports and records compiled under ORS 441.630 to 441.680, available to:**

31 (a) A law enforcement agency[, to any];

32 (b) A public agency [which] **that** licenses or certifies long term care facilities [or];

33 (c) **A public agency that** licenses or certifies the persons practicing the healing arts [therein
34 and to] **in long term care facilities;**

35 (d) The Long Term Care Ombudsman[.];

36 (e) **A public agency that licenses or certifies a person that has abused or is alleged to**
37 **have abused a resident;**

38 (f) **A court pursuant to a court order or as provided in ORS 125.012; and**

39 (g) **An administrative law judge in an administrative proceeding when necessary to pro-**
40 **vide protective services as defined in ORS 410.040 to a resident, when in the best interests**
41 **of the resident or when necessary to investigate, prevent or treat abuse of a resident.**

42 [(2) *Except as provided in subsection (1) of this section, the provisions of ORS 192.410 to 192.505*
43 *apply to all records and reports compiled under ORS 441.640 to 441.665.]*

44 **(3) Information made available under subsection (2) of this section, and the recipient of**
45 **the information, are otherwise subject to the confidentiality provisions of ORS 441.630 to**

1 441.680.

2 **SECTION 14.** (1) The Resident Safety Review Council is created, consisting of six mem-
3 bers as follows:

4 (a) The Long Term Care Ombudsman;

5 (b) A representative of the Oregon Patient Safety Commission established in ORS 442.820,
6 to be appointed by the commission and to serve as the chairperson of the council;

7 (c) A person with expertise in the area of geriatrics who is licensed, registered or certi-
8 fied to provide care or services to a person 65 years of age or older, to be appointed by the
9 President of the Senate;

10 (d) A representative of the Oregon District Attorneys Association, to be appointed by the
11 Speaker of the House of Representatives;

12 (e) A representative of a Medicare quality improvement organization in Oregon, to be
13 appointed by the Speaker of the House of Representatives; and

14 (f) A representative of the Department of Human Services, to be appointed by the Gov-
15 ernor.

16 (2) All appointments to the council under subsection (1) of this section must be completed
17 on or before the date that is 30 days after the adjournment sine die of the 2012 regular ses-
18 sion of the Seventy-sixth Legislative Assembly.

19 (3) Members of the council shall receive no compensation for their services but shall be
20 allowed actual and necessary travel expenses incurred in the performance of their duties.

21 (4) The council shall:

22 (a) Hold the first meeting of the council no later than May 30, 2012;

23 (b) Review information and reports from investigations of abuse undertaken pursuant to
24 ORS 124.070 or 441.650 that are provided under section 15 of this 2012 Act;

25 (c) Perform a root cause analysis of the information received under paragraph (b) of this
26 subsection to determine whether the occurrences of abuse or alleged abuse should be clas-
27 sified as acts of abuse or as adverse events; and

28 (d) Prepare a report on the review and findings of the council, together with recommen-
29 dations for improvement to the processes of investigation and for corrective actions with
30 respect to occurrences of abuse.

31 (5) The council shall submit the report prepared under subsection (4)(d) of this section,
32 and may include recommendations for legislation, to the committees of the Legislative As-
33 sembly related to the care, protection and provision of services to elderly persons over 65
34 years of age and residents of long term care facilities no later than February 15, 2013.

35 (6) The Oregon Patient Safety Commission shall provide staff support to the council.

36 (7) The Department of Human Services and the Oregon Health Authority shall allocate
37 funds from the Quality Care Fund established under ORS 443.001, not to exceed \$300,000 per
38 biennium, for the purpose of providing technical support for data acquisition and analysis,
39 staff support and other costs of the council incurred in the performance of the council's
40 duties under subsection (4) of this section.

41 **SECTION 15.** (1) The Department of Human Services shall provide information and re-
42 ports from investigations of abuse undertaken pursuant to ORS 124.070 or 441.650 to the
43 Resident Safety Review Council created under section 14 of this 2012 Act no later than May
44 1, 2012.

45 (2) Information and reports provided under subsection (1) of this section may not contain

1 or reveal the name of or other identifiable information regarding an alleged victim, a resi-
2 dent or any other person identified in the information or reports.

3 **SECTION 16. Sections 14 and 15 of this 2012 Act are repealed on June 30, 2013.**

4 **SECTION 17.** ORS 443.004 is amended to read:

5 443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete
6 a criminal records check under ORS 181.534 on:

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

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

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

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

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

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

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

27 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
28 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,
29 163.467, 163.535, 163.537, **163.547**, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d),
30 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, **165.013**, 165.022, 165.032, 165.800,
31 165.803, 167.012, 167.017 [*or*], 167.057, **167.320 or 167.322**;

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

38 [*b*] (c) Of a crime listed in ORS 181.594;

39 [*c*] (d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled
40 substance;

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

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

45 (4) If the criminal background check conducted by a home health agency or in-home care agency

1 under subsection (2) of this section reveals that the individual who is subject to the criminal back-
2 ground check has been convicted of any of the crimes described in subsection (3) of this section, the
3 home health agency or in-home care agency may not employ the individual.

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

9 (6) Upon the request of a mental health or substance abuse treatment provider, the department
10 or authority shall maintain a record of the results of any fitness determination made under ORS
11 181.534 (11) and (12). The department or authority may disclose the record only to a person the
12 provider specifically authorizes, by a written release, to receive the information.

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

17 (8) As used in this section:

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

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

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

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

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

23 (A) A peer support specialist;

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

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

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

29 (f) "Peer support specialist" means a person who:

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

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

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

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

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

37 **SECTION 18.** ORS 181.534 is amended to read:

38 181.534. (1) As used in this section:

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

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

42 (B) A criminal justice agency, as defined in ORS 181.010, that is authorized by federal law to
43 receive fingerprint-based criminal records checks from the Federal Bureau of Investigation.

44 (b) "Subject individual" means a person from whom an authorized agency may require finger-
45 prints pursuant to statute for the purpose of enabling the authorized agency to request a state or

1 nationwide criminal records check.

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

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

9 (4) The Federal Bureau of Investigation shall return or destroy the fingerprint cards used to
10 conduct the criminal records check and may not keep any record of the fingerprints. If the federal
11 bureau policy authorizing return or destruction of the fingerprint cards is changed, the Department
12 of State Police shall cease to send the cards to the federal bureau but shall continue to process the
13 information through other available resources.

14 (5) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of
15 State Police, the department shall destroy the fingerprint cards and shall retain no facsimiles or
16 other material from which a fingerprint can be reproduced.

17 (6) If only a state criminal records check is conducted, the Department of State Police shall
18 destroy the fingerprint cards after the criminal records check is completed and the results of the
19 criminal records check provided to the authorized agency and shall retain no facsimiles or other
20 material from which a fingerprint can be reproduced.

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

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

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

32 (a) Specifying categories of subject individuals who are subject to criminal records checks.

33 (b) Specifying the information that may be required from a subject individual to permit a crim-
34 inal records check.

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

36 (d) Specifying the types of crimes that may be considered in reviewing criminal offender infor-
37 mation of a subject individual.

38 (e) Specifying when a nationwide fingerprint-based criminal records check must be conducted.
39 An authorized agency shall consider the additional cost of obtaining a nationwide fingerprint-based
40 criminal records check when adopting rules under this subsection.

41 (f) If the authorized agency uses criminal records checks for agency employment purposes:

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

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

1 (g) Establishing fees in an amount not to exceed the actual cost of acquiring and furnishing
2 criminal offender information.

3 (10) The Department of State Police shall verify that an authorized agency has adopted the rules
4 required by subsection (9) of this section.

5 (11)(a) Except as otherwise provided in ORS 181.612 **and paragraph (b) of this subsection**, an
6 authorized agency, using the rules adopted under subsection (9) of this section, shall determine
7 whether a subject individual is fit to hold a position, provide services, be employed or be granted
8 a license, certification, registration or permit, based on the criminal records check obtained pursu-
9 ant to this section, on any false statements made by the individual regarding the criminal history
10 of the individual and on any refusal to submit or consent to a criminal records check including
11 fingerprint identification. If a subject individual is determined to be unfit, then the individual may
12 not hold the position, provide services, be employed or be granted a license, certification, registra-
13 tion or permit.

14 **(b) An individual prohibited from receiving public funds for employment under ORS**
15 **443.004 (3) is not entitled to a determination of fitness as a subject individual under para-**
16 **graph (a) of this subsection.**

17 (12) Except as otherwise provided in ORS 181.612, in making the fitness determination under
18 subsection (11) of this section, the authorized agency shall consider:

19 (a) The nature of the crime;

20 (b) The facts that support the conviction or pending indictment or that indicate the making of
21 the false statement;

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

25 (d) Intervening circumstances relevant to the responsibilities and circumstances of the position,
26 services, employment, license, certification, registration or permit. Intervening circumstances in-
27 clude but are not limited to:

28 (A) The passage of time since the commission of the crime;

29 (B) The age of the subject individual at the time of the crime;

30 (C) The likelihood of a repetition of offenses or of the commission of another crime;

31 (D) The subsequent commission of another relevant crime;

32 (E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

33 (F) A recommendation of an employer.

34 (13) An authorized agency and an employee of an authorized agency acting within the course
35 and scope of employment are immune from any civil liability that might otherwise be incurred or
36 imposed for determining, pursuant to subsection (11) of this section, that a subject individual is fit
37 or not fit to hold a position, provide services, be employed or be granted a license, certification,
38 registration or permit. An authorized agency and an employee of an authorized agency acting within
39 the course and scope of employment who in good faith comply with this section are not liable for
40 employment-related decisions based on determinations made under subsection (11) of this section.
41 An authorized agency or an employee of an authorized agency acting within the course and scope
42 of employment is not liable for defamation or invasion of privacy in connection with the lawful dis-
43 semination of information lawfully obtained under this section.

44 (14)(a) Each authorized agency shall establish by rule a contested case process by which a sub-
45 ject individual may appeal the determination that the individual is fit or not fit to hold a position,

1 provide services, be employed or be granted a license, certification, registration or permit on the
2 basis of information obtained as the result of a criminal records check conducted pursuant to this
3 section. Challenges to the accuracy or completeness of information provided by the Department of
4 State Police, the Federal Bureau of Investigation and agencies reporting information to the De-
5 partment of State Police or Federal Bureau of Investigation must be made through the Department
6 of State Police, Federal Bureau of Investigation or reporting agency and not through the contested
7 case process required by this paragraph.

8 (b) A subject individual who is employed by an authorized agency and who is determined not to
9 be fit for a position on the basis of information obtained as the result of a criminal records check
10 conducted pursuant to this section may appeal the determination through the contested case process
11 adopted under this subsection or applicable personnel rules, policies and collective bargaining pro-
12 visions. An individual's decision to appeal a determination through personnel rules, policies and
13 collective bargaining provisions is an election of remedies as to the rights of the individual with
14 respect to the fitness determination and is a waiver of the contested case process.

15 **(c) An individual prohibited from receiving public funds for employment under ORS**
16 **443.004 (3) is not entitled to appeal a determination under paragraph (a) or (b) of this sub-**
17 **section.**

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

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

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

28 **SECTION 19.** ORS 181.537 is amended to read:

29 181.537. (1) As used in this section:

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

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

36 (2) For the purpose of requesting a state or nationwide criminal records check under ORS
37 181.534, the Department of Human Services, the Oregon Health Authority and the Employment De-
38 partment may require the fingerprints of a person:

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

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

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

43 (B) Has access to personal information about employees of either department or the authority,
44 recipients of care from either department or the authority or members of the public, including Social
45 Security numbers, dates of birth, driver license numbers, medical information, personal financial in-

1 formation or criminal background information;

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

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

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

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

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

10 (iii) Purchasing or selling property;

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

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

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

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

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

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

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

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

36 (5)(a) A qualified entity, using rules adopted by the Department of Human Services or the
37 Oregon Health Authority, shall determine under this section whether a person is fit to hold a posi-
38 tion, provide services, be employed or, if the qualified entity has authority to make such a determi-
39 nation, be licensed, certified or registered, based on the criminal records check obtained pursuant
40 to ORS 181.534, any false statements made by the person regarding the criminal history of the per-
41 son and any refusal to submit or consent to a criminal records check including fingerprint identifi-
42 cation. If a person is determined to be unfit, then that person may not hold the position, provide
43 services or be employed, licensed, certified or registered.

44 (b) A person prohibited from receiving public funds for employment under ORS 443.004
45 (3) is not entitled to a determination of fitness under paragraph (a) of this subsection.

1 (6) In making the fitness determination under subsection (5) of this section, the qualified entity
2 shall consider:

3 (a) The nature of the crime;

4 (b) The facts that support the conviction or pending indictment or indicate the making of the
5 false statement;

6 (c) The relevancy, if any, of the crime or the false statement to the specific requirements of the
7 person's present or proposed position, services, employment, license, certification or registration;
8 and

9 (d) Intervening circumstances relevant to the responsibilities and circumstances of the position,
10 services, employment, license, certification or registration. Intervening circumstances include but
11 are not limited to the passage of time since the commission of the crime, the age of the person at
12 the time of the crime, the likelihood of a repetition of offenses, the subsequent commission of an-
13 other relevant crime and a recommendation of an employer.

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

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

29 (9) The Department of Human Services and the Oregon Health Authority shall develop systems
30 that maintain information regarding criminal records checks in order to minimize the administrative
31 burden imposed by this section and ORS 181.534. Records maintained under this subsection are
32 confidential and may not be disseminated except for the purposes of this section and in accordance
33 with the rules of the Department of Human Services, the Oregon Health Authority and the Depart-
34 ment of State Police. Nothing in this subsection permits the Department of Human Services to re-
35 tain fingerprint cards obtained pursuant to this section.

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

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

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

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

42 (d) Specifying when a qualified entity, in lieu of conducting a completely new criminal records
43 check, may proceed to make a fitness determination under subsection (5) of this section using the
44 information maintained by the Department of Human Services and the Oregon Health Authority
45 pursuant to subsection (9) of this section.

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

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

7 **SECTION 20.** No later than October 1, 2012, the Department of Human Services shall
8 make a report, and may include recommendations for legislation, to the interim committees
9 of the Legislative Assembly related to reporting of abuse of vulnerable persons regarding
10 implementation of a statewide call system and 2-1-1 system integration to provide a means
11 of making the report required by ORS 124.060.

12 **SECTION 21.** (1) The Department of Human Services shall:

13 (a) Using new or existing materials, develop and implement a training and continuing
14 education curriculum for persons other than law enforcement officers required by law to
15 investigate allegations of abuse under ORS 124.070 or 441.650. The curriculum shall address
16 the areas of training and education necessary to facilitate the skills required to investigate
17 reports of abuse, including, but not limited to, risk assessment, investigatory technique, ev-
18 idence gathering and report writing.

19 (b) Using new or existing materials, develop and implement training for persons that
20 provide care to vulnerable persons to facilitate awareness of the dynamics of abuse, abuse
21 prevention strategies and early detection of abuse.

22 (2) For purposes of this section, "vulnerable person" means a person 65 years of age or
23 older.

24 **SECTION 22.** No later than October 1, 2012, the Department of Human Services shall
25 make a report, and may include recommendations for legislation, to the interim committees
26 of the Legislative Assembly related to reporting of abuse of persons 65 years of age or older
27 regarding development and implementation of the training and continuing education curric-
28 ulum required by section 21 of this 2012 Act.

29 **SECTION 23.** (1) It is the intent of the Legislative Assembly to recreate the Oregon Elder
30 Abuse Work Group, first established on June 21, 2011, by section 1, chapter 444, Oregon Laws
31 2011, and repealed on February 29, 2012, so that the work group may complete its work as
32 set forth in section 1, chapter 444, Oregon Laws 2011.

33 (2) The Oregon Elder Abuse Work Group shall consist of 17 members appointed as fol-
34 lows:

35 (a) The President of the Senate shall appoint two members from among members of the
36 Senate who shall cease being members of the work group upon ceasing to be members of the
37 Legislative Assembly.

38 (b) The Speaker of the House of Representatives shall appoint two members from among
39 members of the House of Representatives who shall cease being members of the work group
40 upon ceasing to be members of the Legislative Assembly.

41 (c) The Governor shall appoint 10 members as follows:

42 (A) The Long Term Care Ombudsman appointed under ORS 441.103;

43 (B) Three members representing long term care providers for elderly persons;

44 (C) Two members representing law enforcement agencies, one of whom shall be a repre-
45 sentative from the Oregon District Attorneys Association and one of whom shall be a rep-

1 **representative from a local law enforcement agency with expertise in investigating elder abuse;**

2 **(D) Two members representing consumers who are elderly persons;**

3 **(E) An officer of a bank, as defined in ORS 706.008; and**

4 **(F) An officer of a credit union, as defined in ORS 723.008.**

5 **(d) The chairperson of the Governor's Commission on Senior Services created under ORS**
6 **410.320 shall appoint one member.**

7 **(e) The Director of Human Services shall appoint two members as follows:**

8 **(A) One member with expertise in elder abuse services and investigations; and**

9 **(B) One member representing the office or department within the Department of Human**
10 **Services that performs criminal background checks of individuals providing services to el-**
11 **derly persons or conducting elder abuse investigations.**

12 **(3) The work group shall have its first meeting on or before the later of 30 days after**
13 **adjournment sine die of the 2012 regular session of the Seventy-sixth Legislative Assembly**
14 **or September 30, 2012.**

15 **(4) The work group shall study and make recommendations on:**

16 **(a) The definition of "elder abuse."**

17 **(b) The criminal background check system and its role in prevention and investigation**
18 **of elder abuse.**

19 **(c) The process involved in conducting elder abuse investigations.**

20 **(d) Elder abuse data reporting systems.**

21 **(e) Reports to the Legislative Assembly.**

22 **(f) Information that could be made available to the public regarding elder abuse and in-**
23 **vestigations of elder abuse.**

24 **(5) The work group shall prepare a detailed assessment of the costs to implement the**
25 **work group's recommendations. The assessment must address both current and future needs**
26 **in providing elder abuse prevention and investigation services. Each agency or organization**
27 **with a member on the work group shall cooperate with the work group in assessing and**
28 **identifying the costs of complying with the work group's recommendations.**

29 **(6) A majority of the members of the work group constitutes a quorum for the trans-**
30 **action of business.**

31 **(7) Official action by the work group requires the approval of a majority of the members**
32 **of the work group.**

33 **(8) The work group shall elect one of its members to serve as chairperson.**

34 **(9) If there is a vacancy for any cause, the appointing authority shall make an appoint-**
35 **ment to become immediately effective.**

36 **(10) The work group shall meet at times and places specified by the call of the chair-**
37 **person or of a majority of the members of the work group.**

38 **(11) The work group may adopt rules necessary for the operation of the work group.**

39 **(12) The work group shall make a report, and may include recommendations for legis-**
40 **lation, to interim committees of the Legislative Assembly related to the provision of services**
41 **to elderly persons and investigation of elder abuse no later than January 15, 2013.**

42 **(13) The work group may accept donations of staff support, office space and equipment**
43 **from advocacy or service provider organizations to assist the work group in the performance**
44 **of its functions.**

45 **(14) Notwithstanding ORS 171.072, members of the work group who are members of the**

1 **Legislative Assembly are not entitled to mileage expenses or a per diem and serve as volun-**
2 **teers on the work group. Other members of the work group are not entitled to compensation**
3 **or reimbursement for expenses and serve as volunteers on the work group.**

4 **(15) All agencies of state government as defined in ORS 174.111 are directed to assist the**
5 **work group in the performance of its duties and, to the extent permitted by laws relating to**
6 **confidentiality, to furnish such information and advice as the members of the work group**
7 **consider necessary to perform their duties.**

8 **SECTION 24. Section 23 of this 2012 Act is repealed on June 30, 2013.**

9 **SECTION 25. The amendments to ORS 131.125 and 411.990 by sections 2 and 3 of this 2012**
10 **Act apply to offenses committed before, on or after the effective date of this 2012 Act, but**
11 **do not operate to revive a prosecution barred by the operation of ORS 131.125 before the ef-**
12 **fective date of this 2012 Act.**

13 **SECTION 26. The amendments to ORS 137.225 by section 4 of this 2012 Act apply to**
14 **motions for entry of an order setting aside a conviction made on or after the effective date**
15 **of this 2012 Act that involve convictions that occurred before, on or after the effective date**
16 **of this 2012 Act.**

17 **SECTION 27. This 2012 Act being necessary for the immediate preservation of the public**
18 **peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect**
19 **on its passage.**

20