

# D R A F T

## SUMMARY

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

Declares emergency, effective on passage.

## A BILL FOR AN ACT

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

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

**SECTION 1.** ORS 181A.195 is amended to read:

181A.195. (1) As used in this section:

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

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

(B) A criminal justice agency, as defined in ORS 181A.010, that is authorized by federal law to receive fingerprint-based criminal records checks from the Federal Bureau of Investigation.

(b) “Subject individual” means a person from whom an authorized agency may require fingerprints pursuant to statute for the purpose of enabling the authorized agency to request a state or nationwide criminal records check.

(2)(a) An authorized agency may request that the Department of State Police conduct a criminal records check on a subject individual for non-criminal justice purposes.

(b) A criminal records check under this subsection must, if requested by

the authorized agency, include a name-based check of the national sex offender registry maintained by the National Crime Information Center.

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

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

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

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

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

(7) An authorized agency may conduct criminal records checks on subject

1 individuals through the Law Enforcement Data System maintained by the  
2 Department of State Police in accordance with rules adopted, and procedures  
3 established, by the Department of State Police.

4 (8) An authorized agency and the Department of State Police shall permit  
5 a subject individual for whom a fingerprint-based criminal records check was  
6 conducted to inspect the individual's own state and national criminal  
7 offender records and, if requested by the subject individual, provide the in-  
8 dividual with a copy of the individual's own state and national criminal  
9 offender records.

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

14 (a) Identifying applicable categories of subject individuals as specified by  
15 the Oregon Department of Administrative Services under ORS 181A.215 who  
16 are subject to criminal records checks by the authorized agency.

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

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

21 (d) If the authorized agency uses criminal records checks for agency em-  
22 ployment purposes:

23 (A) Determining when and under what conditions a subject individual  
24 may be hired on a preliminary basis pending a criminal records check; and

25 (B) Defining the conditions under which a subject individual may partic-  
26 ipate in training, orientation and work activities pending completion of a  
27 criminal records check.

28 (e) Establishing fees in an amount not to exceed the actual cost of ac-  
29 quiring and furnishing criminal offender information.

30 (10)(a) Except as otherwise provided in ORS 181A.400, 181A.875, 342.143,  
31 342.223, 443.735, 475B.785 to 475B.949 and 703.090 and paragraph (d) of this

subsection, an authorized agency, using the rules adopted by the Oregon Department of Administrative Services under ORS 181A.215, shall determine whether a subject individual is fit to hold a position, provide services, be employed or be granted a license, certification, registration or permit. If a subject individual is determined to be unfit, then the individual may not hold the position, provide services, be employed or be granted a license, certification, registration or permit.

(b)(A) Subject to subparagraph (B) of this paragraph, an authorized agency making a fitness determination of an individual under this subsection may request results of a previously made fitness determination from an authorized agency that has already made a fitness determination for the individual. An authorized agency that receives a request under this paragraph shall provide the requested information.

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

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

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

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

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

(A) The nature of the crime;

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

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

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

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

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

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

(iv) The subsequent commission of another relevant crime;

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

(vi) The recommendation of an employer.

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

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

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

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

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

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

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

(D) A conviction under ORS 813.010 **or 830.325, or a conviction under a law in another jurisdiction that imposes criminal penalties for operating a vehicle or boat while under the influence of intoxicants**, if

the subject individual had no more than one conviction [*under ORS 813.010*] **described in this subparagraph** in the five-year period prior to the date of the criminal records check;

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

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

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

(A) Described in ORS 418.016;

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

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

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

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

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

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

(12) Criminal offender information is confidential. Authorized agencies and the Department of State Police shall adopt rules to restrict dissemination of information received under this section to persons with a demon-

1 strated and legitimate need to know the information.

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

6 (14) If an authorized agency requires a criminal records check of em-  
7 ployees, prospective employees, contractors, vendors or volunteers or appli-  
8 cants for a license, certification, registration or permit, the application forms  
9 of the authorized agency must contain a notice that the person is subject to  
10 fingerprinting and a criminal records check.

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

12 443.004. (1)(a) The Department of Human Services or the Oregon Health  
13 Authority shall complete a criminal records check under ORS 181A.195 on:

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

15 (B) Any individual who is paid directly or indirectly with public funds  
16 who has or will have contact with a recipient of support services or a resi-  
17 dent of an adult foster home or a residential facility; and

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

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

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

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

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

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

31 **(E) Determines, under criteria set forth in rules adopted by the**

**department or the authority, that it would be burdensome for a subject individual to wait for a new criminal records check.**

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

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

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

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

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

(b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465, 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date of conviction for which was within the five years immediately preceding employment in any capacity of an individual, other than a mental health or substance abuse treatment provider, having contact with a recipient of support services, a resident of a residential facility or a resident of an adult

foster home, when the recipient or resident is 65 years of age or older;

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

(d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

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

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

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

(5) Public funds may not be used to support, in whole or in part, the employment, in any capacity having contact with a recipient of support services or a resident of a residential facility or an adult foster home, of a mental health or substance abuse treatment provider who has been convicted of committing, or convicted of an attempt, conspiracy or solicitation to commit, a crime described in ORS 163.095, 163.107, 163.115, 163.375, 163.405, 163.411 or 163.427.

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

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

1 may conduct a fitness determination in accordance with this section and  
2 ORS 181A.195.

3 (8) As used in this section:

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

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

6 (c) "Home health agency" has the meaning given that term in ORS  
7 443.014.

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

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

11 (A) A peer support specialist;

12 (B) An employee of a residential treatment facility or a residential treat-  
13 ment home that is licensed under ORS 443.415 to provide treatment for in-  
14 dividuals with alcohol or drug dependence;

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

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

18 (f) "Peer support specialist" has the meaning given that term in ORS  
19 414.025.

20 (g) "Personal support worker" has the meaning given that term in ORS  
21 410.600.

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

23 **SECTION 3. This 2020 Act being necessary for the immediate pres-**  
24 **ervation of the public peace, health and safety, an emergency is de-**  
25 **clared to exist, and this 2020 Act takes effect on its passage.**