

House Bill 2942

Sponsored by Representative BYNUM, Senator DEMBROW, Representative HERNANDEZ (at the request of Multnomah Educational Service District) (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Removes certain nonviolent crimes from list of crimes that automatically make person ineligible to hold license or registration issued by Teacher Standards and Practices Commission if person has been convicted of crime. Directs commission to establish standards for determining when to issue license or registration to person who has been convicted of those crimes.

A BILL FOR AN ACT

1
2 Relating to consideration of criminal convictions in school settings; amending ORS 181A.180,
3 326.603, 342.143 and 342.175.

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

5 **SECTION 1.** ORS 342.143 is amended to read:

6 342.143. (1) A teaching, personnel service or administrative license, or public charter school
7 registration, may not be issued to any person until the person has attained the age of 18 years and
8 has furnished satisfactory evidence of proper educational training.

9 (2) The Teacher Standards and Practices Commission may require an applicant for a teaching,
10 personnel service or administrative license or for registration as a public charter school teacher or
11 administrator to furnish evidence satisfactory to the commission of good moral character, mental
12 and physical health, and such other evidence as the commission may deem necessary to establish
13 the applicant's fitness to serve as a teacher or administrator.

14 (3) Without limiting the powers of the Teacher Standards and Practices Commission under sub-
15 section (2) of this section[.],

16 [(a)] a teaching, personnel service or administrative license, or a public charter school regis-
17 tration, may not be issued to any person who:

18 [(A)] (a) Has been convicted of a crime listed in ORS 163.095, 163.107, 163.115, 163.185, 163.235,
19 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 163.432,
20 163.433, 163.435, 163.445, 163.465, 163.515, 163.525, 163.547, 163.575, 163.670, 163.675 (1985 Replace-
21 ment Part), 163.680 (1993 Edition), 163.684, 163.686, 163.687, 163.688, 163.689, 164.325, 164.415,
22 166.005, 166.087, [167.007,] 167.008, 167.012, 167.017, 167.057, 167.062, 167.075, 167.080, 167.090,
23 [475.808, 475.810, 475.812, 475.818, 475.820, 475.822, 475.828, 475.830, 475.832, 475.848, 475.852, 475.868,
24 475.872, 475.878, 475.880, 475.882, 475.888, 475.890, 475.892, 475.904] or 475.906.

25 [(B)] (b) Has been convicted under ORS 161.405 of an attempt to commit any of the crimes listed
26 in [subparagraph (A) of this] paragraph (a) of this subsection.

27 [(C)] (c) Has been convicted in another jurisdiction of a crime that is substantially equivalent,
28 as defined by rule, to any of the crimes listed in [subparagraphs (A) and (B) of this paragraph]
29 paragraphs (a) and (b) of this subsection.

30 [(D)] (d) Has had a teaching, personnel service or administrative license, or a public charter

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 school registration, revoked in another jurisdiction for a reason that is substantially equivalent, as
 2 defined by rule, to a reason described in ORS 342.175 and the revocation is not subject to further
 3 appeal. A person whose right to apply for a license or registration is denied under this subparagraph
 4 may apply for reinstatement of the right as provided in ORS 342.175 (4).

5 *[(b) The Teacher Standards and Practices commission may refuse to issue a license or registration*
 6 *to any person who has been convicted of:]*

7 *[(A) A crime involving the illegal use, sale or possession of controlled substances; or]*

8 *[(B) A crime described in ORS 475B.010 to 475B.545.]*

9 **(4)(a) Without limiting the powers of the Teacher Standards and Practices Commission**
 10 **under subsection (2) of this section, the commission shall establish standards for issuing a**
 11 **teaching, personnel service or administrative license, or a public charter school registration,**
 12 **to a person who:**

13 **(A) Has been convicted of a crime listed in ORS 167.007, 475.808, 475.810, 475.812, 475.818,**
 14 **475.820, 475.822, 475.828, 475.830, 475.832, 475.848, 475.852, 475.868, 475.872, 475.878, 475.880,**
 15 **475.882, 475.888, 475.890, 475.892 or 475.904.**

16 **(B) Has been convicted under ORS 161.405 of an attempt to commit any of the crimes**
 17 **listed in subparagraph (A) of this paragraph.**

18 **(C) Has been convicted in another jurisdiction of a crime that is substantially equivalent,**
 19 **as defined by rule, to any of the crimes listed in subparagraphs (A) and (B) of this paragraph.**

20 **(D) Has been convicted of a crime involving the illegal use, sale or possession of con-**
 21 **trolled substances.**

22 **(E) Has been convicted of a crime described in ORS 475B.010 to 475B.545.**

23 **(b) The standards established under this subsection:**

24 **(A) Shall prohibit indefinite ineligibility for a license or registration for a person con-**
 25 **victed of a crime listed in paragraph (a) of this subsection;**

26 **(B) May prescribe a minimum length of time that must elapse before a person convicted**
 27 **of a crime listed in paragraph (a) of this subsection may become eligible to be issued a license**
 28 **or registration; and**

29 **(C) Shall allow the commission to take into consideration the relationship of the facts**
 30 **which support the conviction and all intervening circumstances to the specific professional**
 31 **standards in determining the fitness of the person to receive the license or registration.**

32 *[(4)]* **(5) In denying the issuance of a license or registration under this section, the commission**
 33 **shall follow the procedure set forth in ORS 342.176 and 342.177.**

34 **SECTION 2.** ORS 181A.180 is amended to read:

35 181A.180. Whenever any court or district attorney receives a disposition report and the court
 36 or district attorney has cause to believe that the arrested person who is the subject of the report
 37 is an employee of a school district or is licensed as a school teacher or administrator and that the
 38 charge involves a violation of any crime listed in ORS 342.143 (3) **or (4)**, the court or district at-
 39 torney shall cause the Teacher Standards and Practices Commission and the Department of Educa-
 40 tion to be sent a copy of the completed disposition report.

41 **SECTION 3.** ORS 326.603 is amended to read:

42 326.603. (1) For the purposes of requesting a state or nationwide criminal records check under
 43 ORS 181A.195, the Department of Education may require the fingerprints of:

44 (a) A school district or private school contractor, whether part-time or full-time, or an employee
 45 of a contractor, whether part-time or full-time, who has direct, unsupervised contact with students

1 as determined by the district or private school.

2 (b) A person newly hired, whether part-time or full-time, by a school district or private school
3 in a capacity not described in ORS 342.223 (1).

4 (c) A person who is a community college faculty member providing instruction:

5 (A) At the site of an early childhood education program or at a school site as part of an early
6 childhood education program; or

7 (B) At a kindergarten through grade 12 school site during the regular school day.

8 (d) A person who is an employee of a public charter school.

9 (2)(a) A school district shall send to the Department of Education for purposes of a criminal
10 records check any information, including fingerprints, for each person described in subsection (1)
11 of this section.

12 (b) A private school may send to the Department of Education for purposes of a criminal records
13 check any information, including fingerprints, for each person described in subsection (1)(a), (b) or
14 (c) of this section.

15 (3) The Department of Education shall request that the Department of State Police conduct a
16 criminal records check as provided in ORS 181A.195 and may charge the school district or private
17 school a fee as established by rule under ORS 181A.195. The school district or private school may
18 recover its costs or a portion thereof from the person described in subsection (1) of this section. If
19 the person described in subsection (1)(b) or (d) of this section requests, the school district shall and
20 a private school may withhold the amount from amounts otherwise due the person, including a pe-
21 riodic payroll deduction rather than a lump sum payment.

22 (4) Notwithstanding subsection (1) of this section, the Department of Education may not require
23 fingerprints of a person described in subsection (1) of this section if the person or the person's em-
24 ployer was checked in one school district or private school and is currently seeking to work in an-
25 other district or private school unless the person lived outside this state during the interval between
26 the two periods of time of working in the district or private school.

27 (5) Nothing in this section requires a person described in subsection (1)(a), (b) or (d) of this
28 section to submit to fingerprinting until the person has been offered employment or a contract by
29 a school district or private school. Contractor employees may not be required to submit to finger-
30 printing until the contractor has been offered a contract.

31 (6) If a person described in subsection (1) of this section states on a criminal history form pro-
32 vided by the Department of Education that the person has not been convicted of a crime but the
33 criminal records check indicates that the person has a conviction, the department shall determine
34 whether the person knowingly made a false statement as to the conviction. The department shall
35 develop a process and criteria to use for appeals of a determination under this subsection.

36 (7)(a) The Superintendent of Public Instruction shall inform a school district or private school
37 if a person described in subsection (1) of this section has been convicted of a crime listed in ORS
38 342.143 (3) **or** (4) or has knowingly made a false statement on a criminal history form provided by
39 the Department of Education as to the conviction of any crime.

40 (b) If a person described in subsection (1) of this section has been convicted of a crime listed in
41 ORS 342.143 (3), a school district may not employ or contract with the person and a private school
42 may choose not to employ or contract with the person. Notification by the superintendent that the
43 school district may not employ or contract with the person shall remove the person from any school
44 district policies, collective bargaining provisions regarding dismissal procedures and appeals and the
45 provisions of ORS 342.805 to 342.937.

1 **(c) If a person described in subsection (1) of this section has been convicted of a crime**
 2 **listed in ORS 342.143 (4), a school district may choose not to employ or contract with the**
 3 **person after taking into consideration the relationship of the facts that support the con-**
 4 **viction and all intervening circumstances to the specific professional or occupational stan-**
 5 **dards in determining the fitness of the person to be employed or contracted with.**

6 [(c)] (d) If a person described in subsection (1) of this section has knowingly made a false
 7 statement on a criminal history form provided by the Department of Education as to the conviction
 8 of a crime not listed in ORS 342.143 (3) **or (4)**, a school district or private school may choose to
 9 employ or contract with the person.

10 (8) If a person described in subsection (1) of this section refuses to consent to the criminal re-
 11 cords check or refuses to be fingerprinted, the school district shall terminate the employment or
 12 contract status of the person. Termination under this subsection removes the person from any school
 13 district policies, collective bargaining provisions regarding dismissal procedures and appeals and the
 14 provisions of ORS 342.805 to 342.937.

15 (9)(a) A school district may not hire or continue to employ or contract with or allow the con-
 16 tractor to continue to assign a person to the school project if the person described in subsection (1)
 17 of this section has been convicted of a crime [*according to the provisions of*] **listed in ORS 342.143**
 18 **(3).**

19 **(b) A school district may choose not to hire or continue to employ or contract with or**
 20 **allow the contractor to continue to assign a person to the school project if the person de-**
 21 **scribed in subsection (1) of this section has been convicted of a crime listed in ORS 342.143**
 22 **(4) and the school district has taken into consideration the relationship of the facts that**
 23 **support the conviction and all intervening circumstances to the specific professional or oc-**
 24 **cupational standards in determining the fitness of the person to be hired, employed, con-**
 25 **tracted with or assigned.**

26 (10) As used in this section and ORS 326.607:

27 (a) “Private school” means a school that:

28 (A) Offers education in prekindergarten, kindergarten or grades 1 through 12, or any combina-
 29 tion of those grade levels; and

30 (B) Provides instructional programs that are not limited solely to dancing, drama, music, reli-
 31 gious or athletic instruction.

32 (b) “School district” means:

33 (A) A school district as defined in ORS 330.003.

34 (B) The Oregon School for the Deaf.

35 (C) An educational program under the Youth Corrections Education Program.

36 (D) A public charter school as defined in ORS 338.005.

37 (E) An education service district.

38 **SECTION 4.** ORS 342.175 is amended to read:

39 342.175. (1) The Teacher Standards and Practices Commission may suspend or revoke the license
 40 or registration of a teacher or administrator, discipline a teacher or administrator, or suspend or
 41 revoke the right of any person to apply for a license or registration, if the licensee, registrant or
 42 applicant has held a license or registration at any time within five years prior to issuance of the
 43 notice of charges under ORS 339.390 or 342.176 based on the following:

44 (a) Conviction of a crime not listed in ORS 342.143 (3) **or (4)**;

45 (b) Gross neglect of duty;

1 (c) Any gross unfitness;

2 (d) Conviction of a crime for violating any law of this state or any state or of the United States
3 involving the illegal use, sale or possession of controlled substances;

4 (e) Conviction of a crime described in ORS 475B.010 to 475B.545;

5 (f) Any false statement knowingly made in an application for issuance, renewal or reinstatement
6 of a license or registration; or

7 (g) Failure to comply with any condition of reinstatement under subsection (4) of this section
8 or any condition of probation under ORS 342.177 (3)(b).

9 (2) If a person is enrolled in an approved educator preparation program under ORS 342.147, the
10 commission may issue a public reprimand or may suspend or revoke the right to apply for a license
11 or registration based on the following:

12 (a) Conviction of a crime listed in ORS 342.143 (3) **or (4)** or a crime described by the commission
13 by rule;

14 (b) Conviction of a crime for violating any law of this state or any state or of the United States
15 involving the illegal use, sale or possession of controlled substances; or

16 (c) Any conduct that may cause the commission to issue a public reprimand for a teacher or to
17 suspend or revoke the license or registration of a teacher.

18 (3)(a) The commission shall revoke any license or registration and shall revoke the right of any
19 person to apply for a license or registration if the person has been convicted of any crime listed in
20 ORS 342.143 (3).

21 **(b) The commission may revoke any license or registration and may revoke the right of**
22 **any person to apply for a license or registration if the person has been convicted of any**
23 **crime listed in ORS 342.143 (4), based on standards adopted by the commission under ORS**
24 **342.143 (4).**

25 (4)(a) Except for convictions for crimes listed in ORS 342.143 (3) **or (4)** and subject to subsection
26 (5) of this section, any person whose license or registration has been revoked, or whose right to
27 apply for a license or registration has been revoked, may apply to the commission for reinstatement
28 of the license or registration after one year from the date of the revocation.

29 (b) Any person whose license or registration has been suspended, or whose right to apply for a
30 license or registration has been suspended, may apply to the commission for reinstatement of the
31 license or registration.

32 (c) The commission may require an applicant for reinstatement to furnish evidence satisfactory
33 to the commission of good moral character, mental and physical health and such other evidence as
34 the commission may consider necessary to establish the applicant's fitness. The commission may
35 impose a probationary period and such conditions as the commission considers necessary upon ap-
36 proving an application for reinstatement.

37 (5) The commission shall reconsider immediately a license or registration suspension or revoca-
38 tion or the situation of a person whose right to apply for a license or registration has been revoked,
39 upon application therefor, when the license or registration suspension or revocation or the right
40 revocation is based on a criminal conviction that is reversed on appeal.

41 (6) Violation of rules adopted by the commission relating to competent and ethical performance
42 of professional duties shall be admissible as evidence of gross neglect of duty or gross unfitness.

43 (7) A copy of the record of conviction, certified to by the clerk of the court entering the con-
44 viction, shall be conclusive evidence of a conviction described in this section.