

B-Engrossed
House Bill 2250

Ordered by the House July 2
Including House Amendments dated April 6 and July 2

Introduced and printed pursuant to House Rule 12.00. Pre-session file (at the request of House Interim Committee on Consumer Protection and Government Efficiency)

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.

Authorizes Oregon Department of Administrative Services to adopt rules related to electronic fingerprint capture services.

Directs Oregon Department of Administrative Services to adopt rules establishing [*factors that must be considered when making fitness determinations and*] process for appealing fitness determinations.

Applies laws requiring use of uniform rules for purposes of making fitness determinations to certain [*state agencies and other*] entities exempt from such rules under current law. Creates exemption.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to criminal records checks; creating new provisions; amending ORS 8.100, 181.516, 181.533,
3 181.534, 181.537, 181.547, 181.612, 242.550, 267.237, 326.604, 329A.270, 329A.300, 329A.330,
4 329A.370, 329A.390 and 443.004; and declaring an emergency.

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

6
7 **ELECTRONIC FINGERPRINT CAPTURE**

8
9 **SECTION 1.** ORS 181.516 is amended to read:

10 181.516. (1)(a) Except as provided in subsection (2) of this section, the Department of State Po-
11 lice and any other governmental agency authorized to report, receive or disseminate criminal
12 offender information shall use electronic fingerprint capture technology to take and submit a
13 person's fingerprints for purposes of conducting criminal records checks under ORS 181.533, 181.534
14 or 267.237 or for any other purpose authorized by law.

15 **(b)(A) The Oregon Department of Administrative Services shall adopt rules to implement**
16 **this section.**

17 [*(b)*] **(B) In adopting rules under this paragraph,** the Oregon Department of Administrative
18 **Services** may adopt [*by rule*] exemptions from the requirement described in paragraph (a) of this
19 subsection.

20 (2)(a) This section applies to the Department of State Police only with respect to the adminis-
21 tration of criminal records checks under ORS 181.533, 181.534 and 267.237.

22 (b) This section does not apply to a criminal justice agency, as defined in ORS 181.010, that is
23 authorized by federal law to receive fingerprint-based criminal records checks from the Federal

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 Bureau of Investigation.

2 (3) To meet the requirements of this section, the Department **of State Police** and other gov-
3 ernmental agencies described in subsection (1) of this section may:

4 (a) Directly provide electronic fingerprint capture services; *[or]*

5 (b) Enter into a contract described in subsection (4) of this section for the provision of elec-
6 tronic fingerprint capture services[.]; **or**

7 **(c) Provide electronic fingerprint capture services in any other manner allowed by the**
8 **Oregon Department of Administrative Services by rule or order.**

9 (4) The Oregon Department of Administrative Services shall develop a standard contract by
10 which the Department of State Police and other governmental agencies described in subsection (1)
11 of this section may contract for the provision of electronic fingerprint capture services. Contracts
12 developed under this subsection must account for the variety of uses and levels of service necessary
13 to accommodate the needs of the Department of State Police, other governmental agencies described
14 in subsection (1) of this section, qualified entities as defined in ORS 181.533, qualified entities as
15 defined in ORS 181.537, qualified entities as defined in ORS 267.237 and any other entity required
16 by law or rule to conduct criminal records checks for purposes not related to the administration of
17 the criminal justice system.

18
19 **UNIFORM RULES FOR FITNESS DETERMINATIONS**

20
21 **SECTION 2.** ORS 181.547 is amended to read:

22 181.547. (1) As used in this section[.]:

23 **(a) “Authorized agency” means an authorized agency as defined in ORS 181.533 or 181.534.**

24 **(b) “Direct access” means access to an individual or the personal information of an individual.**

25 **(c) “District” has the meaning given that term in ORS 267.237.**

26 **(d) “Qualified entity” has the meaning given that term in ORS 181.537.**

27 (2) **Subject to ORS 8.100**, the Oregon Department of Administrative Services, in consultation
28 with the Department of State Police, shall adopt rules *[specifying]*:

29 (a) **Specifying** categories of individuals who are subject to criminal records checks that:

30 (A) An authorized agency[, *as defined in ORS 181.533 or 181.534,*] may use to make fitness de-
31 terminations under ORS 181.533 [(4)(a)] and 181.534 [(11); *or*];

32 (B) [*Qualified entities*] **A qualified entity** may use to make fitness determinations under ORS
33 181.537 [(10)(c).]; **or**

34 **(C) A district may use to make fitness determinations under ORS 267.237.**

35 (b) **Specifying** the information, for each category, that may be required from a subject individual
36 to permit a criminal records check.

37 (c) **Specifying** the types of crimes that may be considered in reviewing criminal offender infor-
38 mation of a subject individual for each category.

39 (d) **Specifying** when a nationwide fingerprint-based criminal records check must be conducted.

40 **(e) Establishing the process for appealing a fitness determination, except as otherwise**
41 **provided by law.**

42 (3) The Oregon Department of Administrative Services shall consider the additional cost of ob-
43 taining a nationwide fingerprint-based criminal records check when adopting rules under subsection
44 (2)(d) of this section.

45 (4) Categories adopted under subsection (2)(a) of this section shall separate individuals into

1 categories comprising:

2 (a) Individuals who have direct access to or who provide services for children;

3 (b) Individuals who have direct access to or who provide services for the elderly;

4 (c) Individuals who have direct access to or who provide services for persons with disabilities;

5 (d) Individuals who have direct access to or who provide services for persons with a mental
6 illness;

7 (e) Individuals who have direct access to or who provide services for the general public;

8 (f) Individuals licensed, registered, certified or otherwise authorized to practice a profession or
9 trade in this state and individuals applying for licensure, registration, certification or authorization
10 to practice a profession or trade in this state; and

11 (g) Any other population of individuals specified by the Oregon Department of Administrative
12 Services by rule.

13 **(5) An authorized agency, qualified entity or district, or an employee of an authorized**
14 **agency, qualified entity or district who is acting within the course and scope of the**
15 **employee's employment, is immune from any civil liability that might otherwise be incurred**
16 **or imposed for making a fitness determination in accordance with this section and ORS**
17 **181.533, 181.534, 181.537 and 267.237.**

18 **SECTION 3.** ORS 8.100 is amended to read:

19 8.100. (1) For the purpose of requesting a state or nationwide criminal records check under ORS
20 181.534, the Judicial Department may require the fingerprints of a person who:

21 [(1)] (a) Is employed or applying for employment by the department; or

22 [(2)] (b) Provides services or seeks to provide services to the department as a contractor, vendor
23 or volunteer.

24 **(2) After considering the rules adopted by the Oregon Department of Administrative**
25 **Services under ORS 181.547, the Chief Justice of the Supreme Court may, by order, adopt**
26 **rules used to determine whether a person described in subsection (1) of this section is fit to**
27 **be employed by, or provide services to, the Judicial Department. The order may incorporate,**
28 **in whole or in part, the rules adopted by the Oregon Department of Administrative Services**
29 **under ORS 181.547.**

30 **SECTION 4.** ORS 267.237 is amended to read:

31 267.237. (1) As used in this section:

32 (a) "District" means a mass transit district organized under ORS 267.010 to 267.390 or a trans-
33 portation district organized under ORS 267.510 to 267.650.

34 (b) "Qualified entity" means an individual or business or organization, whether public, private,
35 for-profit, nonprofit or voluntary, that, under contract with a district, provides individuals to operate
36 motor vehicles for the transportation of passengers in the public transportation system of the dis-
37 trict.

38 (c) "Subject individual" means a person subject to a criminal records check as specified by re-
39 solution of a mass transit district or a transportation district.

40 (2) A mass transit district or a transportation district shall request the Department of State
41 Police to conduct criminal records checks of subject individuals if the checks are required in order
42 to protect vulnerable Oregonians:

43 (a) To implement a federal or state statute, executive order or rule that expressly refers to
44 criminal conduct and contains requirements or exclusions expressly based on such conduct;

45 (b) For district employment purposes when hiring individuals to operate motor vehicles of the

1 district; or

2 (c) For the purposes of employment decisions made by a district for qualified entities that, under
3 contracts with the district, employ individuals to operate motor vehicles for the transportation of
4 passengers in the public transportation system of the district.

5 (3) A mass transit district that has a population of more than 500,000 may request the Depart-
6 ment of State Police to conduct a criminal records check of a subject individual who is:

7 (a) Seeking employment by the district in a position that provides the individual with access to
8 critical infrastructure or security sensitive facilities or information; or

9 (b) Seeking to provide services to the district that will result in the individual's having access
10 to critical infrastructure or security sensitive facilities or information.

11 (4) In order to determine the suitability of the subject individual, a district shall require the
12 subject individual to furnish to the district a full set of fingerprints to enable a criminal records
13 check to be conducted. The district shall submit the completed fingerprint cards to the Department
14 of State Police along with the applicable Oregon and Federal Bureau of Investigation processing
15 fees. If no disqualifying record is identified at the state level, the Department of State Police shall
16 forward the fingerprints to the Federal Bureau of Investigation for a national criminal records
17 check.

18 (5) The Federal Bureau of Investigation shall either return or destroy the fingerprint cards used
19 to conduct the criminal records check and shall not keep any record of the fingerprints. However,
20 if the federal bureau policy authorizing return or destruction of the fingerprint cards is changed, a
21 district shall cease to cause the cards to be sent to the federal bureau but shall continue to process
22 the information through other available resources.

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

26 (7) If only a state criminal records check is conducted, the Department of State Police shall
27 destroy the fingerprint cards after the criminal records check is completed and the results of the
28 criminal records check provided to the district and shall retain no facsimiles or other material from
29 which a fingerprint can be reproduced.

30 (8) The district and the Department of State Police shall permit a subject individual to inspect
31 the individual's own Oregon and Federal Bureau of Investigation criminal offender records after
32 positive fingerprint identification has been made.

33 (9)(a) A district, *[using guidelines established by a resolution of the district]* **subject to rules**
34 **adopted by the Oregon Department of Administrative Services under ORS 181.547**, shall de-
35 termine *[under this section]* whether a subject individual is fit to operate motor vehicles for the
36 transportation of passengers in the public transportation system of the district or to hold a position
37 or provide services that provide the individual with access to critical infrastructure or security
38 sensitive facilities or information[, *based on the criminal records check obtained pursuant to this sec-*
39 *tion, any false statements made by the individual regarding the criminal history of the individual and*
40 *any refusal to submit or consent to a criminal records check including fingerprint identification]. If a*
41 subject individual is determined to be unfit, then that person shall not be allowed to operate motor
42 vehicles for the transportation of passengers in the public transportation system of the district or
43 to hold the position or provide services that provide the individual with access to critical
44 infrastructure or security sensitive facilities or information.

45 (b) In making the fitness determination, the district shall consider:

1 (A) The nature of the crime;

2 (B) The facts that support the conviction or pending indictment or indicate the making of *[the]*
3 **a** false statement;

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

6 (D) Intervening circumstances relevant to the responsibilities and circumstances of the position
7 or employment[. *Intervening circumstances include but are not limited to*], **such as:**

8 (i) The passage of time since the commission of the crime[.];

9 (ii) The age of the person at the time of the crime[.];

10 (iii) The likelihood of a repetition of offenses[.]; **and**

11 (iv) The subsequent commission of another relevant crime and *[a]* **the** recommendation of an
12 employer.

13 *[(c) A district and an employee of the district are immune from any civil liability that might oth-*
14 *erwise be incurred or imposed for actions taken in determining pursuant to this subsection that a*
15 *subject individual is fit or not fit to hold a position or be employed. A district, an employee of the*
16 *district and an employer or employer's agent who in good faith comply with this section and the deci-*
17 *sion of the district or employee of the district are not liable for the failure to hire a prospective em-*
18 *ployee or the decision to discharge an employee on the basis of the district's or employee's decision.*
19 *A district and an employee of the district are immune from any civil liability for the lawful dissem-*
20 *ination of information obtained under this section when the disclosure is:]*

21 *[(A) For the purpose of providing notice to the subject individual or the employer of the subject*
22 *individual of a determination of fitness under this section,]*

23 *[(B) Required by law; or]*

24 *[(C) Necessary to support a claim or defense related to denying employment to the subject individ-*
25 *ual.]*

26 *[(10) A district shall establish by resolution a process by which a subject individual may appeal*
27 *the determination that the subject individual is disqualified for a position or employment pursuant to*
28 *this section. Challenges to the accuracy or completeness of information provided by the Department of*
29 *State Police, the Federal Bureau of Investigation and agencies reporting information to the department*
30 *or bureau must be made through the department, bureau or agency and not through the appeal process*
31 *required by this subsection.]*

32 *[(11)] (10) A district shall develop a system that maintains information regarding criminal re-*
33 *ords checks in order to minimize the administrative burden that criminal records check require-*
34 *ments impose upon subject individuals and providers. Records maintained under this subsection for*
35 *subject individuals are confidential and may not be disseminated except for the purposes of this*
36 *section and in accordance with the relevant resolutions of the district. Nothing in this subsection*
37 *permits a district to retain fingerprint cards of subject individuals.*

38 *[(12)] (11) A district, in consultation with the Department of State Police and affected provider*
39 *groups, shall adopt resolutions to implement this section and other statutes relating to criminal*
40 *offender information. The resolutions [shall] **may** include but need not be limited to:*

41 (a) Specifying which employees are authorized to make criminal record inquiries;

42 (b) *[Specifying]* **Identifying applicable** categories of subject individuals **as specified by the**
43 **Oregon Department of Administrative Services under ORS 181.547** who are subject to criminal
44 records checks **by the district;**

45 (c) *[Specifying the]* **Identifying applicable** information[, *including fingerprints,*] that may be re-

1 quired from a subject individual to permit a criminal records check **as specified by the Oregon**
2 **Department of Administrative Services under ORS 181.547;**

3 (d) Specifying which services or qualified entities are subject to this section;

4 [(e) *Specifying which crimes may be considered in reviewing criminal offender information for a*
5 *subject individual;*]

6 [(f) *Specifying when a nationwide criminal records check shall be conducted on a subject individual*
7 *through the Department of State Police. The additional cost of obtaining a nationwide criminal records*
8 *check and the risk to vulnerable Oregonians should be taken into consideration when enacting resol-*
9 *utions under this subsection;*]

10 [(g)] (e) Specifying when a district, in lieu of conducting a completely new criminal records
11 check, may proceed to make a fitness determination under this section using the information main-
12 tained by the district under subsection [(11)] (10) of this section; and

13 [(h)] (f) Determining when a subject individual may be hired on a probationary basis pending a
14 criminal records check[. *At a minimum*], **provided that** if there is any indication of criminal be-
15 havior by the subject individual, the resolution must require that, if the individual is hired, the in-
16 dividual can be hired only on a probationary basis and must be actively supervised at all times when
17 the individual is in contact with children, the elderly or persons with disabilities.

18 [(13)] (12) Criminal offender information is confidential. The Department of State Police shall
19 adopt rules to restrict dissemination of information received under this section to persons with a
20 demonstrated and legitimate need to know the information. Any district receiving information pur-
21 suant to this section is bound by the rules of disclosure adopted by the department.

22 [(14)] (13) If a subject individual refuses to consent to the criminal records check or refuses to
23 be fingerprinted, the district or qualified entity shall deny or terminate the employment of the indi-
24 vidual, or revoke or deny any applicable position, authority to provide services or employment.

25 [(15)] (14) A district shall define by resolution the conditions under which subject individuals
26 may participate in training, orientation and work activities pending completion of a criminal records
27 check through the Law Enforcement Data System or nationwide criminal records check. At a mini-
28 mum, subject individuals shall be actively supervised at all times that they are in contact with
29 children, the elderly and persons with disabilities during such periods of training, orientation and
30 work. Subject individuals may continue probationary employment while awaiting the nationwide
31 criminal records check as long as the individual's criminal records check through the Law
32 Enforcement Data System did not result in disqualification and there are no other indications of
33 criminal behavior.

34 [(16)] (15) If a district or a qualified entity requires a criminal records check of employees or
35 other persons, the application forms of the district or qualified entity must contain a notice that
36 employment is subject to fingerprinting and a criminal records check as required by this section.

37 **SECTION 5.** ORS 181.533 is amended to read:

38 181.533. (1) As used in this section:

39 (a) "Authorized agency" means the Department of State Police or other governmental agency
40 designated by the State of Oregon to report, receive or disseminate criminal offender information.

41 (b) "Qualified entity" means a business or organization that:

42 (A) Provides care or placement services, or licenses or certifies others to provide care or
43 placement services, for children, elderly persons or dependent persons;

44 (B) Is not governed by a state regulatory or licensing agency; and

45 (C) Has been determined by an authorized agency to meet the criteria established by the au-

1 thorized agency by rule under subsection (9) of this section.

2 (c) "Subject individual" means a person who is employed or seeks to be employed by a qualified
3 entity or who is providing services or seeks to provide services to a qualified entity on a contractual
4 or volunteer basis.

5 (2) An entity may request from an authorized agency a criminal records check for purposes of
6 evaluating the fitness of a subject individual as an employee, contractor or volunteer. The author-
7 ized agency may access state and federal criminal records under this subsection only through use
8 of the subject individual's fingerprints.

9 (3) Before an authorized agency may conduct a criminal records check under this section:

10 (a) The authorized agency must determine whether the entity requesting the criminal records
11 check is a qualified entity; **and**

12 *[(b) The qualified entity must establish criteria, subject to rules adopted by the Oregon Department
13 of Administrative Services under ORS 181.547, to be used by the authorized agency in reviewing the
14 criminal offender information for a final record check determination;]*

15 *[(c) The qualified entity must provide the criteria established under paragraph (b) of this subsection
16 to the authorized agency; and]*

17 *[(d)]* **(b)** The qualified entity must have informed the subject individual that the qualified entity
18 might request a fingerprint-based criminal records check and that the subject individual may obtain
19 a copy of the record check report from, or challenge the accuracy or completeness of the record
20 check report through, the authorized agency or the Federal Bureau of Investigation.

21 (4)(a) Upon receipt of a subject individual's criminal offender information, the authorized agency
22 shall **submit the criminal offender information to the Department of Human Services. The**
23 **Department of Human Services shall, subject to** *[use the criteria provided to the authorized*
24 *agency by the qualified entity under subsection (3)(c) of this section and]* rules adopted by the Oregon
25 Department of Administrative Services under ORS 181.547, *[to]* make a fitness determination. *[In*
26 *making the final record check determination, the authorized agency may consider only information that*
27 *the Department of State Police may disclose under ORS 181.560.]* **After making a fitness determi-**
28 **nation under this subsection, the Department of Human Services shall inform the qualified**
29 **entity of the results of the fitness determination.**

30 *[(b) An authorized agency is immune from civil liability that might otherwise be incurred or im-*
31 *posed for making the final record check determination under this subsection.]*

32 **(b) In making the fitness determination, the Department of Human Services shall con-**
33 **sider:**

34 **(A) The nature of the crime;**

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

37 **(C) The relevancy, if any, of the crime or the false statement to the specific requirements**
38 **of the subject individual's present or proposed position or employment; and**

39 **(D) Intervening circumstances relevant to the responsibilities and circumstances of the**
40 **position or employment, such as:**

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

42 **(ii) The age of the person at the time of the crime;**

43 **(iii) The likelihood of a repetition of offenses; and**

44 **(iv) The subsequent commission of another relevant crime and the recommendation of**
45 **an employer.**

1 (5) An authorized agency may not transfer a fingerprint card used to conduct the criminal re-
2 cords check unless the public agency or person receiving the fingerprint card agrees to destroy or
3 return the fingerprint card to the authorized agency.

4 (6) If the public agency or person returns a fingerprint card to the authorized agency, the au-
5 thorized agency shall destroy the fingerprint card. The authorized agency may not keep a record
6 of the fingerprints.

7 (7) The authorized agency **or the Department of Human Services** shall permit a subject in-
8 dividual to inspect the individual's Oregon and Federal Bureau of Investigation criminal offender
9 information after positive identification has been established based upon fingerprints.

10 (8) Challenges to the accuracy or completeness of information provided by [*the authorized*
11 *agency,*] the Federal Bureau of Investigation and agencies reporting information to [*the authorized*
12 *agency or*] the federal bureau must be made through [*the authorized agency or*] the federal bureau.

13 (9) The authorized agency shall adopt rules to implement this section. The rules may include but
14 are not limited to:

15 (a) Criteria to be used by the authorized agency to determine whether an entity is a qualified
16 entity; and

17 (b) Fees to be charged for conducting criminal records checks under this section in amounts not
18 to exceed the actual costs of acquiring and furnishing criminal offender information.

19 **SECTION 6.** ORS 181.534 is amended to read:

20 181.534. (1) As used in this section:

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

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

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

26 (b) "Subject individual" means a person from whom an authorized agency may require finger-
27 prints pursuant to statute for the purpose of enabling the authorized agency to request a state or
28 nationwide criminal records check.

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

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

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

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

44 (6) If only a state criminal records check is conducted, the Department of State Police shall
45 destroy the fingerprint cards after the criminal records check is completed and the results of the

1 criminal records check provided to the authorized agency and shall retain no facsimiles or other
2 material from which a fingerprint can be reproduced.

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

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

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

14 (a) Identifying applicable categories of subject individuals as specified by the Oregon Depart-
15 ment of Administrative Services under ORS 181.547 who are subject to criminal records checks by
16 the authorized agency.

17 (b) Identifying applicable information that may be required from a subject individual to permit
18 a criminal records check as specified by the Oregon Department of Administrative Services under
19 ORS 181.547.

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

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

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

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

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

28 *[(10) The Department of State Police shall verify that an authorized agency has adopted the rules*
29 *required by subsection (9) of this section.]*

30 *[(11)(a)]* **(10)(a)** Except as otherwise provided in ORS 181.612, 342.143, 342.223, 443.735 *[and*
31 *475.304]* **and 475.300 to 475.346** and paragraph (b) of this subsection, an authorized agency, using
32 *[the rules adopted by the authorized agency under subsection (9) of this section and]* the rules adopted
33 by the Oregon Department of Administrative Services under ORS 181.547, shall determine whether
34 a subject individual is fit to hold a position, provide services, be employed or be granted a license,
35 certification, registration or permit, *based on the criminal records check obtained pursuant to this*
36 *section, on any false statements made by the individual regarding the criminal history of the individual*
37 *and on any refusal to submit or consent to a criminal records check including fingerprint*
38 *identification].* If a subject individual is determined to be unfit, then the individual may not hold the
39 position, provide services, be employed or be granted a license, certification, registration or permit.

40 (b) An individual prohibited from receiving public funds for employment under ORS 443.004 (3)
41 is not entitled to a determination of fitness as a subject individual under *[paragraph (a) of]* this
42 subsection.

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

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

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

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

6 (ii) Who are in a category of individuals as specified by the Oregon Department of Administra-
7 tive Services **by rule** under ORS 181.547; and

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

9 [(12)] (d) Except as otherwise provided in ORS 181.612, in making the fitness determination un-
10 der [subsection (11) of this section] **this subsection**, the authorized agency shall consider:

11 [(a)] (A) The nature of the crime;

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

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

17 [(d)] (D) Intervening circumstances relevant to the responsibilities and circumstances of the
18 position, services, employment, license, certification, registration or permit[. *Intervening circum-*
19 *stances include but are not limited to*], **such as:**

20 [(A)] (i) The passage of time since the commission of the crime;

21 [(B)] (ii) The age of the subject individual at the time of the crime;

22 [(C)] (iii) The likelihood of a repetition of offenses or of the commission of another crime;

23 [(D)] (iv) The subsequent commission of another relevant crime;

24 [(E)] (v) Whether the conviction was set aside and the legal effect of setting aside the con-
25 viction; and

26 [(F)] (vi) [A] **The** recommendation of an employer.

27 (e) **An individual prohibited from receiving public funds for employment under ORS**
28 **443.004 (3) is not entitled to a determination of fitness as a subject individual under this**
29 **subsection.**

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

40 [(14)(a) *Each authorized agency shall establish by rule a contested case process by which a subject*
41 *individual may appeal the determination that the individual is fit or not fit to hold a position, provide*
42 *services, be employed or be granted a license, certification, registration or permit on the basis of in-*
43 *formation obtained as the result of a criminal records check conducted pursuant to this section. Chal-*
44 *lenges to the accuracy or completeness of information provided by the Department of State Police, the*
45 *Federal Bureau of Investigation and agencies reporting information to the Department of State Police*

1 or Federal Bureau of Investigation must be made through the Department of State Police, Federal
2 Bureau of Investigation or reporting agency and not through the contested case process required by this
3 paragraph.]

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

11 [(c) An individual prohibited from receiving public funds for employment under ORS 443.004 (3)
12 is not entitled to appeal a determination under paragraph (a) or (b) of this subsection.]

13 [(15)] (11) Criminal offender information is confidential. Authorized agencies and the Depart-
14 ment of State Police shall adopt rules to restrict dissemination of information received under this
15 section to persons with a demonstrated and legitimate need to know the information.

16 [(16)] (12) If a subject individual refuses to consent to the criminal records check or refuses to
17 be fingerprinted, the authorized agency shall deny the employment of the individual, or revoke or
18 deny any applicable position, authority to provide services, license, certification, registration or
19 permit.

20 [(17)] (13) If an authorized agency requires a criminal records check of employees, prospective
21 employees, contractors, vendors or volunteers or applicants for a license, certification, registration
22 or permit, the application forms of the authorized agency must contain a notice that the person is
23 subject to fingerprinting and a criminal records check.

24 **SECTION 7.** ORS 181.537 is amended to read:

25 181.537. (1) As used in this section:

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

28 (b) "Native American tribe" has the meaning given that term in ORS 181.538 (4).

29 (c) "Qualified entity" means a community mental health program, a community developmental
30 disabilities program, a local health department, the government of a Native American tribe or an
31 agency of a Native American tribe responsible for child welfare or an individual or business or or-
32 ganization, whether public, private, for-profit, nonprofit or voluntary, that provides care, including
33 a business or organization that licenses, certifies or registers others to provide care.

34 (2) For the purpose of requesting a state or nationwide criminal records check under ORS
35 181.534, the Department of Human Services, the Oregon Health Authority and the Employment De-
36 partment may require the fingerprints of a person:

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

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

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

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

45 (C) Has access to information the disclosure of which is prohibited by state or federal laws,

1 rules or regulations, or information that is defined as confidential under state or federal laws, rules
2 or regulations;

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

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

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

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

8 (iii) Purchasing or selling property;

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

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

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

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

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

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

23 (f) For the purposes of licensure, certification or registration of foster homes by the government
24 of a Native American tribe or an agency of a Native American tribe responsible for child welfare.

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) Except as otherwise provided in ORS 443.735 and ~~[475.304]~~ **475.300 to 475.346**, a qualified
37 entity, *[using]* **subject to** rules adopted by *[the Department of Human Services or the Oregon Health*
38 *Authority under ORS 181.534 (9) and rules adopted by]* the Oregon Department of Administrative
39 Services under ORS 181.547, shall determine under this section whether a person is fit to hold a
40 position, provide services, be employed or, if the qualified entity has authority to make such a de-
41 termination, be licensed, certified or registered~~], based on the criminal records check obtained pur-~~
42 ~~suant to ORS 181.534, any false statements made by the person regarding the criminal history of the~~
43 ~~person and any refusal to submit or consent to a criminal records check including fingerprint identifi-~~
44 ~~cation]. If a person is determined to be unfit, then that person may not hold the position, provide~~
45 services or be employed, licensed, certified or registered.

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

3 [(6)] (c) In making the fitness determination under *[subsection (5) of this section]* **this**
4 **subsection**, the qualified entity shall consider:

5 [(a)] (A) The nature of the crime;

6 [(b)] (B) The facts that support the conviction or pending indictment or indicate the making of
7 *[the]* a false statement;

8 [(c)] (C) The relevancy, if any, of the crime or the false statement to the specific requirements
9 of the person's present or proposed position, services, employment, license, certification or regis-
10 tration; and

11 [(d)] (D) Intervening circumstances relevant to the responsibilities and circumstances of the
12 position, services, employment, license, certification or registration. *Intervening circumstances in-*
13 *clude but are not limited to*, **such as**:

14 (i) The passage of time since the commission of the crime[.];

15 (ii) The age of the person at the time of the crime[.];

16 (iii) The likelihood of a repetition of offenses[.];

17 (iv) The subsequent commission of another relevant crime; and [a]

18 (v) **The** recommendation of an employer.

19 [(7) *The Department of Human Services, the Oregon Health Authority and the Employment De-*
20 *partment may make fitness determinations based on criminal offender records and information fur-*
21 *nished by the Federal Bureau of Investigation through the Department of State Police only as described*
22 *in ORS 181.534.]*

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

34 [(9)] (6) The Department of Human Services and the Oregon Health Authority, subject to rules
35 adopted by the Oregon Department of Administrative Services under ORS 181.547, shall develop
36 systems that maintain information regarding criminal records checks in order to minimize the ad-
37 ministrative burden imposed by this section and ORS 181.534. Records maintained under this sub-
38 section are confidential and may not be disseminated except for the purposes of this section and in
39 accordance with the rules of the Department of Human Services, the Oregon Health Authority and
40 the Department of State Police. Nothing in this subsection permits the Department of Human Ser-
41 vices to retain fingerprint cards obtained pursuant to this section.

42 [(10)] (7) In addition to the rules required by ORS 181.534, the Department of Human Services
43 and the Oregon Health Authority, in consultation with the Department of State Police, shall adopt
44 rules:

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

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

2 (c) Specifying which qualified entities are responsible for deciding, subject to rules adopted by
3 the Oregon Department of Administrative Services under ORS 181.547, whether a subject individual
4 is not fit for a position, service, license, certification, registration or employment; and

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

9 [(11)] (8) If a person refuses to consent to the criminal records check or refuses to be finger-
10 printed, the qualified entity shall deny or terminate the employment of the person, or revoke or deny
11 any applicable position, authority to provide services, employment, license, certification or regis-
12 tration.

13 [(12)] (9) If the qualified entity requires a criminal records check of employees or other persons,
14 the application forms of the qualified entity must contain a notice that employment is subject to
15 fingerprinting and a criminal records check.

16
17 **CLARIFYING REFERENCES**

18
19 **SECTION 8.** ORS 329A.270 is amended to read:

20 329A.270. (1) A certification or registration authorized by ORS 329A.030 and 329A.250 to
21 329A.450 and issued to a child care facility may be renewed upon submission of an application and
22 payment of the required fee not later than 30 days prior to the expiration date of the current cer-
23 tification or registration if the Office of Child Care finds that the child care facility that is seeking
24 renewal of the certification or registration is in compliance with the requirements of ORS 181.537,
25 329A.030 and 329A.250 to 329A.450 and the rules promulgated pursuant to ORS 181.534, 181.537,
26 **181.547**, 329A.030 and 329A.250 to 329A.450.

27 (2) Upon submission of an application for renewal in proper time, manner and form, and payment
28 of the required fee, the current certification or registration, unless officially revoked, shall remain
29 in force until the Office of Child Care has acted on the application for renewal and has given notice
30 of the action taken.

31 **SECTION 9.** ORS 329A.300 is amended to read:

32 329A.300. (1) Upon receipt of an application for a certification, accompanied by the required fee,
33 the Office of Child Care shall issue a certification if the office finds that the child care facility and
34 its operations are in compliance with the requirements of ORS 181.537, 329A.030 and 329A.250 to
35 329A.450 and the rules promulgated pursuant to ORS 181.534, 181.537, **181.547**, 329A.030 and
36 329A.250 to 329A.450.

37 (2) The Office of Child Care may issue a temporary certification, subject to reasonable terms
38 and conditions, for a period not longer than 180 days to a child care facility that does not comply
39 with the requirements and rules if the office finds that the health and safety of any child will not
40 be endangered thereby. Not more than one temporary certification shall be issued for the same child
41 care facility in any 12-month period.

42 (3) The Office of Child Care shall serve as the state agency authorized, upon request, to certify
43 compliance with applicable federal child care standards or requirements by any facility providing
44 child care in the state.

45 **SECTION 10.** ORS 329A.330 is amended to read:

1 329A.330. (1) A provider operating a family child care home where care is provided in the family
2 living quarters of the provider's home that is not subject to the certification requirements of ORS
3 329A.280 may not operate a child care facility without registering with the Office of Child Care.

4 (2) A child care facility holding a registration may care for a maximum of 10 children, including
5 the provider's own children. Of the 10 children:

6 (a) No more than six may be younger than school age; and

7 (b) No more than two may be 24 months of age or younger.

8 (3)(a) To obtain a registration, a provider must apply to the Office of Child Care by submitting
9 a completed application work sheet and a nonrefundable fee. The fee shall vary according to the
10 number of children for which the facility is requesting to be registered, and shall be determined and
11 applied through rules adopted by the Early Learning Council under ORS 329A.275. The fee shall be
12 deposited as provided in ORS 329A.310 (2). The office may waive any or all of the fee if the office
13 determines that imposition of the fee would impose a hardship on the provider.

14 (b) Upon receipt of an initial or renewal application satisfactory to the office, the office shall
15 conduct an on-site review of the child care facility under this section. The on-site review shall be
16 conducted within 30 days of the receipt of a satisfactory application.

17 (4) The office shall issue a registration to a provider operating a family child care home if:

18 (a) The provider has completed a child care overview class administered by the office;

19 (b) The provider has completed two hours of training on child abuse and neglect issues;

20 (c) The provider is currently certified in infant and child first aid and cardiopulmonary resus-
21 citation;

22 (d) The provider is certified as a food handler under ORS 624.570; and

23 (e) The office determines that the application meets the requirements of ORS 181.537, 329A.030
24 and 329A.250 to 329A.450 and the rules promulgated pursuant to ORS 181.534, 181.537, **181.547**,
25 329A.030 and 329A.250 to 329A.450, and receives a satisfactory records check, including criminal
26 records and protective services records.

27 (5) Unless the registration is revoked as provided in ORS 329A.350, the registration is valid for
28 a period of two years from the date of issuance. The office may renew a registration of a provider
29 operating a family child care home if the provider:

30 (a) Is currently certified in infant and child first aid and cardiopulmonary resuscitation;

31 (b) Has completed a minimum of eight hours of training related to child care during the most
32 recent registration period; and

33 (c) Is certified as a food handler under ORS 624.570.

34 (6) A registration authorizes operation of the facility only on the premises described in the
35 registration and only by the person named in the registration.

36 (7) The Early Learning Council shall adopt rules:

37 (a) Creating the application work sheet required under subsection (3) of this section;

38 (b) Defining full-time and part-time care;

39 (c) Establishing under what circumstances the adult to child ratio requirements may be tempo-
40 rarily waived; and

41 (d) Establishing health and safety procedures and standards on:

42 (A) The number and type of toilets and sinks available to children;

43 (B) Availability of steps or blocks for use by children;

44 (C) Room temperature;

45 (D) Lighting of rooms occupied by children;

- 1 (E) Glass panels on doors;
- 2 (F) Condition of floors;
- 3 (G) Availability of emergency telephone numbers; and
- 4 (H) Smoking.

5 (8) The office shall adopt the application work sheet required by subsection (3) of this section.
6 The work sheet must include, but need not be limited to, the following:

- 7 (a) The number and ages of the children to be cared for at the facility; and
- 8 (b) The health and safety procedures in place and followed at the facility.

9 (9) The office, upon good cause shown, may waive one or more of the registration requirements.
10 The office may waive a requirement only if appropriate conditions or safeguards are imposed to
11 protect the welfare of the children and the consumer interests of the parents of the children. The
12 office may not waive the on-site review requirement for applicants applying for an initial registra-
13 tion or renewal of a registration.

14 (10) The Early Learning Council, by rule, shall develop a list of recommended standards con-
15 sistent with standards established by professional organizations regarding child care programs for
16 child care facilities. Compliance with the standards is not required for a registration, but the office
17 shall encourage voluntary compliance and shall provide technical assistance to a child care facility
18 attempting to comply with the standards. The child care facility shall distribute the list of recom-
19 mended minimum standards to the parents of all children cared for at the facility.

20 (11) In adopting rules relating to registration, the Early Learning Council shall consult with the
21 appropriate legislative committee in developing the rules to be adopted. If the rules are being
22 adopted during a period when the Legislative Assembly is not in session, the Early Learning Council
23 shall consult with the appropriate interim legislative committee.

24 **SECTION 11.** ORS 329A.370 is amended to read:

25 329A.370. Without the necessity of prior administrative proceedings or hearing and entry of an
26 order or at any time during such proceedings if they have been commenced, the Office of Child Care
27 may institute proceedings to enjoin the operation of any child care facility operating in violation
28 of ORS 181.537, 329A.030 and 329A.250 to 329A.450 or the rules promulgated pursuant to ORS
29 181.534, 181.537, **181.547**, 329A.030 and 329A.250 to 329A.450.

30 **SECTION 12.** ORS 329A.390 is amended to read:

31 329A.390. (1) Whenever an authorized representative of the Office of Child Care is advised or
32 has reason to believe that child care that is subject to regulation by the office is being provided
33 without a certification, registration or record, the authorized representative may visit and conduct
34 an on-site investigation of the premises of the facility at any reasonable time to determine whether
35 the facility is subject to the requirements of ORS 181.537, 329A.030 and 329A.250 to 329A.450.

36 (2) At any reasonable time, an authorized representative of the Office of Child Care may conduct
37 an on-site investigation of the premises of any certified or registered child care facility to determine
38 whether the child care facility is in conformity with ORS 181.537, 329A.030 and 329A.250 to 329A.450
39 and the rules promulgated pursuant to ORS 181.534, 181.537, **181.547**, 329A.030 and 329A.250 to
40 329A.450.

41 (3) An authorized representative of the Office of Child Care shall conduct an on-site investi-
42 gation of the premises of any certified or registered child care facility or of any other child care
43 facility that is subject to regulation by the office if the office receives a serious complaint about the
44 child care facility. The Early Learning Council, by rule, shall adopt a definition for “serious com-
45 plaint.”

1 (4) Any state agency that receives a complaint about a certified or registered child care facility,
2 a preschool recorded program or a school-age recorded program shall notify the Office of Child Care
3 about the complaint and any subsequent action taken by the state agency based on that complaint.

4 (5) The director and operator of a child care facility, a preschool recorded program or a
5 school-age recorded program shall permit an authorized representative of the office to inspect re-
6 cords of the facility or program and shall furnish promptly reports and information required by the
7 office.

8
9 **CONFORMING AMENDMENTS**

10
11 **SECTION 13.** ORS 181.612 is amended to read:

12 181.612. (1) For the purpose of requesting a state or nationwide criminal records check under
13 ORS 181.534, the Department of Public Safety Standards and Training may require the fingerprints
14 of a person who:

15 (a) Is employed or applying for employment by the department;

16 (b) Provides services or seeks to provide services to the department as a contractor, vendor or
17 volunteer; or

18 (c) Is applying for a license or certificate, or for reissuance of a license or certificate, that is
19 issued by the department or is under investigation by the department.

20 (2) ORS 181.534 [(11) and (12)] (10) does not apply to the department when the department makes
21 denial or revocation decisions regarding persons described in subsection (1)(c) of this section or ORS
22 181.880 or 703.090.

23 (3) The department and an employee of the department acting within the course and scope of
24 employment are immune from any civil liability that might otherwise be incurred or imposed for
25 making denial or revocation decisions regarding persons described in subsection (1)(c) of this section
26 or ORS 181.880 or 703.090. The department, an employee of the department acting within the course
27 and scope of employment and an employer or employer's agent who in good faith comply with the
28 requirements of ORS 181.662, 181.875 or 703.090, any rules adopted by the department and the de-
29 cision of the department or employee of the department acting within the course and scope of em-
30 ployment are not liable for employment-related decisions based on decisions made under ORS
31 181.662, 181.875 or 703.090. The department or an employee of the department acting within the
32 course and scope of employment is not liable for defamation or invasion of privacy in connection
33 with the lawful dissemination of information lawfully obtained under ORS 181.534.

34 **SECTION 14.** ORS 242.550 is amended to read:

35 242.550. **Subject to rules adopted by the Oregon Department of Administrative Services**
36 **under ORS 181.547**, the civil service board may require an applicant for a custodial position to
37 furnish evidence satisfactory to the board of good character, mental and physical health, and such
38 other evidence as [it may deem] **the civil service board deems** necessary to establish the
39 applicant's fitness[, including any information concerning a criminal conviction for a crime involving
40 the possession, use, sale or distribution of a controlled substance, sexual misconduct listed in ORS
41 342.143 (3), theft or a crime of violence. The board shall not approve the employment of any applicant
42 unless the board is satisfied that the applicant poses no danger to school children].

43 **SECTION 15.** ORS 326.604 is amended to read:

44 326.604. (1) As used in this section, "care" means the provision of care, treatment, education,
45 training, instruction, supervision, placement services, recreation or support to children, youth or

1 persons with disabilities.

2 (2) For the purpose of requesting a state or nationwide criminal records check under ORS
3 181.534, the Department of Education may require the fingerprints of a person who:

4 (a)(A) Is employed or applying for employment by the department; or

5 (B) Provides services or seeks to provide services to the department as a contractor, subcon-
6 tractor, vendor or volunteer; and

7 (b) Is, or will be, working or providing services in a position:

8 (A) In which the person may have unsupervised access to children;

9 (B) In which the person may have contact with recipients of care;

10 (C) In which the person has access to confidential or personal information about children, as
11 may be further defined by the State Board of Education by rule;

12 (D) In which the person is providing information technology services and has control over, or
13 access to, information technology systems that would allow the person to harm the information
14 technology systems or the information contained in the systems;

15 (E) In which the person has access to information, the disclosure of which is prohibited by state
16 or federal laws, rules or regulations or information that is defined as confidential under state or
17 federal laws, rules or regulations;

18 (F) That has payroll functions or in which the person has responsibility for receiving, receipting
19 or depositing money or negotiable instruments, for billing, collections or other financial transactions
20 or for purchasing or selling property or has access to property held in trust or to private property
21 in the temporary custody of the department;

22 (G) That has mailroom duties as the primary duty or job function of the position;

23 (H) In which the person has responsibility for auditing the department;

24 (I) That has personnel or human resources functions as one of the position's primary responsi-
25 bilities; or

26 (J) In which the person has access to personal information about employees or members of the
27 public, including Social Security numbers, dates of birth, driver license numbers, medical informa-
28 tion, personal financial information or criminal background information.

29 (3) In addition to the authority granted by subsection (2) of this section and for the purpose of
30 requesting a state or nationwide criminal records check under ORS 181.534, the Department of Ed-
31 ucation may require the fingerprints of a person for the purposes of licensing, certifying, registering
32 or otherwise regulating or administering programs under the authority of the department.

33 (4) The Department of Education, **subject to rules adopted by the Oregon Department of**
34 **Administrative Services under ORS 181.547**, may make fitness determinations based on criminal
35 offender records and information furnished by the Federal Bureau of Investigation through the De-
36 partment of State Police as provided by ORS 181.534.

37 **SECTION 16.** ORS 443.004 is amended to read:

38 443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete
39 a criminal records check under ORS 181.534 on:

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

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

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

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

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

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

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

15 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
16 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,
17 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d),
18 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800, 165.803,
19 167.012, 167.017, 167.057, 167.320 or 167.322;

20 (b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465,
21 163.467, 163.700, 164.055, 164.125 or 164.377, the date of conviction for which was within the five
22 years immediately preceding employment in any capacity of an individual, other than a mental
23 health or substance abuse treatment provider, having contact with a recipient of support services,
24 a resident of a residential facility or a resident of an adult foster home, when the recipient or resi-
25 dent is 65 years of age or older;

26 (c) Of a crime listed in ORS 181.805;

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

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

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

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

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

42 (6) Upon the request of a mental health or substance abuse treatment provider, the department
43 or authority shall maintain a record of the results of any fitness determination made under ORS
44 181.534 [(11) and (12)] (10). The department or authority may disclose the record only to a person
45 the provider specifically authorizes, by a written release, to receive the information.

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

5 (8) As used in this section:

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

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

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

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

10 (e) "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 treatment home that is li-
13 censed under ORS 443.415 to provide treatment for individuals with alcohol or drug dependence;

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

15 or

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

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

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

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

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

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

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

25
26 **TRANSITIONAL PROVISIONS**

27
28 **SECTION 17. The rules of the Department of State Police adopted pursuant to ORS**
29 **181.516 before the operative date specified in section 25 of this 2015 Act continue in effect**
30 **until superseded or repealed by rules of the Oregon Department of Administrative Services.**
31 **Until superseded or repealed, references in rules of the Department of State Police adopted**
32 **pursuant to ORS 181.516 before the operative date specified in section 25 of this 2015 Act to**
33 **the Department of State Police or an officer or employee of the Department of State Police**
34 **are considered to be references to the Oregon Department of Administrative Services or an**
35 **officer or employee of the Oregon Department of Administrative Services.**

36
37 **APPLICABILITY**

38
39 **SECTION 18. The amendments to ORS 8.100, 181.533, 181.534, 181.537, 267.237 by sections**
40 **3 to 7 of this 2015 Act apply to information submitted for purposes of conducting criminal**
41 **records checks that is received on or after the operative date specified in section 25 of this**
42 **2015 Act.**

43
44 **CONTINUATION OF WORK GROUP**

1 **SECTION 19.** The Oregon Department of Administrative Services shall continue to con-
2 vene the work group that the department convened to implement the provisions of chapter
3 285, Oregon Laws 2013, for the purposes of implementing the provisions of this 2015 Act. As
4 part of its duties, the work group shall study further statutory changes that are necessary
5 for the efficient administration of criminal records checks conducted pursuant to the statu-
6 tory laws of this state for purposes related to making fitness determinations. On the basis
7 of the findings of the work group, the department shall submit a report in the manner pro-
8 vided by ORS 192.245, and may include recommendations for legislation, to an interim com-
9 mittee of the Legislative Assembly related to government efficiency no later than December
10 15, 2015.

11
12 **INCREASES IN APPROPRIATIONS AND**
13 **INCREASES AND DECREASES IN EXPENDITURE LIMITATIONS**
14

15 **SECTION 20.** Notwithstanding any other provision of law, the General Fund appropriation
16 made to the Department of Human Services by section 1 (1), chapter __, Oregon Laws 2015
17 (Enrolled House Bill 5026), for the biennium beginning July 1, 2015, for central services,
18 statewide assessments and enterprise-wide costs and program design services, is increased
19 by \$144,705 for the purpose of implementing the amendments to ORS 8.100, 181.516, 181.533,
20 181.534, 181.537, 181.547, 181.612, 242.550, 267.237, 326.604, 329A.270, 329A.300, 329A.330,
21 329A.370, 329A.390 and 443.004 by sections 1 to 16 of this 2015 Act.

22 **SECTION 21.** Notwithstanding any other law limiting expenditures, the limitation on
23 expenditures established by section 2 (1), chapter __, Oregon Laws 2015 (Enrolled House Bill
24 5026), for the biennium beginning July 1, 2015, as the maximum limit for payment of expenses
25 from fees, moneys or other revenues, including Miscellaneous Receipts and Medicare receipts
26 and including federal funds for indirect cost recovery, Social Security Supplemental Security
27 Income recoveries and the Child Care and Development Fund, but excluding lottery funds and
28 federal funds not described in this section, collected or received by the Department of Human
29 Services, for central services, statewide assessments and enterprise-wide costs and program
30 design services, is increased by \$187,768 for the purpose of implementing the amendments to
31 ORS 8.100, 181.516, 181.533, 181.534, 181.537, 181.547, 181.612, 242.550, 267.237, 326.604, 329A.270,
32 329A.300, 329A.330, 329A.370, 329A.390 and 443.004 by sections 1 to 16 of this 2015 Act.

33 **SECTION 22.** Notwithstanding any other law limiting expenditures, the limitation on
34 expenditures established by section 2 (4), chapter __, Oregon Laws 2015 (Enrolled House Bill
35 5026), for the biennium beginning July 1, 2015, as the maximum limit for payment of expenses
36 from fees, moneys or other revenues, including Miscellaneous Receipts and Medicare receipts
37 and including federal funds for indirect cost recovery, Social Security Supplemental Security
38 Income recoveries and the Child Care and Development Fund, but excluding lottery funds and
39 federal funds not described in this section, collected or received by the Department of Human
40 Services, for shared services is increased by \$117,981 for the purpose of implementing the
41 amendments to ORS 8.100, 181.516, 181.533, 181.534, 181.537, 181.547, 181.612, 242.550, 267.237,
42 326.604, 329A.270, 329A.300, 329A.330, 329A.370, 329A.390 and 443.004 by sections 1 to 16 of this
43 2015 Act.

44 **SECTION 23.** Notwithstanding any other law limiting expenditures, the limitation on
45 expenditures established by section 3 (1), chapter __, Oregon Laws 2015 (Enrolled House Bill

1 5026), for the biennium beginning July 1, 2015, as the maximum limit for payment of expenses
2 from federal funds, excluding federal funds described in section 2, chapter __, Oregon Laws
3 2015 (Enrolled House Bill 5026), collected or received by the Department of Human Services,
4 for central services, statewide assessments and enterprise-wide costs and program design
5 services, is increased by \$177,000 for the purpose of implementing the amendments to ORS
6 8.100, 181.516, 181.533, 181.534, 181.537, 181.547, 181.612, 242.550, 267.237, 326.604, 329A.270,
7 329A.300, 329A.330, 329A.370, 329A.390 and 443.004 by sections 1 to 16 of this 2015 Act.

8 SECTION 24. Notwithstanding any other law limiting expenditures, the limitation on
9 expenditures established by section 2 (4), chapter __, Oregon Laws 2015 (Enrolled Senate
10 Bill 5531), for the biennium beginning July 1, 2015, as the maximum limit for payment of ex-
11 penses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding
12 lottery funds and federal funds, collected or received by the Department of State Police, for
13 administrative services, agency support, criminal justice information services and office of
14 the State Fire Marshal, is decreased by \$90,049 for purposes related to implementing the
15 amendments to ORS 8.100, 181.516, 181.533, 181.534, 181.537, 181.547, 181.612, 242.550, 267.237,
16 326.604, 329A.270, 329A.300, 329A.330, 329A.370, 329A.390 and 443.004 by sections 1 to 16 of this
17 2015 Act.

18
19 **OPERATIVE DATE**
20

21 SECTION 25. (1) The amendments to ORS 8.100, 181.516, 181.533, 181.534, 181.537, 181.547,
22 181.612, 242.550, 267.237, 326.604, 329A.270, 329A.300, 329A.330, 329A.370, 329A.390 and 443.004
23 by sections 1 to 16 of this 2015 Act become operative on January 1, 2016.

24 (2) The Oregon Department of Administrative Services and the Department of Human
25 Services may take any action before the operative date specified in subsection (1) of this
26 section that is necessary to enable the Oregon Department of Administrative Services and
27 the Department of Human Services to exercise, on and after the operative date specified in
28 subsection (1) of this section, all the duties, functions and powers conferred on the Oregon
29 Department of Administrative Services and the Department of Human Services by the
30 amendments to ORS 8.100, 181.516, 181.533, 181.534, 181.537, 181.547, 181.612, 242.550, 267.237,
31 326.604, 329A.270, 329A.300, 329A.330, 329A.370, 329A.390 and 443.004 by sections 1 to 16 of this
32 2015 Act.

33
34 **CAPTIONS**
35

36 SECTION 26. The unit captions used in this 2015 Act are provided only for the conven-
37 ience of the reader and do not become part of the statutory law of this state or express any
38 legislative intent in the enactment of this 2015 Act.

39
40 **EMERGENCY CLAUSE**
41

42 SECTION 27. This 2015 Act being necessary for the immediate preservation of the public
43 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
44 on its passage.