

Senate Bill 909

Sponsored by COMMITTEE ON JUDICIARY

SUMMARY

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

Requires that fitness determination be conducted before hiring individuals with specified criminal history if individual will have direct contact with resident of residential facility or adult foster home or persons who receive in-home services or supports.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to direct care providers; amending ORS 443.004; and declaring an emergency.

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

4 **SECTION 1.** ORS 443.004 is amended to read:

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

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

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

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

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

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

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

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

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

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.

1 167.012, 167.017, 167.057, 167.320 or 167.322;]

2 [(b)] (a) [Notwithstanding paragraph (a) of this subsection,] Of a crime described in ORS 163.465,
3 163.467, 163.700, 164.055, 164.125 or 164.377, the date of conviction for which was within the five
4 years immediately preceding employment in any capacity of an individual, other than a mental
5 health or substance abuse treatment provider, having contact with a recipient of support services,
6 a resident of a residential facility or a resident of an adult foster home, when the recipient or resi-
7 dent is 65 years of age or older;

8 [(c)] (b) Of a crime listed in ORS 181.805;

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

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

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

15 **(4) A determination of fitness in accordance with ORS 181.534 and 181.537 must be con-**
16 **ducted before an individual who will be paid using public funds in whole or in part may be**
17 **employed in any capacity in which the individual will have contact with a recipient of support**
18 **services or a resident of a residential facility or adult foster home, other than a mental**
19 **health or substance abuse treatment provider, if the individual has been convicted of a crime**
20 **described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165, 163.175, 163.185,**
21 **163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465, 163.467,**
22 **163.535, 163.537, 163.547, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215,**
23 **164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800, 165.803,**
24 **167.012, 167.017, 167.057, 167.320 or 167.322.**

25 [(4)] (5) If the criminal background check conducted by a home health agency or in-home care
26 agency under subsection (2) of this section reveals that the individual who is subject to the criminal
27 background check has been convicted of any of the crimes described in subsection (3) **or** (4) of this
28 section, the home health agency or in-home care agency may not employ the individual.

29 [(5)] (6) Public funds may not be used to support, in whole or in part, the employment, in any
30 capacity having contact with a recipient of support services or a resident of a residential facility
31 or an adult foster home, of a mental health or substance abuse treatment provider who has been
32 convicted of committing, or convicted of an attempt, conspiracy or solicitation to commit, a crime
33 described in ORS 163.095, 163.115, 163.375, 163.405, 163.411 or 163.427.

34 [(6)] (7) Upon the request of a mental health or substance abuse treatment provider, the de-
35 partment or authority shall maintain a record of the results of any fitness determination made under
36 ORS 181.534 (11) and (12). The department or authority may disclose the record only to a person the
37 provider specifically authorizes, by a written release, to receive the information.

38 [(7)] (8) If the department or authority has a record of substantiated abuse committed by an
39 employee or potential employee of a home health agency, in-home care agency, adult foster home
40 or residential facility, regardless of whether criminal charges were filed, the department or author-
41 ity shall notify, in writing, the employer and the employee or potential employee.

42 [(8)] (9) As used in this section:

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

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

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

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

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

3 (A) A peer support specialist;

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

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

7 or

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

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

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

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

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

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

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

17 **SECTION 2. This 2015 Act being necessary for the immediate preservation of the public**
18 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
19 **on its passage.**

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